

Design Options for the Clean Industry Bonus (previously British Jobs Bonus)

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Research Questions

How can the design of the British Jobs Bonus secure quality jobs for workers, and ensure support both for those locations and industries most at risk and for those formerly/currently employed in oil and gas?

- a. What design and incentives are required for the BJB to secure comparable job quality for workers?
- b. How should the BJB be structured to target particular locations / regions or industries? How are these selected?
- c. How should the BJB be structured to create pathways/support for oil and gas workers specifically to transition into the jobs created by the BJB?
- d. For sub questions 2a, 2b and 2c, what learnings can be taken from other countries' examples of local content or jobs requirements on subsidies and the emerging evidence of the effectiveness of these provisions?

What design is required for the British Jobs Bonus to fit most effectively into the existing regulatory and political environment?

- e. How must the BJB be structured to reduce the risk of conflict with the regulatory landscape, the Subsidy Control Act, and international subsidy control commitments?
- f. How can / should the BJB intersect with other government policy propositions, particularly the National Wealth Fund, and potentially also GB Energy and the New Deal for Working People? How can the government leverage their overlaps and avoid duplication
- g. How can / should the BJB intersect with or build upon existing government policy e.g. the CfD Sustainable Industry Reward?
- h. What are the implementation barriers?

Executive Summary

This paper lays out proposals on how the British Jobs Bonus can ensure job quality, optimise job creation in key locations, and deliver just transition pathways for oil and gas workers.

Delivering on this agenda is essential to delivering a just transition away from North Sea oil extraction, which in turn is key to maintaining social cohesion and consensus around a rapid climate transition, as well as international momentum in the phase out of fossil fuels.

We propose a British Jobs Bonus package, delivered by amending and upscaling the Sustainable Industry Rewards, and funded through the £1.5 billion pledged in the Labour manifesto.

We also propose an additional package of measures, to provide a supportive and consistent environment for the BJB interventions.

Proposed British Jobs Bonus package

The proposed British Jobs Bonus policy comprises baseline job quality conditions applied to all CfD-financed projects, alongside bonus incentives to promote job quality, job creation in key locations, and just transition pathways. The package can be delivered by updating the Contracts for Difference (Sustainable Industry Rewards) Regulations.

British Jobs Bonus conditions on all CfD applicants to achieve baseline job quality:

- Pay: Obtaining an SIR Statement (and thus entry to a CfD auction) should require applicants to commit to ensuring developers and Tier 1 & Tier 2 suppliers pay wages in line with nationally negotiated agreements or prevailing wages.
- Fair Work Charter: Obtaining an SIR Statement (and thus entry to a CfD auction) should require applicants to commit to ensuring developers, Tier 1 & Tier 2 suppliers signing up to a Fair Work Charter, with principles including Worker Voice/Union recognition, Security of Contracts, Health & Safety, Equalities & Diversity, Training & skills, Apprenticeships, Transparency & Whistle-blowing

British Jobs Bonus incentives:

- Job Quality: Bonus payments for CfD applicants that commit in SIR statement to either:
 - Limit sub-contracting tiers;
 - Deliver “Best-in-class” pay within the sector; and
 - Extend the baseline job quality requirements (negotiated/prevaling wages and Fair Work Charter) to Tier 3 & Tier 4 suppliers
- Job Creation in Target Locations: Bonus payments when SIR Statements include commitments to invest into domestic manufacturing supply chains. Three alternative measures are proposed:
 - Bonus support for renewable energy projects that use local supply chains or generate local long term jobs;


- Manufacturing investment bonus for investment in new or upgraded manufacturing facilities (with higher proportion if it upgrades a facility currently within the oil & gas supply chain), tied to the CfD SIR process; or
 - Manufacturing investment bonus as above, not tied to the CfD SIR process
- The first option would face a significant risk of successful legal challenge, most likely by the EU through the Trade and Cooperation Agreement, or a company/investor under the Subsidy Control Act. This risk, and the resource required to defend the policy, should be weighed against its potential benefits. The second two options present much lower risk, and would be equivalent to measures already introduced by the UK and EU.
- Just Transition Pathways for Oil & Gas workers: Bonus payments for CfD-financed projects that commit in their SIR Statement to developers and most Tier 1 & Tier 2 suppliers participating in a proposed Transition Scheme for Oil & Gas Workers, overseen by the Office for Clean Energy Jobs.

Table 2: Summary of proposed British Jobs Bonus total allocation this Parliament (£1.5bn)

Job quality	Conditions for Job Quality			£120m
	Bonus incentives <ul style="list-style-type: none">• Limits on sub-contracting• Best in class job quality (salaries)• Extend baseline conditions to Tiers 3 & 4			£90m
Job location	Bonus support for renewable energy projects that use local supply chains or generate local long term jobs	OR Manufacturing investment bonus for investment in new or upgraded manufacturing facilities, tied to the CfD SIR process	OR Manufacturing investment not tied to the CfD SIR process	£1,135m
Pathways for fossil fuel workers	Transition Scheme for Oil & Gas Workers			£150m
BJB administration				£5m
Annual total				£1,500m

Additional package of measures

We also propose an additional package of measures, including Regulatory minimum standards, strengthening existing Supply Chain Plan conditions applied to Contracts for



Differences, and applying job quality conditions to other public investment and procurement. These include:

Job Quality:

- Implement a strong New Deal for Working People
- Use planned primary legislation, secondary legislation and official strategic update letters from Secretaries of State to extend the same baseline job quality standards (negotiated/prevaling wages and Fair Work Charters) across all energy projects supported by public financing or procurement.

Job Creation in Target Locations:

- Strengthen existing conditions on Contracts for Difference, specifically the requirements and questions in Supply Chain Plan Questionnaires, through updates to the Contracts for Difference regulation
- Apply criteria and priorities to public investment and public procurement, including to projects in which GB Energy and the National Wealth Fund hold equity stakes - through primary legislation for GB Energy etc, and guidance from Secretaries of State

Just Transition Pathways for Oil & Gas Workers:

- Create a North Sea Job Guarantee & Welfare Support programme, targeted at workers currently reliant on the oil & gas industry, and who fall through the gaps of the Transition Scheme for Oil & Gas Workers proposed as part of the British Jobs Bonus
- Regulate to require oil and gas employers to invest into their workforce and cover the costs of training accredited for both oil & gas sectors and zero carbon industries, as well as paid time off to train.

1.Introduction

The new Government has introduced a series of measures to accelerate the rollout of renewable energy, as part of its mission to establish the UK as a “Clean Energy Superpower”.¹ A core element of this mission, alongside decarbonisation, energy security and lower bills, is the creation of hundreds of thousands of “good jobs” by “rebuilding the strength of our industrial heartlands and coastal communities”².

Measures introduced or announced include:

- **British Jobs Bonus (BJB)** - an annual allocation of up to £500m, “to incentivise companies developing clean technologies...to target their investment particularly at the areas that most need it...to create jobs and build their supply chains in industrial heartlands and coastal communities of the UK, including communities with historic and current ties to fossil fuel production like coal, oil and gas”³. This policy has been modelled in part on the US’ Inflation Reduction Act.
- **A National Wealth Fund (NFW)** - £7.3 billion of public capital to invest in “new industries of the future”, with the aim of leveraging greater sums of private investment.⁴ Priority areas identified for investment include green steel, green hydrogen, industrial decarbonisation, gigafactories and ports.
- **Great British Energy (GBE)** – a publicly owned energy company that will own, manage and operate clean power projects, backed by a capitalisation of £8.3 billion of new money over a single Parliament.⁵

This paper reviews options and presents proposals for how the British Jobs Bonus can be designed and allocated across the renewables sector to maximise delivery of high quality jobs in the right places, that are accessible to oil and gas workers.

The paper lays out a proposal for how the British Jobs Bonus conditions and incentives can contribute to these three objectives:

- Ensuring job quality
- Optimising job creation in key locations
- Delivering just transition pathways for oil and gas workers

In addition, it lays out how the objectives can be supported through additional policy measures including

- Changes to regulatory minimum standards and cross-cutting national policy
- Introducing conditions attached to additional public investment and subsidies

¹

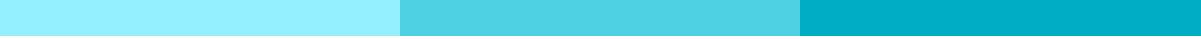
https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf

² <https://labour.org.uk/wp-content/uploads/2024/03/Make-Britain-a-Clean-Energy-Superpower.pdf>

³ <https://labour.org.uk/wp-content/uploads/2024/03/Make-Britain-a-Clean-Energy-Superpower.pdf>

⁴ <https://www.gov.uk/government/news/boost-for-new-national-wealth-fund-to-unlock-private-investment>

⁵ <https://assets.publishing.service.gov.uk/media/66a235daab418ab055592d27/great-british-energy-founding-statement.pdf>



We review the compatibility of proposed measures with existing legal frameworks, and the level of risk that measures designed to direct investment and create jobs within the UK, will be challenged under international trade and investment agreements to which the UK is a party, and under domestic law. We suggest ways in which measures can be designed to limit the risk of a successful challenge.

The UK is still suffering from the legacy of previous industrial transitions, from coal to shipbuilding and steel, in which sectors core to regional economies have been wound down with no planning or investment in alternative industries to support workers and communities. By delivering rapid decarbonisation of the UK's energy system in a just and fair manner, we have a chance to bring new wealth and opportunity to many of those regions and communities., This is essential to building and maintaining political support for achieving net zero.

2. Ensuring Job Quality

The degree to which job quality is *guaranteed* through employment law, *extended* through conditionality attached to government support, or *incentivised* through bonus payments, is a question for policy makers. We propose policy makers use the following framework.

Measure	Effect
Bonus payments	Rewards practices that are economy leading, as part of a “race to the top”
Conditions for government subsidy - especially access to the Contracts for Difference (CfD) scheme	Sets requirements for good practice across the clean power sector
Employment law/wider policy	Sets a baseline that is reasonable for employees to expect and achievable for employers to meet, either across the whole economy, or within specific high-risk sectors.

The British Jobs Bonus can play a key role in both setting conditions on Contracts for Difference and additional bonus payments.

2.1. Defining job quality

As recommended by the Taylor Review of Modern Working Practices in the UK, the Government “must place equal importance on the quality of work as it does on the quantity”.⁶ Job quality cannot be measured through a single metric, but is rather a “complex, multi-faceted concept, which may require varied policy and practice interventions”.⁷ For the purposes of this analysis, we are guided by the European Trade Union Confederation (ETUC) agreed indicators/benchmarks of job quality:

- Good wages
- Work security via standard employment and access to social protection
- Lifelong learning opportunities
- Good working conditions in safe and healthy workplaces
- Reasonable working time with good work-life balance
- Trade union representation and bargaining rights⁸

2.2. Job quality concerns in the renewable energy sector

2.2.1. Wages

There is mixed data emerging on job quality within the renewable energy sector. The IEA has noted that due to lower rates of unionisation, among other factors, wages in the

⁶ <https://www.gov.uk/government/publications/good-work-plan/good-work-plan>

⁷ https://d1ssu070pg2v9i.cloudfront.net/pex/pex_carnegie2021/2018/09/06105222/Measuring-Good-Work-FINAL-03-09-18.pdf

⁸ <https://www.etuc.org/en/document/etuc-resolution-defining-quality-work-etuc-action-plan-more-and-better-jobs>

renewables sector tend to lag behind those in fossil fuels.⁹ This is particularly marked in the US¹⁰, though there is evidence that this can also be the case in the UK, with significant salary dip when comparing like-for-like professions in offshore oil and gas compared to offshore wind.¹¹

Further, the application of a basic wage floor has been an ongoing problem in the offshore wind sector. There is evidence of migrant workers being paid a fraction of the minimum wage for construction and maintenance.¹² The National Minimum Wage (Offshore Employment) (Amendment) Order 2020 extended minimum wage rights to all seafarers working from a UK port to an offshore energy site on the UK continental shelf, but guidance published in 2022 excluded the offshore wind sector from these protections.¹³ Evidence of ongoing abuses exist in the sector,¹⁴ and until recently the Offshore Wind Workers Concession (OWWC) allowed migrant workers, typically on worse terms and conditions, to work in UK territorial waters without a work permit or visa.¹⁵

2.2.2. Job security

There is a perception that jobs in the renewables sector in the UK are “marked by insecurity”.¹⁶ This reflects the higher prevalence in the UK of jobs in the temporary installation stage than in manufacturing, the fragmentation of the renewables sector, and a long term trend in offshore energy (including oil and gas) towards self-employment and off-payroll (IR35) contracting,¹⁷ in contrast to the secure employment contracts enjoyed by previous generations.

2.2.3. Skills and learning opportunities

The casualisation of the offshore energy workforce, combined with lack of government support, means that the majority of offshore energy workers pay training costs out of their own pocket, covering both course fees and working time lost to gain essential qualifications.¹⁸

As part of the North Sea Transition Deal the offshore oil and gas sector has committed to “create an integrated people and skills plan, with measurable objectives, to support its transition and diversification”.¹⁹ However, rather than requiring specific commitment from oil and gas companies to provide retraining and reskilling for their workforce, the Transition Deal leaves skills policy to an industry owned oil and gas skills provider, OPITO.²⁰ As

⁹ <https://www.climatechangenews.com/2022/09/08/clean-energy-jobs-overtake-fossil-fuel-sector-but-wages-lag-behind/>

¹⁰ <https://www.vox.com/recode/22914487/clean-energy-fossil-fuels-salaries-unions>

¹¹ <https://www.pressandjournal.co.uk/fp/politics/scottish-politics/6259296/pay-cuts-oil-and-gas-renewables/>

¹²

<https://www.theguardian.com/uk-news/2018/oct/21/migrants-building-beatrice-windfarm-paid-fraction-of-minimum-wage#:~:text=Contracts%20issued%20by%20SHL%20and,minimum%20wage%20was%20%20C2%A37.50.>

¹³ <https://www.gov.uk/guidance/minimum-wage-seafarers-and-other-people-working-at-sea>

¹⁴ See <https://www.rmt.org.uk/news/rmt-uncovers-illegal-employment-practices-in-the-offshore/> and [Nautilus condemns poverty wages in job ad minimum wage breaches \(nautilusint.org\)](https://www.nautilusint.org/en/news-insight/telegraph/why-maritime-professionals-deserve-a-fair-share-of-the-offshore-wind-boom/)

¹⁵

<https://www.nautilusint.org/en/news-insight/telegraph/why-maritime-professionals-deserve-a-fair-share-of-the-offshore-wind-boom/>

¹⁶ <https://labour.org.uk/wp-content/uploads/2024/03/Make-Britain-a-Clean-Energy-Superpower.pdf>

¹⁷ <https://platformlondon.org/app/uploads/2021/06/Training-Costs-Survey-Results-1.pdf>

¹⁸ <https://platformlondon.org/app/uploads/2021/06/Training-Costs-Survey-Results-1.pdf>

¹⁹ https://assets.publishing.service.gov.uk/media/605b148ce90e0724c7d30c2b/north-sea-transition-deal_A_FINAL.pdf

²⁰ <https://www.sei.org/wp-content/uploads/2022/05/sei2022-012-oil-gas-north-sea-transition.pdf>

discussed below, offshore oil and gas workers face costly duplication of qualifications, running to thousands of pounds, if they wish to work in offshore wind. This affects thousands of workers in offshore engineering, diving, and seafaring roles, leading to financial strain and job insecurity.

2.2.4. Working conditions

The energy sector is inherently risky, with deaths and serious injuries occurring in onshore wind, offshore wind and solar from working at height, exposure to hazardous environments and other risks associated with construction. This is particularly the case for offshore work. Injury rates in offshore wind are three to four times worse than comparable industries²¹ with industry acknowledgement that safety standards in offshore wind have lagged behind oil and gas.²² In the offshore oil and gas sector, there is evidence that workers can face reprimands and other negative consequences, such as blacklisting, from raising serious health and safety issues, with whistleblowing protections not applying to self-employed or off-payroll workforce.²³

2.2.5. Trade union representation

Trade union membership has fallen significantly in the energy sector from the 1990s to the present.²⁴ This reflects economy-wide trends, but is also the transition away from fossil fuel extraction and generation – long standing sectors that are geographically concentrated and economically consolidated with an established union presence – to renewable technologies like solar and wind that are intrinsically harder to organise within due to higher dispersion/fragmentation. Renewables employers in the UK have been resistant to collective bargaining, including those that already have trade union representation in their legacy operations.

This process is exacerbated by casualisation/self-employment in the sector, with collectively negotiated agreements such as the Energy Services Agreement (ESA) in the offshore oil and gas sector²⁵ covering direct employees only. In the offshore wind sector, there is no collective agreement equivalent to the ESA.

2.3. Regulatory minimum standards

The Labour Party committed to introduce a New Deal for Working People to “boost wages, make work more secure and support working people to thrive”²⁶. This will be implemented through a new Employment Rights Bill²⁷ and other regulatory changes, and by introducing new economy-wide minimum standards, has the potential to significantly enhance job quality for those working in the renewable energy sector.

²¹ <https://www.sciencedirect.com/science/article/pii/S1364032123007864>

²² <https://windeurope.org/offshore2019/files/media-and-press/dailies-day-two.pdf>

²³ <https://foe.scot/wp-content/uploads/2023/03/Our-Power-Report.pdf>

²⁴ <https://www.statista.com/statistics/287329/trade-union-membership-energy-united-kingdom-uk/>

²⁵ <https://oeuk.org.uk/energy-services-agreement/>

²⁶ <https://labour.org.uk/wp-content/uploads/2024/06/MakeWorkPay.pdf>

²⁷

https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf

Table 3 summarises how key provisions of the New Deal can directly address some of the job quality issues facing energy workers.

Table 3: New Deal for Working People and the renewable energy sector

New Deal for Working People provision	Impact on job quality in the renewable sector
Wages	
“We would change the Low Pay Commission’s remit so that alongside median wages and economic conditions, the minimum wage will for the first time reflect the need for pay to take into account the cost of living ”	The current National Minimum Wage of £11.44 p.h. (“National Living Wage”) for those 21 and above, is, assuming full time work, close to the expected salary range for some roles in the offshore and onshore wind sector ²⁸ and the NMW has determined salaries of the lowest paid in offshore oil and gas. ²⁹ While most roles in the renewables sector pay above the minimum, an uplift to the NMW would benefit a minority (esp. newly qualified) workers in the sector.
“remove discriminatory age bands to ensure every adult worker benefits”	New starters in the renewables sector are typically paid lower rates, so bringing NMW for 18-20 year olds into line with the 21+ rates would benefit many younger workers.
“we will work with the Single Enforcement Body and HMRC and ensure they have the powers necessary to make sure our genuine living wage is properly enforced, including penalties for non-compliance ”	Monitoring of NMW and other rights is a challenge for renewables projects in remote locations, esp. offshore, with regulators and unions relying on inspectors from the International Transport Workers Federation to uncover breaches ³⁰ . Increased funding and powers for the Health and Safety Executive, Maritime and Coastguard Agency, HMRC NMW Inspectors and ITF Inspectors. is required for proper monitoring and enforcement.
Job security	
“Labour will end ‘one sided’ flexibility and ensure all jobs provide a baseline level of security and predictability, banning exploitative zero hours contracts ”	Zero hours contracts are widely advertised in solar installation, have been an increasing feature of offshore oil and gas, ³¹ and are reported by unions in the onshore wind sector.
“will move towards a single status of worker and transition towards a simpler two-part framework for employment status. We will consult in detail on a simpler framework that differentiates between workers and the genuinely self-employed.”	Many offshore workers are self-employed and do not enjoy the employment rights and benefits enjoyed by directly employed workers. Limiting the powers of employers to shape their workforce on an ad-hoc contracting model will bring greater job security to the renewables sector.

²⁸ See <https://www.completetrainingsolutions.co.uk/working-offshore-wind-industry/> and <https://www.planitplus.net/JobProfiles/View/782/53>

²⁹ [Our-Power-Report.pdf \(foe.scot\)](https://www.foe.scot/Our-Power-Report.pdf)

³⁰ <https://www.foe.scot/wp-content/uploads/2023/03/Our-Power-Report.pdf>

³¹ <https://www.energyvoice.com/oilandgas/78230/union-boss-warns-of-zero-hours-impact-on-offshore-safety/>

Labour will introduce “ basic individual rights from day one for all workers , ending the current arbitrary system that leaves workers waiting up to two years to access basic rights of protection against unfair dismissal, parental leave and sick pay”	As a fast growing, relatively young sector with many start-ups and new market entrants, new-starters are a common feature of the renewables workforce.
Labour will “strengthen redundancy rights and protections”	In recent years the offshore oil and gas, solar and onshore wind sectors have experienced boom and bust, with high levels of redundancy. Strengthening redundancy rights and TUPE will create greater security for workers in these volatile sectors and create opportunities to transition to new roles across the energy sector.
Working conditions	
“We will finally establish a Single Enforcement Body to enforce workers’ rights, including strong powers to inspect workplaces and take action against exploitation.”	As noted above, monitoring and enforcing workers rights in remote industries like offshore wind is a major challenge, with greater powers and resourcing for enforcement bodies welcome.
“Labour will commit to modernising health and safety guidance with reference to extreme temperatures, preventative action and steps to ensure safety at work. As part of this review, Labour will also work with employers, trade unions and other stakeholders to support the wellbeing of workers”	As noted above, the energy sector is inherently risky. A process to modernise health and safety guidance should prioritise dangerous sectors like energy.
“strengthen protection for whistleblowers ...outlaw the use of predictive technologies for blacklisting and safeguard against singling out workers for mistreatment or the sack without any evidence of human interaction. We will act to end the loophole that allows employers to bypass laws through third party contractors”	Offshore work is a high risk environment, and increasing the confidence/security of workers to blow the whistle is essential for operational safety.
“extending health and safety and blacklisting protections to self-employed workers”	Current whistleblowing and blacklisting protections in UK law do not apply to the self-employed or off-payroll workers, which constitute a significant number of the renewable workforce.
Trade union representation	
“a Labour government will act to ensure that union members and	Unionisation rates are low in the renewables sector. Even large energy companies with established trade

<p>workers are able to access a union at work through a regulated and responsible route where there is support within the workforce. Labour will introduce rights for trade unions to access workplaces in a regulated and responsible manner, for recruitment and organising purposes.”</p>	<p>union presence in fossil fuel extraction, generation, transmission and supply may often resist unionisation of their renewables operations.</p>
<p>“collective bargaining can help companies and workers respond to demographic and technological change and adapt to the new world of work... Labour will consult widely on the design of this Fair Pay Agreement [in adult social care sector], learning from those economies where they already operate successfully”</p>	<p>Labour’s first step will be to establish a Fair Pay Agreement in the adult social care sector. The energy sector, which is experiencing significant demographic and technological change, and in which collective bargaining is a common feature in other countries (and formerly in the UK), could be the government’s next priority.</p>
<p>Cross-cutting</p>	
<p>“Through our new National Procurement Plan Labour will ensure social value is mandatory in contract design. Mandating consideration of social value will mean a Labour government will value organisations that create local jobs, skills and wealth and treat their workers well and equally, including on matters such as pay, conditions, trade union access, recognition and provision for collective bargaining arrangements, effective equality policies, adherence to high environmental standards and tax compliance. Labour will make sure that trade union recognition and access is valued and considered as part of the process of awarding public contracts and determining strategic suppliers, alongside other factors that demonstrate a commitment to good jobs.”</p>	<p>Great British Energy will co-invest in new renewable technologies, scale and accelerate mature renewable technologies, and scale up municipal and community energy. As a public body, GBE will be covered by the new National Procurement Plan. As a co-investor in larger capital projects, GBE thus has the potential to scale responsible procurement requirements beyond its own investments.</p>

In addition to the elements of the New Deal for Working People, the following targeted measures to bolster minimum rights and protections should be introduced to improve basic job quality in the renewables sector:

- Extending National Minimum Wage and other rights (TUPE, whistleblowing legislation, flexible working etc.) to all people working on the UK's continental shelf, including the self-employed
- This should include updating the the National Minimum Wage (Offshore Employment) (Amendment) Order 2020 guidance, so that minimum wage rights apply to all seafarers working on the UK continental shelf, including in renewables.
- The right to paid time off for essential training and skills development

2.4. British Jobs Bonus - job quality conditions to access CfD rounds

The vast majority of new clean power in the UK is currently delivered through Contracts for Difference. The simplest mechanism that the government can implement to ensure that renewables jobs are quality jobs would be for entry to Contract for Difference auctions to be conditional on companies adopting good standards and practices with respect to job quality. This is already standard practice in many other developed countries.

2.4.1. Examples of job quality subsidy conditions from across the world

There are many examples from the UK, Europe, North America and across the world that condition government spending on job quality provisions. A selection of these are summarised in Table 4.

Table 4: Public subsidy/investment conditionalities from across the world

Country	Provision	Description
US	Davis-Bacon Act	Requires that workers on federally funded or assisted construction projects be paid the local prevailing wage. This effectively ties federal funding to wage standards in the construction sector. ³²
Canada	Community Benefit Agreements	Provincial state investment in public infrastructure is accompanied by a CBA, or "workforce development agreement" between authorities, contractors, trade unions and other stakeholders that require job quality commitments on e.g. pay rates, skills training and apprenticeship provision, trade union representation and terms and conditions such as hours of work, holiday pay and safety provisions. ³³
Germany, Italy,	Prevailing wage agreements	In Germany, "Tariftreue" laws enacted at the state level require companies bidding for public contracts to pay wages and offer terms and conditions that match those in relevant agreements

³²

<https://www.dol.gov/agencies/whd/government-contracts/construction#:~:text=Davis%2DBacon%20Act%20and%20Related,similar%20projects%20in%20the%20area>

³³ See e.g. http://docs.openinfo.gov.bc.ca/Response_Package_AED-2018-86376.pdf and <https://buildingtrades.ca/wp-content/uploads/2022/02/CBA-Report.pdf>



Switzerland		negotiated by trade unions within the sector. This approach is now being rolled out at the federal level in Germany. ³⁴ Similar provisions are in place in Italy, ³⁵ Switzerland ³⁶ and elsewhere across Europe. ³⁷
Canada	Clean Technology Investment Credit	For companies to qualify for an investment credit, each covered worker must be compensated for their labour in accordance with the worker's relevant collective agreement (e.g., a labour agreement with a trade union in agreement with provincial laws). If no collective agreement exists, the amount of compensation (including benefits) must be at least equal to the amount specified in the most comparable agreement that is relevant to the given worker's experience level. Companies must also make reasonable efforts to ensure that registered apprentices work at least 10% of the total work performed by workers on the installation of the clean technology property. ³⁸
Scotland	Fair Work First	To access government grants, funding streams, and public contracts organisations must demonstrate commitment to effective channels for worker voice such as trade union recognition, provision of skills training and development, predictable and secure working hours with no inappropriate use of zero-hours contracts, and payment of at least the real living wage. ³⁹
Wales	Ethical Employment in Supply Chains Code of Practice/ Social Partnership and Public Procurement (Wales) Act 2023	All public sector organisations, businesses and third sector organisations in receipt of public sector funding are expected to sign up to the Code of Practice, which includes ensuring workers are free to join a Trade Union or collective agreement, considering paying all staff the Living Wage Foundation's Living Wage as a minimum. ⁴⁰ The Social Partnership and Public Procurement (Wales) Act 2023 places a socially responsible procurement duty on major construction contract, in which contracting authorities must have regard to model social public works clauses, with provisions on (inter alia) payments, employment practices and training. ⁴¹
USA	Inflation Reduction Act	The Inflation Reduction Act structures the clean energy Production Tax Credit (PTC) and Investment Tax Credit (ITC) provisions so that a bonus credit boosts the tax credit available by 5 times where projects pay the prevailing wage and use

³⁴ <https://www.twobirds.com/en/insights/2023/germany/tarifbindung-bei-der-oeffentlichen-auftragsvergabe>

³⁵ https://archivio.urp.cnr.it/copertine/ente/ente_evidenza/dlgs163_06.pdf

³⁶ <http://www.admin.ch/ch/d/sr/1/172.056.1.de.pdf>

³⁷ https://www.epsu.org/sites/default/files/article/files/EPsU_Report_final.pdf

³⁸ https://www.ey.com/en_ca/tax/tax-alerts/2024/tax-alert-2024-no-06

³⁹

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2023/03/fair-work-first-guidance-2/documents/fair-work-first-guidance-supporting-implementation-fair-work-first-workplaces-scotland/fair-work-first-guidance-supporting-implementation-fair-work-first-workplaces-scotland/govscot%3Adocument/fair-work-first-guidance-supporting-implementation-fair-work-first-workplaces-scotland.pdf>

⁴⁰ <https://www.gov.wales/sites/default/files/publications/2019-09/code-of-practice-ethical-employment-in-supply-chains.pdf>

⁴¹ <https://www.legislation.gov.uk/asc/2023/1/enacted>

		registered apprentices between 10 and 15 percent of total labour hours. ⁴²
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2.4.2. Proposed British Jobs Bonus: job quality conditions

Cross-cutting conditions for entry into Contracts for Difference auctions are the simplest, single most efficient mechanism to drive up job quality across the UK renewables industry.

Applying these conditions can increase costs for renewables developers and their supply chains. To make the shift easier for developers, and to manage the political challenges around a sudden jump in CfD bids associated with these conditions, we propose that part of the BJB is paid to all successful auction bids - for the first three years of the BJB. This support should be tapered down, so that after 3 years, relevant costs are incorporated into CfD bids, and not subject to political whims.

	Additional payments in exchange for meeting BJB conditions
Year 1 (2026-2027)	£60 million
Year 2 (2027-2028)	£40 million
Year 3 (2028-2029)	£20 million

2.4.2.1. BJB Condition: Quality wages, in line with national negotiated agreements or prevailing wages

Entry into a CfD auction can be made conditional on developers paying quality wages and ensuring these are paid amongst significant contractors - ensuring that renewables jobs provide a good quality of life for employees, their families and communities.

The payment of wages in line with national agreements negotiated by trade unions within the sector or with prevailing wages, ensures that government-supported projects are not undercutting market rates or undermining collective bargaining efforts, and helps to level the playing field for responsible employers. Another impact of rolling out this requirement nationally is to reduce geographic disparity in wages, helping to tackle regional inequality. Further, research has also shown that prevailing wage laws can reduce disparities in pay due to worker characteristics,⁴³ especially when paired with targeted hiring requirements.

Nationally-negotiated agreements already exist that cover some of the job roles in clean power projects (e.g. the National Agreement for the Engineering Construction Industry).

⁴² <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

⁴³ <https://laborcenter.berkeley.edu/ira-charts-a-path-that-is-both-pro-climate-and-pro-worker/>

Where existing agreements do not cover the target workforce, DESNZ should play an active role in bringing together industry and trade unions to develop these.

The UK Government already relies on prevailing wage calculations for the application of the Skilled Work visa.⁴⁴ DESNZ should also build on this with a public register of going rates relevant to the clean power sector.

Provision	Entry to the CfD auction should require applicants to commit to ensuring developers, Tier 1 & Tier 1 suppliers pay wages to meet at least i) the closest relevant agreement negotiated by trade unions within the sector (e.g. the National Agreement for the Engineering Construction Industry (NAECI)) or ii) where no relevant agreement exists, payment of the prevailing wage as determined by the Secretary of State (following the approach of the Inflation Reduction Act).
Scope	All CfD-supported UK energy projects. The provision should apply to all employment in developers and Tier 1 & Tier 2 suppliers, with safeguards to prevent bogus sub-contracting. The scope could be widened to cover international supply chains (e.g. 100% of domestic supply chain and 60% of global supply chain) to avoid creating an incentive to offshore.
Instrument	This can be implemented through amendments to Sustainable Industry Rewards (SIR) process and criteria (see The Contracts for Difference (Sustainable Industry Rewards) Regulations 2024). Signing up to nationally negotiated or prevailing wage levels can be integrated as a Pass/Fail requirement within a SIR Statement, an existing condition of entry for Contracts for Difference auctions. Amending the CfD (SIR) regulations can require ongoing compliance with this part of the SIR Statement for all projects successful in the CfD auction, regardless of whether they have qualified for additional SIR bonus payments or not.
Oversight and enforcement	Oversight provided through self-reporting by fund recipients, to the funding body. Public awareness amongst the workforce within the sector will make non-compliance straightforward to identify, especially if there are easy mechanisms to report breaches to the funding body. A formal, funded role could be created for trade unions to monitor compliance and report breaches to the funding body. Penalties for non-compliance should be as least administratively burdensome as possible, large enough to be a deterrent, and possibly integrated into CfD payments.

2.4.2.2. *BJB Condition: Fair Work Charter: Trade union recognition, training & skills, apprenticeships, health & safety, and equalities*

A Fair Work Charter can be an effective mechanism to improve job quality across a range of indicators and benchmarks. Adopting Fair Work principles has been made a requirement for bidding into public procurement in a range of contexts, including combined authorities and devolved governments.

For example, the Scottish Fair Work First policy⁴⁵ makes access to public funding and public contracts dependent on employers adopting fair work practices including:

- providing channels for worker voice, such as trade union recognition
- investment into skills
- action on equalities, tackling the gender pay gap and boosting diversity and inclusion
- offering flexible and family-friendly working practices.

Entry into a CfD auction can be made conditional on developers and Tier 1 and Tier 2 contractors adopting a Fair Work Charter that meets criteria covering

- Commitment to recognise a trade union
- Security of Contracts
- Investment into training & skills
- Apprenticeship provision
- Health & Safety
- Transparency & Whistle-blowing
- Equalities & Diversity

Nb. The pay requirement proposed in 2.4.2.1 could theoretically be incorporated into the principles of a Fair Work Charter. Given its importance, and the potential for watering down a Charter with less strong principles, we have proposed it as a stand-alone item in this paper.

Provision	<p>Entry to the CfD auction should require applicants to commit to ensuring developers, Tier 1 & Tier 2 suppliers sign up to a Fair Work Charter, with principles including:</p> <ul style="list-style-type: none"> ● Worker Voice: Commit to recognising a trade union, and be pro-active in enabling workers (including agency workers) to access to a union, and unions to access workers. ● Security of Contract: Demonstrating that all workers have security of employment, with all workers employed on open-ended or fixed term contracts with confirmed hours and work pattern. ● Training & Skills: Invest into workforce development, including covering the cost of essential qualifications for the workforce (both employed and self-employed), with paid time off for training
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⁴⁵ <https://www.gov.scot/publications/fair-work-first-guidance-2/pages/2/>



	<ul style="list-style-type: none"> ● Apprenticeships: Build up the next generation of skilled workers, by setting clear targets for 2.5%⁴⁶ of workforce to be apprentices, with a commitment to reach 3.5% by 2030. Target percentages should be reviewed every 2 years, with option to increase figure depending on performance. Apprenticeships should be “high quality apprenticeships”, taking the TUC’s Charter⁴⁷ as a starting point. ● Health & Safety: Companies commit to full cooperation with the relevant agencies (e.g. Health and Safety Executive, Maritime and Coastguard Agency, HMRC NMW Inspectors, ITF Inspectors, independent third party regulator, if established). ● Transparency & Whistle-blowing: Companies to provide training for frontline workers and management on how to raise concerns and worker rights when raising concerns, establish whistleblowing advocates throughout the organisation, and establish a formal process to oversee and protect workers that blow the whistle. ● Equalities & Diversity: Building a more diverse workforce and going beyond legal obligations to support workers with protected characteristics. Employers commit to adopting standard best practice and proactive measures on increasing diversity, including action to hit Offshore Wind Industry Council diversity targets⁴⁸, tackling the gender pay gap and adopting anti-racist employment strategies.
Scope	All CfD-supported energy projects. The provision should apply to all employment in developers and Tier 1 & Tier 2 suppliers, with safeguards to prevent bogus sub-contracting.
Instrument	<p>This can be implemented through amendments to the Sustainable Industry Rewards (SIR) process and criteria (see The Contracts for Difference (Sustainable Industry Rewards) Regulations 2024).</p> <p>Signing up to a Fair Work Charter can be integrated as a Pass/Fail requirement within a SIR Statement, an existing condition of entry for Contracts for Difference auctions.</p> <p>Amending the CfD (SIR) regulations can require ongoing compliance with this part of the SIR Statement for all projects successful in the CfD auction, regardless of whether they have qualified for additional SIR bonus payments or not.</p>
Oversight and enforcement	Oversight provided through self-reporting by fund recipients, to the funding body.

⁴⁶ The Sector Deal target is 2.5% by 2030, but this target should be ratcheted up as apprenticeship numbers were already 2% in 2022 <https://eeegr.com/wp-content/uploads/2020/08/People-wind-deal-.pdf>

⁴⁷ <https://www.unionlearn.org.uk/tuc-charter-apprenticeships>

⁴⁸ The Offshore Wind Industry Council (OWIC) has committed to ensuring that at least 33% of its workforce are women by 2030 (up from 18% in 2020) with a stretch target of 40%, and is aiming for at least 9% BAME staff by the end of the decade (up from 5% currently).



	<p>Public awareness amongst the workforce within the sector will make non-compliance straightforward to identify, especially if there are easy mechanisms to report breaches to the funding body.</p> <p>A formal, funded role could be created for trade unions to monitor compliance and report breaches to the funding body.</p> <p>Penalties for non-compliance should be as least administratively burdensome as possible, large enough to be a deterrent, and possibly integrated into CfD payments.</p>
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2.5. British Jobs Bonus: job quality incentive payments

The British Jobs Bonus can also incentivise and reward best practice across the renewable energy sector with regard to job quality, helping to drive up standards in the industry.

BJB and the Sustainable Industry Rewards

The previous Government has already developed plans to reward non-price factors within the Contracts-for-Difference (CfD) scheme through the Sustainable Industry Rewards (SIR). SIR has been designed to be implemented through a competitive auction model, in which offshore wind developers, prior to a CfD round opening, submit proposals to DESNZ on the delivery of sustainability criteria and their estimated cost of delivery, with developers competing against each other for funding.⁴⁹ This approach has been chosen to prevent over-compensation of developers.

The new Government could implement the British Jobs Bonus through modifications to the existing SIR criteria and process, or alternatively establish an entirely new funding mechanism for the BJB. Adapting SIR would enable swift delivery through the CfD process, and would benefit from existing consultation rounds and detailed work, in particular ensuring compliance with the EU-UK Trade and Cooperation Agreement (TCA) and other trade agreements.

We propose that British Jobs Bonus incentive payments reward projects that deliver greater job quality, beyond the renewable sector baseline established by the British Jobs Bonus conditions applied to all CfDs. This should consist of one Job Quality incentive pot, with multiple criteria by which to qualify, including

- Limits on sub-contracting tiers

⁴⁹

<https://assets.publishing.service.gov.uk/media/65ef95dff117000116158e9/cfd-sustainable-industry-reward-consultation-government-response.pdf>

- “Best-in-class” pay
- Extending the baseline job quality requirements (negotiated/prevaling wages and Fair Work Charter) to Tier 3 & Tier 4 suppliers

2.5.1.1. BJB Incentive: Job Quality and limits on sub-contracting tiers

Provision	<p>Developers can qualify for an additional payment from the BJB Incentive pot, if in their SIR statement they can demonstrate that they qualify for one of the following 3 criteria:</p> <ul style="list-style-type: none"> • <i>Criteria 1: Limits on sub-contracting tiers</i> The high levels of sub-contracting tiers in offshore wind present challenges for implementing, monitoring and enforcing job quality. To meet this criteria, CfD applicants need to demonstrate a lower number of sub-contracting tiers. As part of their SIR statement, companies can submit a proposed organisational structure/map illustrating total sub-contracting tiers, estimating value delivered at each tier. Submissions will be scored according to a measure of consolidation, with the highest scoring employers to receive a BJB incentive payment per MW of installed capacity.. • <i>Criteria 2: “Best in class” pay</i> To meet this criteria, CfD applicants need to demonstrate that they will pay ‘best in class’ salaries across comparable roles. Identification of key roles to build on existing classifications by sector councils (e.g. OWIC), involving government, industry and unions. CfD applicants to disclose the minimum salary forecast to be paid across roles in a blind, competitive process. Submissions will be scored and weighted, with the best-in-class employers to receive a BJB incentive payment per MW of installed capacity. • <i>Criteria 3: Extending baseline job quality conditions to Tier 3 & 4</i> To meet this criteria, CfD applicants need to demonstrate that they will extend baseline job quality requirements (negotiated/prevaling wages and Fair Work Charter, as described in section 2.4.2) from Tier 1 and 2 contractors to Tier 3 and 4 contractors. Companies which commit to contractually cascading these provisions qualify for a BJB incentive payment per MW of installed capacity.
Scope	Eligible for all projects that bid into CfD rounds. Covers all contracts within the UK-based supply chain and contracts for work undertaken on the UK Continental Shelf.
Instrument	This can be implemented through amendments to Sustainable Industry Rewards (SIR) process and criteria, via Statutory Instrument (see The Contracts for Difference (Sustainable Industry Rewards) Regulations 2024).
Oversight and	Oversight provided through self-reporting by fund recipients, to the funding body.

enforcement	<p>Failure to meet commitments made will be less easy to identify than with the over-arching job quality conditions, as only a minority of developers will have qualified for Bonus Incentive Payments. This is where a formal, funded role for trade unions could have significant impact, to monitor compliance and report breaches to the funding body.</p> <p>Where developers fail to deliver on the commitments made, penalties should be as least administratively burdensome as possible, large enough to be a deterrent, and possibly integrated into CfD payments.</p>
Suggested annual allocation	£30m

2.6. Extending BJB job quality conditions to all other public funding and procurement

As well as Contracts for Difference, the new Government will directly invest into and provide financial support to the renewable energy sector through a combination of new packages including the National Wealth Fund,⁵⁰ Great British Energy⁵¹ and the Warm Homes Plan. There are also a number of existing other packages of support and institutions like the UK Infrastructure Bank. Government support for the renewables sector should be conditional on companies adopting good standards and practices with respect to job quality.

To most effectively boost job quality conditions across the renewable power sectors, the government should apply cross-cutting job quality conditions for access to government grants and investment towards the sector.


These should be the same job quality conditions (on negotiated wages and Fair Work Charters) described above in 2.4.2.1 and 2.4.2.2. Applying the same conditionalities across multiple streams of government support would simplify the process for companies, that would not have to meet separate standards for separate funding streams.

Government support/subsidy should be broadly understood to include, inter alia:

- Price support mechanisms such as Contracts for Difference
- Public grants
- Public equity investments
- Concessional finance (low interest loans, loans with longer repayment periods etc)

⁵⁰ <https://www.greenfinanceinstitute.com/programmes/national-wealth-fund-taskforce/>

⁵¹ <https://www.gov.uk/government/publications/introducing-great-british-energy/great-british-energy-founding-statement>

- 
- Loan guarantees
 - Upfront, de-risking investments (e.g. securing planning consent and grid connection) in projects that subsequently attract private investment

Additionally, the government should explore whether levers or resource are required to improve job quality for non-subsidised renewable energy projects. Many of the developers and supply chain companies delivering CfD-financed renewable projects will be the same as those delivering non-subsidised projects. However, it's worth government assessing whether some renewables sectors - such as commercial rooftop solar developments - will not be covered, and what can be done to address this.

Instruments for delivering this in the first instance would include:

- Primary legislation that government is already introducing as it establishes new bodies (e.g. Great British Energy). These should include for example requirements for GB Energy to require negotiated/prevaling investments and Fair Work Charters through its investments and procurement.
- Secondary legislation, as well as official strategic update letters issued by the Chancellor and by the DESNZ Secretary of State to existing public bodies (e.g. UK Infrastructure Bank).
- Integrating into new funding pots (e.g. Warm Homes Plan grants)

Ultimately, new primary legislation that ensures that all public financing and procurement of net zero activity meet baseline job quality considerations (similar to the Scottish Government's Fair Work First policy⁵² for all public financing and procurement), would be most effective at ensuring this is met across the board.

Compliance should be assessed according to simple pass/fail criteria. Where beneficiaries of subsidy/public support fail to adhere to conditions, the enforcement mechanism should be the most appropriate/least administratively burdensome according to the structure of funding/financial support. Where negotiated wage conditions are breached, government should adopt a broad requirement of repayment to the value of underpaid wages. Enforcement should be relatively straightforward for price support mechanisms, with the value of underpaid wages can be deducted from future price support payments. Enforcement could be complex in the case of a government equity investment, and government should review options for the shareholder agreement/joint venture agreement to provide for a mechanism where the value of underpaid wages is transferred to e.g. an independent public entity, and set aside for employee compensation.

⁵² <https://www.gov.scot/publications/fair-work-first-guidance-2/pages/2/>

3. Optimising Job Creation in target locations

Government policy should address two key aspects of job location: national and sub-national.

National policy should aim to reverse the “squandered opportunity”⁵³ whereby domestic renewable industries and jobs have not emerged at scale in the UK,⁵⁴ despite the UK’s leadership researching and developing new renewable technologies, the UK’s huge natural advantage (long coastline and windy, shallow seas), large levels of public investment, and the UK’s position until 2021 as the largest global installer of offshore wind.⁵⁵

Sub-national policy should aim to ensure that new jobs and investment go to those parts of the UK where they can have the greatest impact both in terms of renewables deployment and social and economic sustainability. Subsidies are also more generally acceptable internationally when they are focused towards supporting economic activity in areas of greater deprivation.

This briefing proposes soft measures (but stronger than those currently existing) to be required of all Contracts for Difference.

This should be backed up by stronger measures deployed through British Jobs Bonus payments, to incentivise greater investment into UK supply chains in target locations.

3.1. Defining target locations

The existing proposals for the Sustainable Industry Rewards Draft Allocation⁵⁶ Framework require investments to take place in “deprived communities”, defined according to this methodology:

- Local authorities in England with between 2 and 4 measures of deprivation in the bottom quartile of Department for Levelling Up, Housing and Communities’ ‘Levelling Up the United Kingdom’ dataset.
- Data zones in Northern Ireland in deciles 1 – 5 on overall deprivation, as defined within the Northern Ireland Multiple Deprivation Measure 2017
- Data zones in Scotland in deciles 1 – 5 on overall deprivation, or data zones in deciles 1-2 on the geographic access to services indicator, as defined within the Scottish Index of Multiple Deprivation 2020.
- d) Data zones in Wales in deciles 1 – 5 on overall deprivation, as defined within the Welsh Index of Multiple Deprivation 2019⁵⁷

⁵³ <https://labour.org.uk/wp-content/uploads/2024/03/Make-Britain-a-Clean-Energy-Superpower.pdf>

⁵⁴ <https://www.ippr.org/media-office/revealed-billions-at-stake-and-net-zero-goals-threatened-as-uk-falls-behind-in-the-race-for-win-d-manufacturing>

⁵⁵ <https://www.statista.com/statistics/264264/capacity-of-offshore-wind-power-plants-worldwide-2010/#:~:text=Offshore%20wind%20capacity%202023%2C%20by%20country&text=In%202021%2C%20China%20overtook%20the,terms%20of%20offshore%20operating%20capacity.>

⁵⁶ <https://assets.publishing.service.gov.uk/media/66339ba94d8bb7378fb6c170/cfd-ar7-sir-allocation-framework-draft-2.pdf>

⁵⁷ <https://assets.publishing.service.gov.uk/media/66339ba94d8bb7378fb6c170/cfd-ar7-sir-allocation-framework-draft-2.pdf>



Labour's manifesto for the British Jobs Bonus stated it would be focused towards

- industrial heartlands
- coastal communities
- areas that have past or current coal, oil and gas industries

Industrial heartlands can be defined as those where a certain percentage of the workforce or a certain percentage of GDP is delivered by high-carbon manufacturing.

Areas that have past or current coal, oil and gas industries, where communities are affected by the phase down of fossil fuels could be defined as those in which a certain percentage of the workforce, or a certain percentage of GDP is connected to sectors which must be phased down as part of the net zero transition (e.g. oil and gas production and refining).⁵⁸

Simplicity of deployment of the British Jobs Bonus would be aided with a target map, that combines the different criteria. Below is the UK's existing Assisted Areas Map for 2014-2020, used to assess eligibility for State Aid before the UK left the EU.⁵⁹ "A" and "Other C" areas are those with heightened levels of deprivation - and cover many of the industrial heartlands, coastal communities and oil/gas/coal communities that Labour wants to reach. There are some notable omissions e.g. Aberdeen and surroundings, where oil & gas has led to higher levels of income.

We propose that the Assisted Areas Map is updated with current levels of deprivation, as well as communities at significant risk due to the net zero transition, and used to determine the target locations for targeted British Jobs Bonus support for job creation.

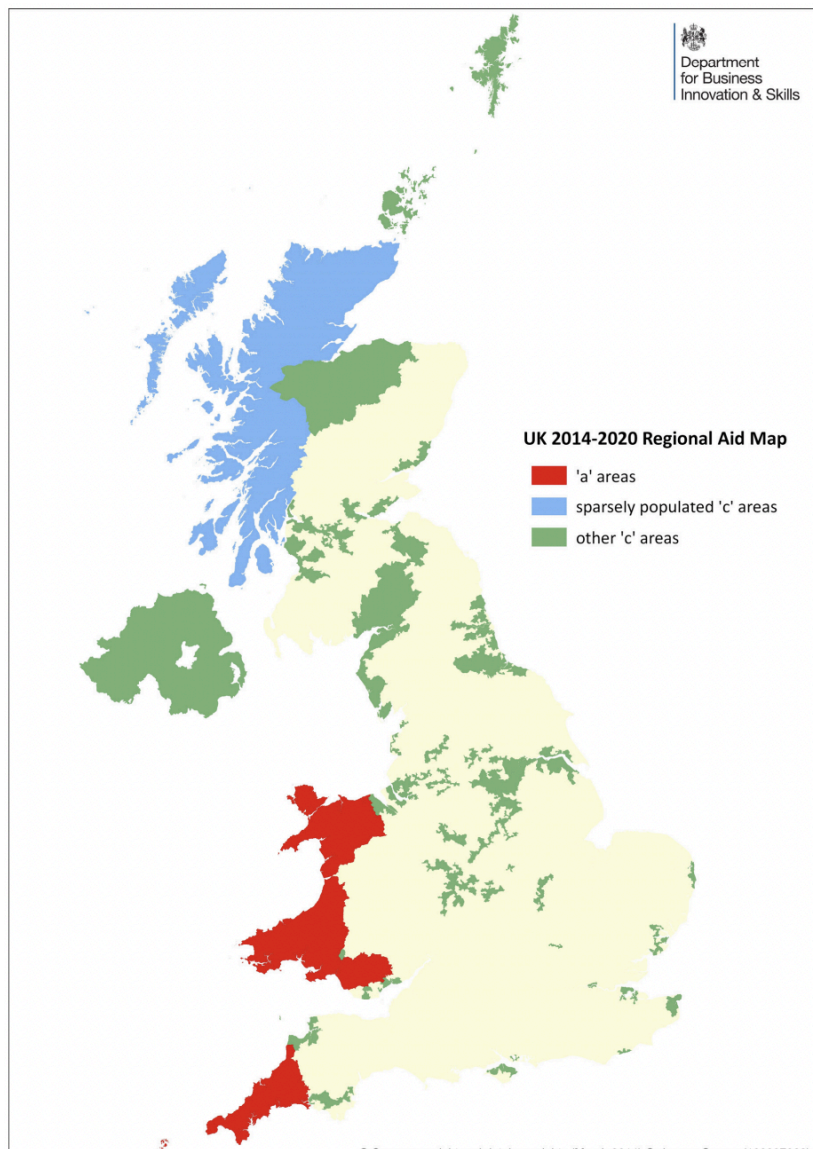
The EU uses its current Assisted Areas Map to determine eligible locations for EU state aid under the Temporary Crisis and Transition Framework for wind and solar supply chains.⁶⁰ Using a similar process will make comparable UK state aid easier to square with the EU.

⁵⁸ The Committee on Climate Change have produced definitions of sectors affected variously by the net zero transition
<https://www.theccc.org.uk/wp-content/uploads/2023/05/CCC-A-Net-Zero-Workforce-Web.pdf>

⁵⁹

<https://assets.publishing.service.gov.uk/media/5a74c1b5ed915d4d83b5eb52/bis-14-701-2014-to-2020-Assisted-Areas-Map-Governments-Response-to-the-Stage-2-Consultation-revised.pdf>

⁶⁰ https://ec.europa.eu/commission/presscorner/detail/EN/ip_23_6751



3.2. Job creation concerns in the renewable energy sector

3.2.1. National experience and opportunity

In the UK, local content in a typical offshore wind project is just below 50%. Local content is highest in the development and project management side, and operations, maintenance and serving, where much of the activity is close to the wind farm sites.⁶¹ Local content is much lower in the manufacturing side,⁶² and it is in manufacturing where the majority of jobs, and longer-term jobs, are generated.⁶³ Local content is also low for decommissioning. A developed domestic offshore wind manufacturing and decommissioning capacity would

⁶¹ <https://guidetoanoffshorewindfarm.com/uk-content>

⁶² <https://www.offshorewindscotland.org.uk/media/11937/bvga-local-content-roadmap.pdf>

⁶³ <https://www.stuc.org.uk/resources/scotwind-report-2024.pdf>

enable the UK to access significant export opportunities, but the UK has not capitalised on its position as the world's second largest market for offshore wind to develop these domestic industries and skills base. This contrasts with other European economies like Denmark, Germany and Spain, where the value of wind turbine production is between 10 and 30 times greater than the UK,⁶⁴ despite these countries having significantly smaller domestic markets for offshore wind.

3.2.2. Sub-national experience and opportunity

Coastal communities in the UK face a number of challenges, with deprivation, unemployment, underemployment and population decline all higher in coastal towns than non-coastal towns.⁶⁵ This reflects the decline of industries around which coastal communities have developed, such as fishing, manufacturing and shipping. The decline of offshore oil and gas extraction has already posed further economic challenges to some North Sea communities, in Scotland in particular, and this will continue as production phases down.

Investment in renewable energy has the potential to reverse these trends. The development of the offshore wind market is already bringing new investment and jobs to towns along the North Sea coast.⁶⁶ Scaling up the UK's offshore wind capacity, with well-directed and targeted local investments, could bring significant new wealth and opportunity to parts of the UK that have experienced underinvestment and decline.

3.3. Regulatory minimum standards and cross-cutting national policy

There are limited opportunities to support domestic industries through regulatory standards and measures, as under the WTO Agreements and other trade and investment treaties entered by the UK (including the EU–UK Trade and Cooperation Agreement) imported and locally-produced goods should generally be treated equally. An economy-wide regulatory standard or policy that breached an international agreement (e.g. that only permitted UK owned and operated companies/vessels to undertake decommissioning activities) would very likely attract a successful challenge. In the United States, the offshore wind sector has been influenced by the Jones Act, which only permits US-built, owned, and operated vessels to transport cargo between US ports, inland waters and coastal areas.⁶⁷ However, this is only possible as the Jones Act pre-dates the international trade agreements⁶⁸ which generally prohibit such rules, and the Act is not replicable in the UK.

One potentially WTO compliant cross-cutting regulatory measure which could support domestic industries would be a cross border carbon adjustment, which would adjust the price of imported carbon-intensive goods to reflect the carbon emissions from their production. Given the relatively low carbon intensity of the UK's power grid, such a policy could increase the competitiveness of UK manufactured output, particularly if this is coupled

⁶⁴ https://ippr-org.files.svdcn.com/production/Downloads/A_second_wind_May24.pdf

⁶⁵ <https://www.ons.gov.uk/businessindustryandtrade/tourismindustry/articles/coastaltownsinenglandandwales/2020-10-06>

⁶⁶ https://green-alliance.org.uk/wp-content/uploads/2021/11/Growing_the_UKs_coastal_economy.pdf

⁶⁷

https://www.infolink-group.com/energy-article/comparison-of-offshore-wind-localization-policy-taiwan-japan-south-korea-and-us?trk=article-ssr-frontend-pulse_little-text-block

⁶⁸ General Agreement on Tariff and Trade (GATT)

with investment in low carbon steel production. The Labour Party manifesto “supports the introduction of a carbon border adjustment mechanism”, and while such a policy is unlikely to have a major impact in isolation,⁶⁹ it has the potential to work as an effective complement to industrial policy.

A more proactive industrial policy is key to ensure that the UK has the infrastructure and skills base to enable industries to locate here. The Labour Party has announced that £1.8 billion of the National Wealth Fund will be allocated to upgrade ports and build supply chains across the UK.⁷⁰ This is an opportunity to develop strategic, long-term port and manufacturing infrastructure, including at an earlier stage of technological maturity. These investments should enable leadership by UK industries so that domestic business can capture more of the supply chain. The allocation could support manufacturing of newer technologies (e.g. Floating Offshore Wind), or enable strategic scaling-up of manufacturing capabilities beyond individual energy projects, delivering a step-change in domestic capability. The NWF funding allows UK supply chains to break the limitations of only growing in line with CfD awards and piecemeal, smaller-scale support made available by the previous government through the Offshore Wind Investment Programme and the Floating Offshore Wind Manufacturing Investment Scheme (FLOWMIS).⁷¹

These investments would play a similar role to the €1 billion investment to upgrade the Danish port of Esbjerg to prepare for more offshore wind manufacturing as well as H2 and CCS,⁷² the €300 million investment into expanding the German port of Cuxhaven,⁷³ and the €43 million investment by Navantia Seanergies into preparing the Cadiz harbour for floating offshore wind production.⁷⁴ All three of these are either publicly-owned ports or manufacturers, leveraging public investment alongside private sector collaboration and further investment to support domestic economic activity.

Alongside public investment in infrastructure, public ownership/direct public investment in renewable generation also presents more opportunities to shape supply chain investment. Firstly, this expands the public influence from context shaping and rule setting, to decision making in supply chain choices. Secondly, public ownership can bring supply chain decision

⁶⁹ Research suggests other factors such as skills and access to materials have a much bigger influence than environmental regulation on where production is located <https://www.journals.uchicago.edu/doi/10.1093/reep/rex013>

⁷⁰ <https://labour.org.uk/wp-content/uploads/2024/06/Change-Labour-Party-Manifesto-2024-large-print.pdf>

⁷¹ See

<https://assets.publishing.service.gov.uk/media/64ddc2dec8dee400d7f1df4/owmis-offshore-wind-investment-programme-guidance.pdf>

And

<https://assets.publishing.service.gov.uk/media/648870d1103ca6000c039de2/floating-offshore-wind-manufacturing-investment-scheme-guidance.pdf>

⁷² <https://www.constructionbriefing.com/news/danish-port-to-invest-980-million-in-green-expansion/8030187.article>

⁷³

<https://www.reuters.com/business/energy/german-wind-power-sector-welcomes-government-offshore-terminal-funding-2024-03-23/>

⁷⁴ <https://www.portseurope.com/navantia-to-invest-e43-million-in-the-puerto-real-cadiz-shipyard/>

<https://www.oceanwinds.com/news/uncategorized/ocean-winds-will-contract-navantia-seanergies-floating-platforms-and-other-elements-for-offshore-wind-farms/> and

<https://www.navantia.es/en/news/press-releases/navantia-seanergies-set-to-boost-spain-industrial-capabilities-to-meet-offshore-wind-emerging-demand/>

making into the realm of public procurement, and the possibility of establishing non-price, social-impact criteria when tendering.⁷⁵

3.4. Subsidy conditionality

As discussed in Section 5, local content requirements (LCRs) can fall foul of WTO and other multi- and bi-lateral trade and investment agreements. Yet LCRs are, as a matter of fact, an increasingly popular feature of renewable energy subsidies across high, middle and low-income economies. One study has charted the growth of LCRs from less than 4 examples in 2005, to over 30 in 2021.⁷⁶ LCRs have been criticised for making renewable energy more costly for end-consumers, and there is mixed evidence on the effectiveness of LCRs on the development of competitiveness in solar and wind technologies, with the suggestion that LCRs may be less effective for less advanced economies in which renewable power technologies are substantially more complex than average exports.⁷⁷ Nonetheless, the growth of LCRs, and most strikingly the US' Inflation Reduction Act, is a reality that the UK government has to engage with in efforts to develop domestic competitiveness.

3.4.1. Examples of subsidy conditionalities: national

Below are some examples of recent decarbonisation subsidies from around the world in which local content provisions have either been required to access the subsidy, or weighted within a competitive process for securing the subsidy.

This does not include provisions that do not influence the selection process such as the UK's non-binding Sector Deal local content target, or the ScotWind Supply Chain Development Statement requirement (although the Statements themselves are intended to be binding, they are not scored as part of the ScotWind leasing process⁷⁸).

Country	Provision	Description
US	Inflation Reduction Act, Clean Vehicle Tax Credit	Provides a consumer facing tax credit of up to \$7500 for vehicles made in North America with batteries made with North American-manufactured components and critical minerals sourced from countries with which the United States has a free trade agreement. ⁷⁹
Japan	Offshore wind bidding rules	One third of the total score for offshore wind bidding is for local content relevant measures (extent to which the bidder's plan will increase regional employment and promote regional investment and construction of regional production facilities, and experience of coordinating with relevant Japanese government authorities,

⁷⁵ The EU's Net Zero Industry Act had been drafted with a view to enabling EU states and state-owned enterprises to do just that <https://www.euractiv.com/section/economy-jobs/news/the-buy-european-clauses-in-the-net-zero-industry-act/>, though as finally adopted it is unlikely to have that function. See <https://www.delorscentre.eu/en/publications/detail/publication/chasing-shadows-what-the-net-zero-industry-act-teaches-us-about-eu-industrial-policy>

⁷⁶ <https://www.piie.com/blogs/trade-and-investment-policy-watch/2021/local-content-requirements-threaten-renewable-energy>

⁷⁷ <https://www.sciencedirect.com/science/article/abs/pii/S1364032122007146#:~:text=For%20most%20countries%2C%20local%20content,export%20capacities%20in%20wind%20energy.>

⁷⁸ <https://www.crownstatescotland.com/sites/default/files/2023-07/foi-259-supply-chain-development-statement-summary.pdf>

⁷⁹ <https://www.bluegreenalliance.org/wp-content/uploads/2022/10/BGA-IRA-User-GuideFINAL-1.pdf>



		co-ordination with local stakeholders on sea routes e.g. fisheries. ⁸⁰
France	Offshore wind Industrial Plans	Industrial Plans with a 40% weighting were required to be submitted for first two rounds of offshore wind development tenders, with preference for local supply chains. This is perceived as having led to increased cost per MWh, and reduced deployment, though it has been accompanied with investment in French manufacturing. More recent rounds have removed local content preference, with the Government agreeing voluntary commitments with industry. ⁸¹
Taiwan	Local Industry Relevance Execution Plans	The capacity allocation process for offshore wind in Taiwan has required the submission of substantial local industry relevance execution plans. Enforcement of LCR pledges has been watered down in more recently, allowing foreign investors to choose local content provisions voluntarily, though investors that present LCR provisions are awarded more points. ⁸²
Canada	FiT eligibility criteria	Eligibility criteria for Ontario's Feed-in-tariff included 50-60% local content and a bonus for locally sourced products. This policy was halted following a WTO ruling. ⁸³
Australia	Victoria Renewable Energy Auction via Local Jobs First Act	A reverse auction in Victoria to purchase renewable energy from three wind projects and three solar projects targeted 64% of local content for all projects, as well as target of 90% for local operations and 90% for local steel. ⁸⁴

3.4.2. Examples of subsidy conditionalities: sub-national

Below are some examples of recent decarbonisation subsidies from around the world in which eligibility has been conditioned on projects being located in sub-national areas that meet social and economic criteria or satisfy energy-system needs.

Country	Provision	Description
EU	Just Transition Fund	To be supported by the JTF, territories have to justify their dependence on fossil fuels and/or on GHG-intensive industrial activities. Territories must also be the most negatively affected based on the economic and social impacts resulting from the transition, in particular with regard to expected job losses and

⁸⁰

<https://ctprodstorageaccountp.blob.core.windows.net/prod-drupal-files/2023-12/South%20Korea%20supply%20chain%20offshore%20wind%20report.pdf>

⁸¹

<https://ctprodstorageaccountp.blob.core.windows.net/prod-drupal-files/2023-12/South%20Korea%20supply%20chain%20offshore%20wind%20report.pdf>

⁸²

https://link.springer.com/chapter/10.1007/978-3-031-24545-9_8

⁸³

<https://www.cambridge.org/core/journals/world-trade-review/article/canadarenewable-energy-implications-for-wto-law-on-green-and-notsogreen-subsidies/33D8401BFCD8F07649074145B0DF2EB4>

⁸⁴

<https://www.piie.com/blogs/trade-and-investment-policy-watch/2021/local-content-requirements-threaten-renewable-energy>

		the transformation of the production processes of industrial facilities with the highest greenhouse gas intensity. ⁸⁵
Germany	Structural Strengthening Act for Coal Regions	Germany's €41.09 billion structural transformation fund to support the country's coal exit pathway specifies in legislation the specific regions which are able to access funding. ⁸⁶
Germany	Renewable Energy Act 2021	Requires at least 15% (rising to 20%) of tenders for wind to be located in the south of Germany to reduce the North/Sea imbalance in generating capacity, and address the grid congestion caused by the wind-rich north and power-hungry south of the country. ⁸⁷
US	EPA Greenhouse Gas Reduction Fund	Environmental Protection Agency's Greenhouse Gas Reduction Fund, by statute, must dedicate at least \$15 billion of the Fund's \$27 billion appropriation to help low-income and disadvantaged communities deploy or benefit from projects that reduce greenhouse gas emissions and other air pollution. ⁸⁸

3.4.3. Proposed subsidy conditionalities for the UK: national

In seeking to promote the development of domestic renewable industries, policymakers face a trade-off between the effectiveness of the measure on the one hand, and any negative consequences triggered by the measure. Effectiveness is likely to increase as policy ramps up from soft, non-binding measures, to rigid binary requirements to access entire subsidy.

Negative consequences are most likely to take the form of a successful challenge under a trade and investment agreement, as discussed below, or a reduced pace of deployment/increased cost of renewable energy the impact of which is not offset by longer term economic benefits of industrial development. Negative consequences are likely to be greater the more stringent the policy.

Table 5: Effectiveness v risk of support measures to promote domestic industrial development

	Risk of negative consequences (legal challenge, scheme failure, prohibitive costs)			
	None	Low	Medium	High
Rigid criteria to access entire subsidy				X
Rigid criteria to access bonus		X	X	

⁸⁵ https://ec.europa.eu/regional_policy/sources/funding/just-transition-fund/swd_territ_just_trans_plan_en.pdf

⁸⁶ https://www.gesetze-im-internet.de/invkg/_2.html

⁸⁷

<https://www.cleanenergywire.org/factsheets/whats-new-germanys-renewable-energy-act-2021#:~:text=In%20a%20bid%20to%20incentivise,to%20tenders%20for%20biomass%20installations.>

⁸⁸ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>



Scoring criteria to access entire subsidy		X	X	
Scoring criteria to access bonus	X	X		
Soft-non binding measure	X			

This report proposes an approach where softer measures with lower risk of negative consequences are introduced as conditionalities for accessing CfDs and other subsidies.

The CfD application process currently requires applicants to submit Supply Chain Plans, including anticipated levels of UK content, as well as domestic direct and indirect jobs. Data on UK content and jobs is not scored in the application process. This data is only published in a highly summarised format.

3.4.3.1. *Greater transparency on the Non-scored Supply Chain Plans required for CfD applications*

Provision	<p>The CfD application process requires applicants to submit Supply Chain Plans, including anticipated levels of UK content, as well as domestic direct and indirect jobs. Data on UK content and jobs is not scored in the application process.</p> <p>The CfD Supply Chain Plan questionnaire currently in use sets out that data is only published in a highly summarised format, of “headline total lifetime UK Content figures”</p> <p>In comparison, the Supply Chain Plans required as part of the ScotWind process were published with much more detail. This increased transparency allows comparisons to be made by the public between developers’ plans - including broken down between DevEx, CapEx and OpeEx</p>
Scope	All projects that bid into CfD rounds
Instrument	Amendments to CfD Regulations to specify greater levels of transparency on data
Oversight and enforcement	Oversight and enforcement of contractual obligations and remedies by the Low Carbon Contracts Company (the CfD Counterparty under the regulations)
Option to strengthen provision	Scoring UK content commitments in the CfD application process, or stronger still, combining scoring with pass/fail criteria for minimum UK content. As discussed in Section 5, such a measure would likely attract a successful challenge

3.4.3.2. *Strengthen the scored CfD application criteria on Supply Chain Resilience*

Provision	<p>Strengthen the existing scored question in the CfD Supply Chain Plan on Supply Chain Resilience.</p> <p>The question on “to what extent do you audit your supply chain to identify risks of modern slavery and/or abusive labour practices?” - should</p> <ul style="list-style-type: none"> ask companies to demonstrate that they have safeguards to ensure that none of their suppliers are involved in modern slavery or forced labour Where they have suppliers located in countries with significant levels of modern slavery or forced labour (e.g. production in Xinjiang in China), then they should demonstrate what transparent safeguards exist for workers safety the question should also require a response on how workers in the supply chain have access to independent trade unions, as a safeguard against abusive labour practices <p>On the question on “What processes do you have in place to mitigate risks affecting the supply of key components?”, should</p> <ul style="list-style-type: none"> Include an assessment of what proportion of key components are sourced from countries with governments considered hostile to the United Kingdom on national security perspective, what safeguards exist to maintain supply chain resilience in a context of international conflict. <p>Supply Chain Plan Guidance should note that UK content, or developing UK-based supply chains, is not necessarily scored more highly than international content/supply chains</p>
Scope	As above
Instrument	Amendment to Supply Chain Plan Questionnaire
Oversight and enforcement	Oversight by National Grid Electricity System Operator (Electricity Market Reform Delivery Body) in role as CfD application assessment
Option to strengthen provision	Supply Chain Plan Guidance to note that UK-based supply chains and domestic skills base score more highly/are more likely to score highly. Increase weighting of this question compared to others.

3.4.3.3. *Strengthen the scored CfD application criteria on Decarbonisation*



Provision	<p>Strengthen the scored criteria in the CfD Supply Chain Plan on Decarbonisation, which currently focuses only on whether a carbon footprint calculation methodology is used, and whether the applicant is signed up to decarbonisation programmes.</p> <p>Add</p> <ul style="list-style-type: none"> • questions for data on the actual carbon emissions associated with the supply chain. Where these cannot be estimated precisely, the carbon emissions for the domestic grid can be substituted • a question on the proximity of the supply chain to the deployment zone, and carbon impacts of shipping components. <p>Guidance should note that non-UK based supply chains can score more highly than UK based supply chains according to scoring across all factors</p>
Scope	As above
Instrument	As above
Oversight and enforcement	As above
Option to strengthen provision	Supply Chain Plan Guidance to note that UK-based supply chains more likely to score highly on environmental sustainability. Increase weighting of this question compared to others.

3.4.3.4. Add a scored CfD application criteria on contribution to the UK's energy security

Provision	<p>Introduce a scored question in the CfD Supply Chain Plan on how the proposed supply chain will contribute to the UK's energy security. Supply Chain Plan Guidance should note that UK content, or developing UK-based supply chains, is not necessarily scored more highly than international content/supply chains</p>
Scope	As above
Instrument	Amendment to Supply Chain Plan Questionnaire
Oversight and enforcement	Oversight by National Grid Electricity System Operator (Electricity Market Reform Delivery Body) in role as CfD application assessment
Option to strengthen provision	Supply Chain Plan Guidance to note that UK-based supply chains and domestic skills base score more highly/are more likely to score highly. Increase weighting of this question compared to others.

3.4.3.5. Add a scored CfD application criteria on social benefit

Provision	Introduce a scored question in the CfD Supply Chain Plan on social benefit (currently in the SIR Allocation Framework) of the proposed supply chains, with guidance that salary levels across the entire, global supply chain will be a relevant factor. Guidance should list other factors (e.g. contribution of supply chain to economic development wherever the project is based) and note that supply chain location (UK or international) is not a relevant factor
Scope	As above
Instrument	As above
Oversight and enforcement	As above
Option to strengthen provision	Supply Chain Plan Guidance to note UK-specific standards (e.g. negotiated rates, prevailing wages) as benchmark values to assess social benefit

3.4.3.6. Apply public procurement provisions to projects wholly owned by, or in which GB Energy/NWF/other public body has an equity stake

Provision	GB Energy, NWF and other relevant public bodies to require strong application of public procurement provisions on local economic development in projects they wholly own or take an equity stake in. Provision to include the strengthening of existing Public Procurement Acts, Regulations and Policy Notes, if required, to enable public bodies to apply significantly weighted criteria on the contribution of procured works to local economic development
Scope	All energy projects in which GB Energy, NWF and other relevant public bodies have an equity stake
Instrument	Incorporate into primary legislation for GB Energy, and guiding documents for National Wealth Fund and other public funds. Incorporate into official strategic update letters from Secretary of State to GB Energy, UK Infrastructure Bank and other public bodies. Potential amendment to Procurement Acts, Regulations and Procurement Policy Notes as required.
Oversight and enforcement	Procurement function/internal auditing within GB Energy, NWF etc
Option to strengthen	Pass/fail criteria on local economic development e.g. with minimum thresholds for supply chain activity in the UK

3.4.4. Proposed subsidy conditionalities for the UK: sub-national

3.4.4.1. *National Wealth Fund to prioritise projects in deprived areas and energy communities*

Provision	The National Wealth Fund to prioritise projects (energy and non-energy sector) located in deprived communities, and communities affected by the phase down of fossil fuel-based activities. Prioritisation can be achieved through both 1) general scoring that weighs these criteria positively, with higher scoring for projects that meet both criteria and 2) ring-fenced allocations for projects that meet this criteria.
Scope	All projects assessed for support by the National Wealth Fund
Instrument	Primary legislation to give Secretary of State powers to determine eligibility criteria of projects in which the National Wealth Fund invests.
Oversight and enforcement	NWF governance

3.5. British Jobs Bonus: Job location incentives

3.5.1. Examples of bonus payment incentives: national

Country	Provision	Description
US	Inflation Reduction Act	The Production Tax Credit for Electricity from Renewables, the Investment Tax Credit for Energy Property, and the Clean Electricity Production Tax Credit, are increased by 10% if the project meets certain domestic content requirements for steel, iron, and manufactured products. ⁸⁹
South Korea	REC multiplier ⁹⁰	Renewable Energy Certificates (RECs) are required by power generators to meet renewable energy targets. Renewable power generators are issued with RECs for each MWh generated. For offshore wind projects where more than 50% of its part are produced domestically, authorities have the discretion to apply a multiplier to the RECs issued. ⁹¹
Greece	FiT bonus	The Greek Feed-in-tariff provides a 10% bonus if 70% of the equipment comes from the EU or EEA. ⁹²

⁸⁹ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

⁹⁰ <https://ctprodstorageaccountp.blob.core.windows.net/prod-drupal-files/2023-12/South%20Korea%20supply%20chain%20offshore%20wind%20report.pdf>

⁹¹ <https://ctprodstorageaccountp.blob.core.windows.net/prod-drupal-files/2023-12/South%20Korea%20supply%20chain%20offshore%20wind%20report.pdf>

⁹² <https://www.piie.com/blogs/trade-and-investment-policy-watch/2021/local-content-requirements-threaten-renewable-energy>

3.5.2. Examples of bonus payments for domestic manufacturing: national

UK	OWMIS	Grant support for investments into the UK Offshore Wind Manufacturing supply chain. ⁹³
UK	FLOWMIS	£160 million grant support for investments into port infrastructure for the UK Floating Offshore Wind supply chain. ⁹⁴
UK	Sustainable Industry Rewards	Proposed SIR criteria include investment in shortening supply chains in deprived areas in the UK. ⁹⁵ Shortening supply chains is defined as investing in ports and tier 1 supply chain capacity closer to deployment zones, concentrated where they are needed most from a socio-economic perspective. ⁹⁶
USA	Inflation Reduction Act	The Qualifying Advanced Energy Project Credit covers between 6% and 30% of the investment cost in new or upgraded factories for clean electricity supply chains. ⁹⁷
USA	Inflation Reduction Act	The Advanced Manufacturing Production Credit is calculated based on production levels, rather than upfront investment costs. ⁹⁸ It covers a subsidy per MW of installed capacity of the wind turbine for which the component is designed. Subsidy levels vary between different components. ⁹⁹ Production must take place in the USA. ¹⁰⁰
EU	Temporary Crisis and Transition Framework	Under TCTF, EU member states are able to design subsidy schemes for clean tech production facilities. The subsidy schemes require that (i) the aid is expected to encourage the production of strategic equipment for the transition to a net-zero economy; ii) the amount of aid per beneficiary will not exceed the ceilings set out in the Temporary Crisis and Transition Framework. ¹⁰¹ These ceilings include both a maximum total per project, and maximum proportion. The ceilings vary based on where the location of the factory is on the EU State Aid map, and whether the company supported is large, medium or small. For example, a large enterprise in Assisted Area A can receive a 35% investment grant, whereas a medium enterprise in Assisted Area C can receive a 30% subsidy grant. Proportions can be higher if the state aid provided is via tax breaks or loans. ¹⁰²
France	Temporary Crisis and Transition	France has introduced a €2.9 billion tax credit for companies that plan to invest in the production of solar panels, batteries, wind

⁹³

<https://www.gov.uk/government/publications/offshore-wind-manufacturing-investment-support-scheme-investment-programme>

⁹⁴ <https://www.gov.uk/government/publications/floating-offshore-wind-manufacturing-investment-scheme>

⁹⁵ <https://assets.publishing.service.gov.uk/media/66339ba94d8bb7378fb6c170/cfd-ar7-sir-allocation-framework-draft-2.pdf>

⁹⁶

<https://assets.publishing.service.gov.uk/media/65ef95dfff117000116158e9/cfd-sustainable-industry-reward-consultation-government-response.pdf>

⁹⁷ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

⁹⁸ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

⁹⁹ <https://www.menon.no/wp-content/uploads/2023-51-Offshore-wind-subsidy-regimes.pdf>

¹⁰⁰ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

¹⁰¹ https://ec.europa.eu/commission/presscorner/detail/EN/ip_23_6751

¹⁰² <https://www.menon.no/wp-content/uploads/2023-51-Offshore-wind-subsidy-regimes.pdf>



	Framework	turbines and heat pumps, components for these and relevant critical minerals. ¹⁰³
Spain	Temporary Crisis and Transition Framework	Spain has introduced a €1.1 billion direct grant subsidy for companies that plan to invest in the production of solar panels, batteries, wind turbines, electrolyzers and heat pumps, components for these and relevant critical minerals. ¹⁰⁴
Spain	Temporary Crisis and Transition Framework	Spain has introduced a €837 million direct grant or loan subsidy for companies that plan to invest in the production of batteries, components for these and relevant critical minerals. ¹⁰⁵
Germany	Temporary Crisis and Transition Framework	Germany has introduced a €3 billion subsidy (including direct grants, tax advantages, subsidised interest on loans and guarantees) for companies that plan to invest in the production of solar panels, batteries, wind turbines, electrolyzers, heat pumps, CCUS and components for these and relevant critical minerals. ¹⁰⁶
Hungary	Temporary Crisis and Transition Framework	Hungary has introduced a €2.36 billion direct grant and tax advantages subsidy for companies that plan to invest in the production of solar panels, batteries, wind turbines, electrolyzers, heat pumps, CCUS, and components for these and relevant critical minerals. ¹⁰⁷
Italy	Temporary Crisis and Transition Framework	Italy has introduced a €100 million direct grant subsidy for companies that plan to invest in the production of electrolyzers. ¹⁰⁸

3.5.3. Examples of bonus payment incentives: sub-national

Country	Provision	Description
US	Inflation Reduction Act	The Inflation Reduction Act structures the clean energy Production Tax Credit (PTC) and Investment Tax Credit (ITC) provisions so that a bonus credit up to a 10-percentage point is available for projects located in an energy community. The ITCs also offer another 10-percentage point bonus allocated investment credit for qualified solar and wind facilities located in a low-income community or on Tribal land and a 20-percentage point bonus for projects that are part of a qualified low-income residential

¹⁰³ https://ec.europa.eu/commission/presscorner/detail/EN/ip_23_6751

¹⁰⁴ https://ec.europa.eu/commission/presscorner/detail/en/IP_23_5727

¹⁰⁵

https://ec.europa.eu/competition/state_aid/cases1/202322/SA_107094_90587688-0100-C6D7-ACB4-CA1BAA6A45F1_63_1.pdf

¹⁰⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3779

¹⁰⁷ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3851

¹⁰⁸ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4730

		building project or a qualified low-income economic benefit project. ¹⁰⁹
US	Inflation Reduction Act	Increases the Department of Energy's loan authority from \$2 billion to \$20 billion for the Tribal Energy Loan Guarantee Program. ¹¹⁰

3.5.4. Proposed British Jobs Bonus Incentives for investing into UK target locations

This paper proposes three *alternative* subsidy schemes for ensuring UK-based job creation in renewable supply chains:

1. Bonus support for renewable energy projects that use local supply chains or generate local long term jobs
2. Manufacturing investment bonus for investment in new or upgraded manufacturing facilities (with higher proportion if it upgrades a facility currently within the oil & gas supply chain), tied to the CfD SIR process
3. Manufacturing investment bonus as above, not tied to the CfD SIR process

It is probably desirable to implement only one of the three schemes for reward, or to combine several within the same funding bucket. Whichever scheme is implemented should receive the bulk of the British Jobs Bonus - over £300 million per year.

Given the stringency of commitments within the EU-UK Trade and Cooperation Agreement, and potential repercussions of violating these commitments, we do not consider the option of conditioning access to CfDs or weighting CfD bids according to local content criteria, as per the US' Inflation Reduction Act. The EU's decision to challenge the UK at the WTO for making local content a criterion for CfD eligibility¹¹¹, and the UK's subsequent withdrawal of the proposed criteria¹¹² indicates the difficulty the UK would have introducing local content conditionalities for CfD access. Therefore we include as option 1 a bonus payment for utilising local supply chains, *on top of the CfDs*. While this is still subject to a high risk of challenge (see Section 5), it is more defensible.

Given the UK's limited renewable manufacturing capacity, and its limited industrial capacity in general, it would likely be over-restrictive for the UK to attempt to mirror the US Inflation Reduction Act approach of conditioning payments on meeting defined thresholds related to domestic content of specific raw materials and other inputs. A more appropriate policy design for the UK would be to reward applicants that can demonstrate a higher percentage of local job creation or local content across the whole supply chain, above a minimum

¹⁰⁹ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

¹¹⁰ <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>

¹¹¹ See https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds612_e.htm

¹¹² See https://policy.trade.ec.europa.eu/news/eu-and-uk-agree-way-forward-wto-dispute-concerning-uks-green-energy-subsidy-scheme-2022-07-01_en

threshold which takes projects beyond the Devex and Opex positions which already tend to be UK-based.

Option 2 presents a slightly higher risk of a challenge, as described in Section 5, though can be designed in such a way as to make a challenge, and a successful challenge, less (or more) likely. Option 3 is unlikely to trigger a challenge under a trade and investment agreement, if implemented in accordance with subsidy procedural requirements (see Section 5). It takes a very similar form to state aid support approved by the European Commission under TCTF in Germany, France, Spain, Italy and Hungary. It also builds on past UK grant support through the Offshore Wind Manufacturing Investment Scheme, and existing plans for the Sustainable Industry Rewards. The Manufacturing Investment Bonus specifically requires investments into the supply chain to be located in target communities, as defined above.

3.5.4.1. *Local supply chain or job creation bonus*

Provision	<p>A BJB payment is available to projects that demonstrate UK content in their supply chain. Submissions will be scored and weighted, with the applicants demonstrating highest UK content (e.g. top quartile in percentage terms above an agreed minimum threshold of e.g. 60%) per MW new installed capacity. BJB payments will be available to all projects that achieve local content above a higher threshold e.g. 75%.</p> <p>Higher scores for percentage of supply chains in a deprived or energy community as defined above, would receive a higher BJB grant payment per MW of installed capacity.</p> <p>Alternatively, a BJB payment is available for projects that demonstrate that they will create (directly) and support (through their supply chain) long term job roles (5 years plus) within the UK. Applicants must be able to demonstrate the longevity of roles (e.g. would not include short term installation positions connected to one windfarm, but would include longer term role in manufacturing facility supplying multiple projects). Submissions will be scored and weighted, with the applicants demonstrating highest long term local job creation (e.g. top 25% per MW new installed capacity, above an agreed minimum threshold) to receive a BJB grant payment per MW of installed capacity, from a total annual allocation. BJB payments will be available to all projects that achieve local long term job creation above a higher threshold.</p> <p>Higher BJB payments can be provided to those projects that commit to greater long term job creation in deprived or energy communities.</p>
Scope	Eligible for all projects that bid into CfD rounds.
Instrument	This can be implemented through amendments to Sustainable Industry Rewards (SIR) process and criteria, via Statutory Instrument (see The



	Contracts for Difference (Sustainable Industry Rewards) Regulations 2024).
Oversight and enforcement	Oversight provided through self-reporting by fund recipients, and by the Low Carbon Contracts Company (the CfD Counterparty under the regulations). A formal, funded role could be created for trade unions, where active, to monitor compliance and report breaches to the funding body. Enforcement through repayment of BJB, or deduction from future CfD price support payments where the wholesale price is below the strike price.

3.5.4.2. *Manufacturing investment bonus tied to the CfD SIR process*

Provision	<p>A BJB payment is available for investment commitments to new or upgraded manufacturing facilities for renewable supply chains. This could include for example nacelles, cables, towers, foundations, anchors, as well as components thereof and relevant critical minerals.</p> <p>The investment support should be capped both as a proportion and as a total, in line with similar limits for EU state aid support.</p> <p>A higher payment and proportion of overall investment costs should be available to proposals that transfer manufacturing capacity and/or jobs from the oil & gas supply chain facilities to long-term net zero supply chains.</p> <p>Proposals should include both a clear business plan demonstrating operational sustainability, target markets and long-term workforce plan. Grants should also be dependent on manufacturing plants signing up to job quality conditions (union access and recognition of existing national agreements) and apprenticeship investment.</p> <p>Implementation would follow a similar process as the current SIR plan - where the proposal is led by a developer bidding for a CfD, and the developer proposes partner Tier 1 or Tier 2 contractors who would actually deliver the investment and operation of the manufacturing facility. The grant will flow directly to the Tier 1 or Tier 2 contractor, not the CfD bidder. The benefit of this approach is that it can build on the existing SIR process and ensures that proposals for manufacturing upgrades are tied into demand from developers.</p>
Scope	Eligible for all manufacturing facilities in the supply chains of developers that bid into CfD rounds. The fund should be directed towards specific geographies, including those with significant current high-carbon employment, coastal communities and comparatively high levels of deprivation. This can be through an overall restriction on where the finance is available, or by offering higher or layered bonus payments for certain geographies (similar to the the EU Assisted Areas Map guiding TCTF eligibility in the EU).



Instrument	This can be implemented through a combination of amendments to Sustainable Industry Rewards (SIR) process and criteria, via Statutory Instrument (see The Contracts for Difference (Sustainable Industry Rewards) Regulations 2024), and by primary legislation giving the Secretary of State powers to determine the eligibility criteria for the BJB
Oversight and enforcement	Oversight provided through self-reporting by fund recipients, and regular channels used by government for monitoring/auditing grant awards.. A formal, funded role could be created for trade unions, where active, to monitor compliance and report breaches to the funding body. Enforcement through repayment of BJB.

3.5.4.3. *Manufacturing investment bonus not tied to the CfD SIR process*

Provision	As described above, with the exception that the Manufacturing Investment Bonus is channelled through a similar process to the past Offshore Wind Manufacturing Investment Scheme and the Floating Offshore Wind Manufacturing Investment Scheme. In this case, bids will be made directly by the manufacturing company, and not tied to a CfD round. This has the benefit of being more straightforward, as bids are made by manufacturing companies rather than developers, and the benefit that bids are not restricted to the CfD process so that public support for a proposed manufacturing site is granted entirely on its own merits, and not dependent on a particular developer winning a CfD bid. By operating very similarly to the parallel EU funding for supply chains, this has very low chances of a trade challenge. The disadvantage is that it doesn't build directly into the existing SIR process and would require other measures to assess demand for the manufactured component.
Scope	Eligible for all renewables manufacturing facilities. The fund should be directed towards specific geographies, including those with significant current high-carbon employment, coastal communities and comparatively high levels of deprivation. This can be through an overall restriction on where the finance is available, or by offering higher or layered bonus payments for certain geographies (similar to the the EU Assisted Areas Map guiding TCTF eligibility in the EU).
Instrument	This can be implemented by primary legislation giving the Secretary of State powers to determine the eligibility criteria for the BJB
Oversight and enforcement	Oversight provided through self-reporting by fund recipients, and regular channels used by government for monitoring/auditing grant awards.. A formal, funded role could be created for trade unions, where active, to monitor compliance and report breaches to the funding body. Enforcement through repayment of BJB.



4. Delivering just transition pathways for oil and gas workers

4.1. Defining a just transition pathway for oil and gas workers

The ITUC has defined a just transition as a process that “secures the future and livelihoods of workers and their communities in the transition to a low-carbon economy”¹¹³. This is a concept which is embedded in the Paris Agreement.¹¹⁴ More concretely, the TUC has set out the following elements required to make a just transition a reality:

- A clear and funded path to a low-carbon economy, with the social and economic impacts of decarbonisation shaping policy design, and a major role for government to progressively fund sectoral, infrastructural and social investment
- Workers at the heart of delivering plans, with workers’ voice heard at every level decisions are made and formalised through e.g. just transition agreements negotiated by trade unions
- Every worker having access to funding to improve skills and a decent social security system to ensure their living costs are met while they train
- New jobs are good jobs, with trade union recognition, decent pay, terms and conditions, high standards of health and safety, and a fair pension.¹¹⁵

4.2. Transition concerns in the UK’s oil and gas sector

Even without the decarbonisation imperative, the UK’s offshore oil and gas sector has become increasingly precarious for its workforce, defined by boom and bust in response to international market shifts, high levels of job insecurity with prevalence of self-employment or “off payroll” (IR35) working, and health and safety concerns in what is a dangerous industry. Platform’s 2020 survey of offshore workers found that over 40% of respondents had been made redundant following the 2020 price crash, high levels of concern about employment and job security, and over 80% of respondents saying they would consider moving to a job outside of the oil and gas industry.¹¹⁶

Notwithstanding the pressures facing a sector in decline, offshore oil and gas remains a key employer that, according to industry representatives, supports 1 in every 160 jobs in the UK, and 1 in every 30 jobs in Scotland.¹¹⁷ That jobs are geographically concentrated compounds the economic impact of the sector and challenge of transition.

¹¹³

<https://www.ituc-csi.org/just-transition-centre#:~:text=A%20Just%20Transition%20secures%20the.with%20communities%20and%20civil%20society.>

¹¹⁴ https://unfccc.int/sites/default/files/english_paris_agreement.pdf

¹¹⁵ https://www.tuc.org.uk/sites/default/files/A_Just_Transition_To_A_Greener_Fairer_Economy.pdf

¹¹⁶ <https://platformlondon.org/app/uploads/2020/09/Oil-Gas-Workers-Report-1.pdf>

¹¹⁷

<https://oeuk.org.uk/product/economy-people-report-2024/#:~:text=Additionally%2C%20the%20oil%20and%20gas,over%20the%20past%2050%20years.>

Yet despite the local significance of the sector, there is no UK-wide just transition policy, or a just transition body, beyond the frameworks enacted by devolved administrations such as the Scottish Just Transition Commission.¹¹⁸ Observers have noted that the UK's constitutional settlement impedes the availability of mechanisms for devolved administrations to deliver a just transition.¹¹⁹ The North Sea Transition Deal, a non-binding agreement between the previous Government and industry to “deliver the skills, innovation and new infrastructure required to meet stretching greenhouse gas emissions reduction targets”¹²⁰ falls far short of just transition policy. The Deal, which was shaped without worker contributions and to which the Scottish government is not a party, provides little support for workers to transition into clean energy jobs, no strategic transition planning for areas in which fossil fuel jobs are concentrated, few measures to encourage oil and gas companies to expand into renewable energy, and gives insufficient attention to growth industries like decommissioning and turbine manufacture.¹²¹

4.3. Regulatory minimum standards and cross-cutting national policy

4.3.1. Welfare and employment support

The UK's Committee on Climate Change has noted that government support in Germany for workers and communities affected by the coal phase out has benefited from reliance on the existing social security system that “already provides effective assistance with training, job placement, and vocational guidance”.¹²²

The success of a transition policy will depend on the degree to which the general provision of benefits and financial support, and training and advice for jobseekers, facilitates and enables individuals affected by industrial transition to find pathways into new employment. Denmark is a case study in how the quality of general social and employment support has enabled workers affected by decarbonisation to gain the skills needed to access jobs in renewable and low carbon industries.¹²³

By contrast, the UK's comparatively meagre levels of unemployment support¹²⁴ and its sanction-driven approach to welfare, one of the most punitive internationally,¹²⁵ with a “work first” policy that prioritises moving claimants into work as quickly as possible irrespective of the quality of new job opportunities,¹²⁶ falls far short of what would be required to enable just

¹¹⁸ See <https://researchbriefings.files.parliament.uk/documents/POST-PN-0706/POST-PN-0706.pdf> and <https://oilandgastransitions.org/wp-content/uploads/2021/11/UK-North-Sea-Oil-and-Gas-Report.pdf>

¹¹⁹ <https://www.sei.org/wp-content/uploads/2022/05/sei2022-012-oil-gas-north-sea-transition.pdf>

¹²⁰ <https://www.gov.uk/government/publications/north-sea-transition-deal>

¹²¹

https://cdn.prod.website-files.com/65fb114310747bea5850d1f4/66267cbb62a89c19a9dc93b3_NewDealNorthSea_UpliftBrief_042024.pdf

¹²² <https://www.theccc.org.uk/wp-content/uploads/2023/05/CCC-A-Net-Zero-Workforce-Web.pdf>

¹²³ <https://climateinstitute.ca/publications/managing-a-just-transition-in-denmark/>

¹²⁴ https://www.tuc.org.uk/sites/default/files/Welfare_States_Touchstone_Extra_2015_AW_Rev.pdf

¹²⁵ <https://publications.parliament.uk/pa/ld5801/ldselect/ldconaf/105/10507.htm#footnote-110>

¹²⁶ <https://www.jrf.org.uk/work/work-first-can-work-better>

transition. The new Government's "Back to Work Plan" must address these general shortcomings, if the specific challenges facing oil and gas workers are to be met.

In addition, Government should create a specific Job Guarantee & Welfare Support programme, targeted at those whose livelihoods currently rely heavily on the oil & gas industry, and who fall through the gaps of the Transition Scheme for Oil & Gas Workers proposed below.

As well as job guarantees, this should include a non-means-tested, non-contributory benefit for those who have worked long term in the oil and gas sector for a minimum number of years (e.g. 10+) and become redundant or accept a job on lower pay. The payment could be made available on a monthly basis for the first 12 months following a change of employment status. The amount available per beneficiary would be calculated in advance based on total funding allocation over one Parliament, and estimated annual demand. For example, a £20m annual allocation, if accessed by 10,000 beneficiaries over a Parliament, would make £10,000 available per individual. This could be administered by DWP as per industrial disablement compensation.¹²⁷

4.3.2. Investment in skills and regional development

The net zero transition will require national, regional and local planning and collaboration between a large number of institutions and stakeholders, both vertically and horizontally. This is necessary to ensure that delivery is both locally sensitive and nationally coherent, and that the skills and infrastructure are available in the right places at the right time. Ensuring the transition is a just transition will require even higher levels of planning and foresight. However, skills and regional development policy in the UK has been characterised by high levels of churn, leading to a cluttered landscape of overlapping institutions, funds and policies.¹²⁸ The previous Government's fragmented and short-term approach to funding the net zero transition locally has exacerbated these problems, with local government, employers and skills providers unable to create the workforce needed to deliver programmes successfully.¹²⁹

The new Government has set out an ambition to bring greater coherence to the skills landscape by setting up Skills England, bringing together "business, training providers and unions with national and local government to ensure we have the highly trained workforce needed to deliver Labour's Industrial Strategy"¹³⁰. This new body should have an explicit focus on workers and communities affected by decarbonisation, with priorities shaped through collaboration with bodies tasked with overseeing decarbonisation, including the newly established net zero Mission Control¹³¹. This work should include regularly updated green skills gap analysis for each region, and the development and funding of courses and qualifications to fill shortages.

¹²⁷ <https://researchbriefings.files.parliament.uk/documents/CDP-2024-0015/CDP-2024-0015.pdf>

¹²⁸ <https://www.instituteforgovernment.org.uk/article/explainer/churn-levelling-policies-uk>

¹²⁹ <https://www.local.gov.uk/publications/green-jobs-creating-workforce-deliver-net-zero>

¹³⁰ <https://www.gov.uk/government/news/skills-england-to-transform-opportunities-and-drive-growth>

¹³¹ <https://www.gov.uk/government/news/chris-stark-to-lead-mission-control-to-deliver-clean-power-by-2030>

To achieve coherence between supply-side and demand-side approaches to new job creation, skills investment will need to be backed by investment through the Government's National Wealth Fund and other channels (including investments beyond the energy/industrial sectors). To ensure coordination with parallel investment at the local level, Government should publish a strategic, long-term timeline of its planned investments out to 2030, around which local government, employers, skills providers and other stakeholders can coalesce.¹³²

Long standing trade union calls for an Offshore Skills Passport – to allow workers to move from oil and gas to renewable energy projects without the need for costly additional certification - have been supported by the Scottish government with a £5m grant to an industry body (OPITO) to support delivery.¹³³ The North Sea Transition Deal also contains a commitment to “ensure that the workforce’s skills and competencies are mutually recognised across energy sectors enabling easier job transferability”.¹³⁴ However, doubts have been raised about commitment within the industry to removing duplication in qualifications,¹³⁵ and administration of a Skills Passport would better sit with a public than industry body, with employers compelled to accept accredited qualifications. The Labour Party’s recent commitment to delivering an Offshore Skills Passport for the North Sea¹³⁶ is an opportunity to establish such a public body, which should be funded through both industry contribution and government.

Government should also use regulation to ensure the oil & gas sector does not abandon its workforce, and invests into upskilling workers to transition into low carbon roles. Where existing regulatory powers are not sufficient, additional levers can be created using primary legislation. This should require employers in the oil & gas sector to provide accredited training and time off to conduct the training, with accreditation that allows their workforce to work in low carbon industries / is consistent with the Offshore Skills Passport. This should apply to all employers of the offshore workforce, including those working as contractors and self-employed.

The North Sea Transition Authority, supported by the Office for Clean Energy Jobs, should have a role in overseeing successful delivery.

4.3.3. Public ownership

The new Government has launched Great British Energy to “own, manage and operate clean power projects” in the UK.¹³⁷ This is a novel development within the UK’s almost

¹³² See Local Government Association report on green jobs, available here

¹³³ <https://www.local.gov.uk/publications/green-jobs-creating-workforce-deliver-net-zero>

¹³⁴ <https://opito.com/news/opito-awarded-5-million-through-just-transition-fund-to-deliver-energy-skills-passport>

¹³⁵ https://assets.publishing.service.gov.uk/media/605b148ce90e0724c7d30c2b/north-sea-transition-deal_A_FINAL.pdf

¹³⁶ <https://foe.scot/wp-content/uploads/2023/03/Our-Power-Report.pdf>

¹³⁷ <https://www.pressandjournal.co.uk/fp/politics/scottish-politics/6491695/labour-pledge-to-deliver-long-overdue-oil-and-gas-skills-passport/>

¹³⁸ <https://www.gov.uk/government/publications/introducing-great-british-energy/great-british-energy-founding-statement>

entirely privatised energy system, and creates an opportunity for the state to directly support just transition on the ground, with day-to-day operational decision making shaped by social objectives.

As an example of this, state-owned EDF has internally redeployed almost 3000 workers within its French operations since 2018, as part of its just transition strategy.¹³⁸ Norwegian state-owned Equinor has a commitment to enabling existing employees to access new jobs created through the energy transition.¹³⁹

As exclusively clean power operator, GBE will not be able to internally redeploy oil and gas workers, but it will be able to adopt recruitment strategies and use its investment and procurement powers to proactively target former oil and gas workers. While the initial impact in the next 5 years is likely to be relatively limited with GBE's current capitalisation of £8.3 billion, it is an opportunity to demonstrate proof of concept and shape practice in the wider sector. Additional capitalisation could give GB Energy a more significant role in a North Sea just transition from 2030 onwards.

4.4. Subsidy conditionality

The proposed subsidy conditionalities and British Jobs Bonus criteria on job quality and location would have the indirect impact of supporting pathways for oil and gas workers into renewable energy. It is not proposed in this paper to introduce further general subsidy conditionalities to promote pathways for oil and gas workers into the renewables sector, as this will not be a relevant consideration for all projects supported by subsidy.

4.5. British Jobs Bonus - Just Transition

4.5.1. International examples

There are a growing number of examples from across the world of dedicated funds established to support workers and communities dislocated by energy transitions, some of which are summarised below. Ensuring that workers and communities do not bear the brunt of job losses from decarbonisation has become a core expectation of net zero policy, and indeed the US' Inflation Reduction Act has attracted criticism for failing to include sufficient measures to that end.¹⁴⁰

Country	Provision	Description
Scotland	Just Transition Fund	A 10 year commitment to invest £500m in projects in Scotland's North East and Moray which contribute towards the region's transition to net zero. Year 1 investments include £5m investment to develop and deploy a digital offshore energy skills passport to support the transition of skills and jobs across the industry, and £5m investment in an energy transition skills hub. ¹⁴¹ The fund has recently been cut. ¹⁴²

¹³⁸ https://www.edf.fr/sites/groupe/files/2022-10/edfgroup_rse_transition-juste-et-inclusive_principes_2022_va.pdf

¹³⁹ <https://www.equinor.com/sustainability/just-transition>

¹⁴⁰ <https://www.bluegreenalliance.org/wp-content/uploads/2022/10/BGA-IRA-User-GuideFINAL-1.pdf>

¹⁴¹ <https://www.gov.scot/publications/just-transition-fund/pages/year-one-projects/>

¹⁴² <https://www.thenational.scot/news/24207130.just-transition-fund-msps-call-clarity-amid-cuts/>

California	Displaced Oil and Gas Worker Pilot Fund	A one-time grant programme to support workforce training and otherwise address the needs of displaced workers in the oil and gas sector. ¹⁴³
Alberta	Coal Workforce Transition Program	Provides financial assistance for long term employees in the coal sector, including re-employment (75% of previous weekly earnings for up to 45 weeks while job seeking), retirement (bridge to retirement relief grant), relocation (up to \$5,000 for moving more than 40km) and education (\$12,000 to pursue post-secondary education to train for new careers). ¹⁴⁴
Norway	Upskilling and reskilling agreements	A trade union negotiated programme supported by government and industry contributions, that reimburses companies and employees for costs associated with training, primarily focusing on wages, to ensure expertise within industry for the green transition, technological development, and international competitiveness. ¹⁴⁵
US	Partnerships for Opportunity and Workforce and Economic Revitalization Initiative (POWER)	Obama-era initiative that directed federal assistance to communities and regions facing job losses in the coal sector due to the energy transition. Grants made available to local partnerships of government, economic development organisations, workforce development boards, community and technical colleges, businesses, unions, and community groups, and could be used to (1) diversify economies; (2) create jobs in new or existing industries; (3) attract new sources of job-creating investment; (4) and provide a range of workforce services and skills training. ¹⁴⁶

4.5.2. Proposed British Jobs Bonus - Just Transition incentives

This paper proposes that the British Jobs Bonus incentivises employer participation in a collective scheme to deliver just pathways for oil and gas workers. This can supplement the ability of British Job Bonus - Job Creation Incentives to transition manufacturing plants in the oil & gas supply chain.

4.5.2.1. BJB Incentive: Transition Scheme for Oil & Gas Workers

Achieving a Just Transition for North Sea oil & gas workers requires a level of coordination and planning that government has yet to demonstrate. This is more challenging in the UK than other European countries, after years of hollowing out the public sector. However, the creation of the Office for Clean Energy Jobs, Great British Energy and the British Jobs Bonus creates new public capacity and resource.

The government should set up a pro-active North Sea Workforce Transition Scheme, to ensure that oil & gas workers transition into quality jobs going forward. The Scheme should

¹⁴³ <https://www.grants.ca.gov/grants/displaced-oil-and-gas-worker-fund-dogwf-grant-for-program-year-2023-24-py-23-24/>

¹⁴⁴ <https://www.alberta.ca/support-for-coal-workers>

¹⁴⁵ [https://news.industrial-europe.eu/documents/upload/2024/6/638536882459861938_Upskilling_and_reskilling_agreements_in_Norway_New_agreements_for_reforming_the_industry_\(2\).pdf](https://news.industrial-europe.eu/documents/upload/2024/6/638536882459861938_Upskilling_and_reskilling_agreements_in_Norway_New_agreements_for_reforming_the_industry_(2).pdf)

¹⁴⁶ <https://obamawhitehouse.archives.gov/the-press-office/2015/03/27/fact-sheet-partnerships-opportunity-and-workforce-and-economic-revitaliz>

aim to support both offshore workers and onshore supply chain workers, including those working directly for oil & gas companies and for contractors. It should work with employers across the renewables industry as well as unions, to identify and deliver pathways to move the oil & gas workforce into clean industries with a long term future.

The overall Scheme should be delivered and overseen by the Office for Clean Energy Jobs. The Scheme will require detailed and granular skills mapping of the workforce of particular enterprises involved in offshore oil & gas - this should be delivered by the Office for Clean Energy Jobs, with the NSTA requiring engagement from the oil & gas sector. The OCEJ should complement this with skills - and ultimately jobs matching exercises.

GB Energy should take on a training role, running the required skills upgrade courses for targeted sections of the oil & gas workforce, to enable a straightforward transition. By pro-actively developing the training programmes based on the macro need identified by OCEJ and allocating appropriate resource, this approach will avoid the limitations of training resource only being created in response to individual requests.

Unions should be engaged in active Outreach processes, so that the oil & gas workforce knows about the pathways and support being developed.

Ensuring that the Skills & Jobs Matching process includes workers moving into actual new quality employment will require very active engagement on the part of the renewable power sector and supply chain.

To support this, CfD applicants can qualify for a BJB incentive if they actively participate in the scheme, including creating practical recruitment and retention pathways

Provision	A BJB payment is available for projects that commit in their SIR Statement to developers and most Tier 1 & Tier 2 suppliers participating in the Transition Scheme for Oil & Gas Workers.
Scope	OCEJ should identify which technologies are most relevant for the Transition Scheme for Oil & Gas Workers. Eligible for all projects of these technologies that bid into CfD rounds.
Instrument	This can be implemented through amendments to Sustainable Industry Rewards (SIR) process and criteria, via Statutory Instrument (see The Contracts for Difference (Sustainable Industry Rewards) Regulations 2024).
Oversight and enforcement	Oversight provided through self-reporting by fund recipients, and by the Low Carbon Contracts Company (the CfD Counterparty under the regulations). In overseeing and delivering the Transition Scheme for Oil & Gas Workers, the Office for Clean Energy Jobs can provide reports on whether recipients of the bonus are failing to participate appropriately. Where projects are sold and new owner do not participate, a portion of the grant can be repaid.



Suggested annual allocation	£50m
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5. Compatibility with existing legal frameworks

This section reviews the risk that the three options proposed in section 3.5.4 for the BJB to incentivise investment into UK target locations, will be successfully challenged under international trade and investment agreements and/or the UK's domestic subsidy control regime.

The six legal frameworks reviewed are:

WTO Agreements	General Agreement on Tariffs and Trade (GATT)	Agreed in 1947 and brought under the WTO Framework in 1995, GATT is a multilateral trade agreement. Our analysis focuses on National Treatment rules that forbid less favourable treatment for imported than domestic products.
	Agreement On Subsidies And Countervailing Measures (SCM)	A multilateral treaty introduced under the WTO Framework in 1995, the SCM creates two categories of subsidies: prohibited subsidies (this includes subsidies contingent upon the use of domestic over imported goods) and actionable subsidies (those which are subject to challenge if they harm other countries).
	General Agreement on Trade in Services (GATS)	A multilateral treaty introduced under the WTO Framework in 1995, GATS requires countries to treat overseas service suppliers no less favourably than domestic service suppliers, in sectors covered by the schedule of specific national treatment commitments that countries have communicated to the WTO. Post-Brexit, the UK's schedule is distinct from that submitted by the EU.
Trade and Cooperation Agreement between the EU and the UK (TCA)		A free trade agreement between the EU and the UK agreed in 2020 that covers a wide range of issues including the trade in goods and services, and the provision of state aid/subsidies.
Subsidy Control Act 2022		The UK's domestic subsidy control regime, introduced post-Brexit to replace the EU-state aid rules that previously applied to the UK. The SCA enables the UK to comply with requirements in the TCA and other free trade agreements to implement a domestic subsidy control regime. The SCA establishes the principles and rules

	according to which UK authorities can issue subsidies, and enables “interested parties” to challenge subsidy decisions.
Comprehensive and Progressive Agreement for Trans-Pacific Partnership	CPTPP is a free trade agreement signed in 2018, between 11 countries in the Pacific region. The UK concluded negotiations to join the CPTPP in March 2023 and signed the Protocol of Accession on 16 July 2023. Entry into force of the agreement will take place once the UK and CPTPP Parties have finished their legislative processes, which is expected in the second half of 2024. The CPTPP allows state-to-state challenges of UK government decisions, and investor-state challenges under the Investor-State Dispute Settlement (ISDS) process.

The above is not an exhaustive list of the obligations to which the UK government is bound, but aims to cover the main legal frameworks under which the UK Government could be challenged for an offending subsidy measure. Our analysis does not include the WTO Agreements on Trade-Related Investment Measures (TRIMs) - excluded as the relevant provisions are essentially the same as those under GATT - and does not include the many bilateral investment treaties (BITs) to which the UK is a party - excluded as the analysis is likely to mirror that set out for the CPTPP.

Our analysis takes a holistic approach to risk, covering political risk of a challenge being brought, legal risk of subsidies being found to be inconsistent with the laws that bind the UK government, the level of risk according to the institutional and procedural effectiveness of legal systems, and the consequences of being found in violation of a treaty or domestic law provision. Risk factors are summarised below:

Risk of a challenge	What factors would encourage or discourage a state-to-state challenge under a treaty, an investor-state challenge under an investment treaty, or an “interested party” challenge under the SCA
Effectiveness of process	How challenging is it for a claim to be brought under a specific treaty, what is the length of time for dispute resolution, what steps are required to reach a final decision, and how functional are the dispute resolution bodies



Legal compliance	What is the risk that a tribunal established under a treaty, or the UK's Competition Appeal Tribunal, would rule that the BJB violates a legal obligation, taking into account existing jurisprudence. Exhaustive analysis of each treaty/domestic law text is beyond the scope of this paper. Rather, we highlight the main provisions that are most likely to present a challenge to the UK government, the basis on which a challenge could be brought, defences available to the UK government, and an assessment of how a tribunal may rule on those specific provisions. The analysis of laws provided here is intended solely for the purposes of policy research. It does not constitute legal advice, nor should it be relied upon as such
Remedies and consequences	What measures or countermeasures would the UK government face if the BJB was found to violate a legal obligation

5.1. Key findings

The EU-UK Trade and Cooperation Agreement, and the Subsidy Control Act introduced post-Brexit, significantly narrows the space available to the UK government to introduce local content requirements as a condition for subsidy access. This makes it difficult for the UK to replicate measures introduced in the US and a number of other economies, as described in Section 3. A BJB subsidy for renewables developers for using local supply chains or creating local jobs may be defensible at the WTO, and given the institutional paralysis of the WTO, worth pursuing at the risk of an unfavourable ruling. However, the measure would face a high risk of successful challenge under the TCA and SCA. We recommend that if the government intends to pursue a local supply chain bonus, it consults in advance with the EU with a view to agreeing formalised carve-outs in TCA, or a more informal waiver/stand still pact, for measures related to renewable energy subsidy bonuses.

A manufacturing investment bonus tied to the CfD SIR process has a lower risk of being challenged by the EU, and being found to be inconsistent with the TCA, if it can be designed in such a way that it is not perceived to subsidise the renewable energy developer. Rather, the policy should be framed as equivalent to a regional development subsidy, with the CfD SIR process merely used to identify manufacturing facilities that can demonstrate a route to market for their output, to ensure that supply-side subsidy matches real world demand. It is possible that this measure could be challenged by the EU, or a dissatisfied company/investor under the SCA or even CPTPP, on the basis that the subsidy provides an unfair advantage to renewables developers using local supply chains (given that manufacturing subsidies can bring prices down further up the supply chain). However, we

recommend that this measure is worth pursuing at risk, given the possibility of a successful defence, and the benefits of linking manufacturing subsidies to the CfD process.

A manufacturing investment bonus that is not linked to the CfD SIR process is unlikely to be successfully challenged through the WTO agreements or TCA/SCA, so long as the procedural requirements (e.g. around transparency) are met. Designing the subsidy so that it meets the General Block Exemption Regulation on EU State Aid for environmental and regional development exemptions (e.g. allocating funds to objectively defined deprived areas) further lowers the risk of a successful challenge. It is recommended that this is the fall back option if a process linked to the CfD/SIR process is deemed to be too high risk.

It is worth noting that the risk of challenge to all three options could be eliminated by introducing a “rest of world” option. For example, this could take the form of a BJB payment for renewables developers using local supply chains that deliver environmental and social benefits *OR* supply chains anywhere else in the world that deliver environmental and social benefits, in which there is no ring-fencing of funds for either option. This is equivalent to how the CfD SIR scheme was conceived by the previous Government.¹⁴⁷ However, the risk with this approach is that limited public subsidy could flow overseas, which would be at odds with the stated objectives of the BJB, and is therefore not a recommended approach.

Our risk analysis of the three BJB design options under the six legal frameworks reviewed, is summarised in the table below.



		Risk of challenge	Effectiveness of process	Legal compliance	Remedies and consequences	Average risk level
Local supply chain bonus/local job creation bonus	GATT	Red	Green	Orange	Orange	Orange
	SCM			Yellow		Yellow
	GATS			Yellow		Yellow
	TCA	Red	Red	Red	Red	Red

¹⁴⁷ See <https://assets.publishing.service.gov.uk/media/65ef95dff117000116158e9/cfd-sustainable-industry-reward-consultation-government-response.pdf> which explicitly proposes a “sustainable means of production anywhere in the world” criteria, and <https://assets.publishing.service.gov.uk/media/66cdc61703c7db1b41c70920/cfd-ar7-sir-allocation-framework-draft-version-2.pdf> which includes a “investment in more sustainable means of production” criteria which is implicitly open to international projects

	CPTPP					
	SCA					
Manufacturing investment bonus tied to CfD SIR	GATT					
	SCM					
	GATS			N/A		N/A
	TCA					
	CPTPP					
	SCA					
Manufacturing investment bonus not tied to CfD SIR	GATT			N/A		N/A
	SCM					
	GATS			N/A		N/A
	TCA					
	CPTPP			N/A		N/A
	SCA					

5.2. Risk of a challenge

5.2.1. WTO agreements

In 2022 the EU requested consultations with the UK regarding the proposed inclusion of local content requirements in the UK's CfD scheme, which it claimed violated Article III(4) of GATT.¹⁴⁸ By challenging local content measures at the WTO under GATT, the EU demonstrated willingness to use the WTO to deter other states from violating National Treatment principles. At the same time, given the prevalence of local content measures in economies manufacturing renewable energy technologies, it is likely that many WTO members would be reluctant to bring a challenge against the UK to avoid a ruling that may scrutinise and threaten their own policies in this area. It has been observed that as part of its WTO challenge, the EU may have avoided bringing a claim against the UK under the SCM Agreement in order to avoid a ruling that renewable energy subsidies are broadly actionable

¹⁴⁸ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds612_e.htm

or even prohibited, thereby shrinking the policy space for EU Member States to maintain subsidies supportive of local industry.¹⁴⁹

5.2.2. Trade and Cooperation Agreement

The willingness or reluctance of either the UK or the EU to initiate a dispute under the TCA would be shaped by the broad context of the UK-EU relationship, and involve consideration of multiple issues at play at any one time. It is possible that were the EU to adopt a more robust response to the US' Inflation Reduction Act, the EU and the UK may wish to expand environmental carve-outs within the TCA, or agree a waiver/stand still pact regarding measures necessary to reach net zero. However, at present that looks unlikely. The internal tensions within the EU on this topic are evident in the development of the Net Zero Industry Act. The NZIA was initially touted as a response to the US IRA, that would enable EU Member States to more robustly pursue green industrial policy priorities in public procurement,¹⁵⁰ responding to calls from leaders including Macron for a "Buy European Act".¹⁵¹ However, while countries including France have long pushed for strategic autonomy and for policies that reduce dependence on non-EU countries, countries including Germany have adopted a more liberal approach, expressing concern that such criteria will make renewable auctions more expensive.¹⁵² The result of this tension is a final version of the NZIA that does little to advance what powers Member States already have in this area, or shift the EU's historic support for trade liberalisation and caution around industrial policy.¹⁵³ It is foreseeable that the EU, having recently determined not to legislate for buy local decarbonisation policies, would take a relatively hard line if it perceived the UK to be introducing such measures. That said, it is highly unlikely that the EU would challenge a manufacturing investment bonus, given the EU and Member States' subsidisation of domestic industries through the Green Deal and Just Transition Fund.

5.2.3. Subsidy Control Act 2022

As noted elsewhere in this paper, overseas investors and renewable generators are a major feature of the UK's renewables market. The Contracts for Difference scheme is the central support mechanism for large scale renewable deployment, and in most cases success or failure in a CfD round will determine which schemes move forward. It is therefore likely that a policy which was perceived to put international companies at a disadvantage would attract legal challenge under the SCA, particularly as standing to challenge is relatively straightforward, as described below. Indeed, in 2019 a CfD round was halted following a

¹⁴⁹

https://static1.squarespace.com/static/5f0a3654a47d231c00ccd14f/t/64de6508b9b52671bad91b91/1692296457096/Vol_63.2_Article_Fang.pdf

¹⁵⁰ <https://www.euractiv.com/section/economy-jobs/news/the-buy-european-clauses-in-the-net-zero-industry-act/>

¹⁵¹ <https://www.edelmanglobaladvisory.com/insights/ega-five-facts-know-EU-Net-Zero-Industry-Act>

¹⁵² See <https://sciencebusiness.net/news/green-technology/eu-parliament-edges-forward-deal-net-zero-industry-act>

¹⁵³ See

<https://www.delorscentre.eu/en/publications/detail/publication/chasing-shadows-what-the-net-zero-industry-act-teaches-us-about-eu-industrial-policy> and

<https://www.euractiv.com/section/economy-jobs/news/europes-net-zero-industry-law-will-do-little-for-manufacturing-ambitions-experts-say/>

judicial review proceedings launched by a developer on the basis that the CfD policy was discriminatory.¹⁵⁴

5.2.4. Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Canada, Japan and Malaysia are CPTPP member countries for which ISDS provisions are currently in force with the UK. These three countries have domestic wind manufacturing capacity, and are home to companies that have invested in UK offshore wind. While a state-to-state dispute would be subject to similar political trade-offs described above with reference to the WTO, it is possible that a company with investments in UK offshore wind would be more willing to initiate, or simply threaten, an ISDS claim over a subsidy it viewed as discriminatory. While an ISDS tribunal could not force the UK to withdraw the measure in question, the potential cost and resource of an ISDS challenge could have a chilling effect on the appetite of the UK government to maintain the measure.

5.3. Effectiveness of process

5.3.1. WTO agreements

WTO dispute resolution starts with a 60-day consultation process in which members should “accord sympathetic consideration to and afford adequate opportunity for consultation”.¹⁵⁵ Where consultation fails, the applicant can request in writing for the formation of a Panel to hear the dispute. The period from the establishment of the Panel to the circulation of the report to the Members “should” not exceed nine months¹⁵⁶. The WTO reports that in practice panel proceedings take an average of 12 months.¹⁵⁷

Decisions of the Panel can be appealed to an Appellate Body. According to WTO rules, Appellate Body hearings should not exceed 90 days.¹⁵⁸ However, since 2019 the WTO Appellate Body has been in a state of paralysis due to a lack of quorum, owing the refusal of the US to allow new appointments – a policy initiated by the Trump administration and continued by the Biden administration.¹⁵⁹ This allows losing parties to appeal Panel reports “into the void”, blocking Panel Reports from having adverse affects.

The procedural weakness of the WTO process regarding the length of time to resolve disputes and the dysfunctionality of the Appellate Body is exacerbated by the inability of states to take interim, retaliatory measures (e.g. suspension of concessions) without the permission of the dispute resolution body.¹⁶⁰

¹⁵⁴

<https://www.current-news.co.uk/banks-group-revealed-as-firm-behind-reluctant-challenge-against-discriminatory-cfd-process/>

¹⁵⁵ Understanding on rules and procedures governing the settlement of disputes, Annex 2 of the WTO Agreement, Art. 4(2)

¹⁵⁶ Art. 12(9)

¹⁵⁷

https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s3p5_e.htm#:~:text=The%20period%20from%20the%20establishment,an%20average%20of%2012%20months.

¹⁵⁸ Art. 17(5).

¹⁵⁹ See analysis here <https://www.iisd.org/articles/policy-analysis/wto-dispute-settlement-without-appellate-body>

¹⁶⁰ https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s10p1_e.htm

5.3.2. Trade and Cooperation Agreement

If one Party considers that a subsidy has been granted by another that causes, or risks causing a significant negative effect on trade or investment between the Parties, it can request written information from the other Party.¹⁶¹ The response must be provided within 30 days, and consultation must conclude no more than 60 days after the initial request.¹⁶² After 60 days, the complainant Party can “unilaterally take appropriate remedial measures”.¹⁶³ The assessment of serious risk must be based “based on facts and not merely on allegation, conjecture or remote possibility”¹⁶⁴. Remedial measures must “be restricted to what is strictly necessary and proportionate in order to remedy the significant negative effect caused or to address the serious risk of such an effect.”¹⁶⁵

If consultations fail, or if requested by either party, an Arbitration Tribunal is established within 10 days, and must rule within 160 days of its establishment.¹⁶⁶ It is not possible to appeal the ruling of the Tribunal.

The TCA dispute resolution process is thus considerably more effective than the WTO process, with the ability of Parties to introduce remedial measures unilaterally, a swifter process, and no appeals mechanism.

5.3.3. Subsidy Control Act 2022

Any “interested party” who is “aggrieved by the making of a subsidy decision” can bring a claim under the SCA via the Competition Appeal Tribunal (CAT)¹⁶⁷, within one month of the date of the publication of the subsidy.¹⁶⁸ This means that the process starts quickly, from one month after a subsidy decision is made. While the process is relatively new, previous decisions have been made within a matter of months. The CAT has noted the “important need for reviews of subsidy decisions to be conducted quickly and with a light touch (and with costs commensurate to these objectives)”.¹⁶⁹ “Interested party” is very broadly defined as “a person whose interests may be affected by the giving of the subsidy or the making of the subsidy scheme”¹⁷⁰. In determining the application, the CAT will apply well established judicial review principles (for proceedings in England, Wales and NI).

5.3.4. Comprehensive and Progressive Agreement for Trans-Pacific Partnership

State to state

¹⁶¹ TCA Article 374 (1)

¹⁶² Art. 374(2)

¹⁶³ Art. 374(3)

¹⁶⁴ Art. 374 (5)

¹⁶⁵ Art.374(8)

¹⁶⁶ Art. 745(4)

¹⁶⁷ Subsidy Control Act 2022, Art. 70(1)

¹⁶⁸ Id. Part 5A

¹⁶⁹

<https://www.pinsentmasons.com/out-law/news/competition-appeal-tribunal-gives-first-judgment-under-subsidy-control-act-2022>

¹⁷⁰ Id. Art. (70)(7)

The CPTPP process follows a similar pattern to resolving a dispute under the WTO agreements (from consultation, to panel formation, to panel decision), but it is generally swifter, allowing roughly half the time for each stage, and does not include an appeals process,¹⁷¹ which can significantly slow the progress of WTO cases.

Investor to state

CPTPP relies on the notorious Investor State Dispute Settlement (ISDS) process. Accordingly, companies from a member state are able to challenge measures introduced by other member states in which they have an investment, which could harm their profits. There are many instances in which ISDS has been used by companies to sue governments for introducing new environmental protections and public health measures. While the UK has disappplied CPTPP ISDS measures with Australia and New Zealand in side letters¹⁷² it has not sought side letters from all CPTPP states, which means that ISDS provisions apply between the UK and, for example, Canada, Japan and Malaysia.¹⁷³

5.4. Legal compliance

5.4.1. General Agreement on Tariffs and Trade (GATT)

Key provisions		
Art. III(4). "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."		
Art.III(8)(a) "The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale."		
Art. XX "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures...(b)necessary to protect human, animal or plant life or health... (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption...(d)necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement...(j) essential to the acquisition or distribution of products in general or local short supply; Provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist		
Art. XXI "Nothing in this Agreement shall be construed...(b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests...(iii) taken in time of war or other emergency in international relations		
Local supply chain bonus/local job creation bonus		
Case for breach	Available defence	Likely outcome
Local supply chain bonus is a violation of Art. III.4, as products are "like" (only difference is country of origin), CfDs	There is a "general" "short supply" of renewable energy deployment (Art. XX(j)) compared to the rate at which renewables	Successful defence is possible under Art. XX(j), though this would

¹⁷¹ See CPTPP Art. 28

¹⁷² See <https://researchbriefings.files.parliament.uk/documents/CBP-9121/CBP-9121.pdf>

¹⁷³ See

https://www.tjm.org.uk/documents/reports/TJM-Briefing_-_Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-CPTPP.pdf

<p>constitute a “regulation” which affects the “internal sale” of renewable energy, and imported products would face “less favourable” treatment without access to British Jobs Bonus. A local job creation bonus indirectly favours domestic over imported products, and does not provide “equality of competitive conditions” as required by Art.III, following Appellate Body decision in <i>Japan – Taxes on Alcoholic Beverages</i>¹⁷⁴</p> <p>Art. III.8 carve out re. procurement does not apply due to the “competitive relationship test” (electricity purchased via CfD scheme not “competitive” with manufactured goods discriminated against).</p> <p>Art. XX (b) and (g) exceptions do not apply as local content requirement not “necessary” to protect human health etc (d) or even a materially relevant (g) consideration for deployment of renewables. Exception (d) does not apply as no UK domestic law (at present) sets legal targets on domestic renewable energy manufacturing</p> <p>Art. XX exceptions should not be available as measure would be “unjustifiable discrimination” as per chapeau, given lack of connection between the local content measure, and permissible objectives under Art. XX.</p>	<p>deployment is required to avoid catastrophic climate change, and “local” short supply to meet the UK government’s target of a net zero grid by 2030. This is particularly the case as the UK imports the vast majority of wind and solar energy components and is therefore vulnerable to supply chain disruption, and growing competition for essential components from larger markets (US, China, EU).</p> <p>LCR’s are an “essential” measure to build domestic capacity to address short supply, as (1) LCRs will create additional production capacity (2) LCR’s will contribute to key societal interests on energy security and just transition (3) a supply chain <i>bonus</i> is not overly restrictive as international producers can still access CfDs and (4) less restrictive measures are likely unavailable.¹⁷⁵</p> <p>There is a rational connection between proposed LCR and objective of Art. XX(j), therefore not “unjustifiable discrimination”. LCR economically necessary to develop domestic industrial base, and politically necessary to build/maintain support for decarbonisation.</p> <p>There is a current emergency in international relations (Russia’s invasion of Ukraine). Development of domestic energy manufacturing capacity is therefore “considered” by the Government an “essential security interest” in light of global supply chain pressures and shortages. Therefore justification under Art. XXI.</p>	<p>require departure from existing WTO jurisprudence.</p> <p>There is no example of a renewable energy LCR that has been successfully defended in front of the WTO Appellate Body. However, there are only a small number of relevant cases, all of which predate the energy crisis, and the global shift towards LCRs typified by the US’ IRA.</p> <p>Academic analysis of the UK’s proposed LCR for CfDs suggests the UK would likely have been unsuccessful defending against a breach of GATT national treatment rules.¹⁷⁶ However, a LCR bonus would be considerably less trade restrictive than CfD entry criteria, and would have greater chance of success. This would be strengthened were the UK to pass a domestic law, or amend existing law (e.g. UK Climate Change Act) that establishes the link between LCRs and decarbonisation with binding targets on domestic renewable energy production.</p> <p>The security exception is not self-justifiable (i.e. for the UK to define), and while the UK will have some scope to define its security interests, the panel will undertake an objective assessment of the “emergency” and connection of the LCR to addressing the emergency.¹⁷⁷ Therefore unclear how claim would be assessed.</p>
Manufacturing investment bonus tied to SIR		
<p>Case for breach</p> <p>A subsidy of CfD bidders’ supply chain for using UK manufacturing facilities/content does not provide “equality of competitive conditions” to CfD bidders using overseas manufacturing facilities/content. Therefore violation of Art. III(4)</p> <p>Exceptions do not apply as above.</p>	<p>Available defence</p> <p>BJB subsidises manufacturing facilities, not renewable energy generation (i.e. CfD bidders). The CfD/SIR process is merely used to identify appropriate recipients of a manufacturing subsidy, so that the subsidy is directed to facilities with a demonstrable market for their goods. There is no requirement or expectation that the subsidy will be passed back up the supply chain back to the CfD bidder. Therefore there is no favourable treatment</p>	<p>Likely outcome</p> <p>There is a good case to be made that National Treatment rules are not violated where the CfD/SIR process only acts as an allocation mechanism for what is in effect a regional/industrial development fund.</p> <p>Even if Appellate Body were to find the subsidy violates Art.III(4), the fact that subsidy goes directly to the manufacturing facilities</p>

¹⁷⁴ Appellate Body Report, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, pp. 16-17.

¹⁷⁵ See test set out in Appellate Body Report, India – Certain Measures Relating to Solar Cells and Solar Modules, ¶¶ 5.1-5.44, WTO Doc. WT/DS456/AB/R (adopted Sept. 16, 2016), discussed in *When Decarbonization Meets Industrialization: The First WTO Dispute Between the EU and U.K.*, Mandy Meng Fang, available here https://static1.squarespace.com/static/5f0a3654a47d231c00ccd14f/t/64de6508b9b52671bad91b91/1692296457096/Vol_63.2_Article_Fang.pdf

¹⁷⁶ Id

¹⁷⁷ See discussion of WTO jurisprudence on security exception here <https://www.hinrichfoundation.com/research/article/wto/testing-the-limits-of-wto-security-exceptions/>

	for CfD bidders using local content, and therefore Article III is not violated. Other arguments as above.	would strengthen defence made under under Arts. XX(j) and XXI, described above. Therefore higher chance of successful defence of manufacturing investment bonus than local supply chain/job creation bonus.
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5.4.2. Agreement On Subsidies And Countervailing Measures (SCM)

Key provisions		
Art.1(1) "a subsidy shall be deemed to exist if (a)(1) there is a financial contribution by a government or any public body within the territory of a Member...and (b) a benefit is thereby conferred."		
Art.1(2) "A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific..."		
Art.2(1) In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply...(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to."		
Art.3(1) "...the following subsidies, within the meaning of Article 1, shall be prohibited: subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods."		
Art. 5 "No Member should cause, through the use of any subsidy... adverse effects to the interests of other Members i.e. (a) injury to the domestic industry of another Member...(c) serious prejudice to the interests of another Member."		
Art. 8(2) "...the following subsidies shall be non-actionable...(b)assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development and non-specific (within the meaning of Article 2) within eligible regions provided that [criteria for definition of regions]."		
Local supply chain bonus/local job creation bonus		
Case for breach	Available defence	Likely outcome
BJB is a financial contribution conferring a benefit on the recipient, which is contingent on use of domestic goods. Therefore prohibited under Art. 3(1). If BJB contingent on local job creation it would cause "adverse effects" e.g. injury to the renewable industries of other countries, and would therefore be an "actionable" subsidy under Article 5. The SCM agreement does not contain exemptions for legitimate public policy objectives e.g. decarbonisation.	BJB is a renewable energy subsidy that does not confer a "benefit" i.e. does not meet the complex standard set out for establishing a "benefit" in the <i>Canada-Renewable Energy case</i> . ¹⁷⁸ It is therefore not subject to provisions of part II (prohibited subsidies) or part III (actionable subsidies). The BJB is not "specific", as it meets criteria in Art. 2(1)(b)) that "objective criteria or conditions governing the eligibility for, and the amount of, a subsidy" have been developed and adhered to. Therefore it is not subject to	WTO jurisprudence suggests the BJB may have a good chance of a successful defence on the grounds it does not confer a "benefit" as required by Art.1. WTO bodies have not ruled any renewable energy subsidy as incompatible with the SCM Agreement see e.g. <i>India – Solar Cells</i> and <i>US – Renewable Energy</i> ¹⁷⁹

¹⁷⁸ See description in

https://www.researchgate.net/publication/259947882_A_Turquoise_Mess_Green_Subsidies_Blue_Industrial_Policy_and_Renewable_Energy_The_Case_for_Redrafting_the_Subsidies_Agreement_of_the_WTO

¹⁷⁹ See discussion here

https://static1.squarespace.com/static/5f0a3654a47d231c00ccd14f/t/64de6508b9b52671bad91b91/1692296457096/Vol_63.2_Article_Fang.pdf

	provisions on prohibited or actionable subsidies. While the SCM agreement does not contain exemptions for legitimate public policy objectives, it does contain "lapsed" provisions in Article 8 on non-actionable subsidies, which should remain persuasive. BJB would be non-actionable under Art. 8(2), as it is non-specific (meets criteria in Art. 2(1)(b)), and is delivered as assistance to disadvantaged regions properly defined.	
Manufacturing investment bonus not tied to SIR		
Case for breach	Available defence	Likely outcome
BJB is a financial contribution conferring a benefit on the recipient. The subsidy causes "serious prejudice to the interests of another member" (Art.5(c)) in the basis that "the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member" and "the effect of the subsidy is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity" (Art. 6.3(a) and (d)).	BJB does not cause serious prejudice to interests of another, as it does not meet conditions in Art.6.1(a-d). Serious prejudice <i>may</i> be deemed to arise under Art.6.3, but given the need to increase global production of renewable technologies, and the fact that global production is increasing, subsidising the capacity of one country to increase domestic production cannot be shown to have displaced the products of another country. Cite lapsed provisions on non-actionable subsidies as above.	Without clear and compelling evidence over a number of years that the BJB has resulted in the displacement of another country's products, or led to an increase in global market share (and BJB alone is likely too small to have a discernible impact globally) it is unlikely that measure will be determined to breach SCM.
Manufacturing investment bonus tied to SIR		
As with GATT section, assessment will depend on whether BJB is deemed to subsidise renewable developers/CfD bidders (thus potentially a prohibited subsidy violating national treatment provisions), or whether it is deemed to subsidise manufacturing capacity (thus potentially an actionable subsidy distorting trade).		

5.4.3. General Agreement on Trade in Services (GATS)

Key provisions		
Art. XVII(1) "In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers"		
Local job creation bonus		
Case for breach	Available defence	Likely outcome
CfDs and the BJB cover multiple service sectors (e.g.construction, shipping, maintenance). Conditioning the BJB on local job creation would mean less favourable treatment for service providers that rely on international workforce. Therefore breach of Art.XVII on national treatment.	BJB, as an energy subsidy, is out of scope of the UK's national treatment commitments communicated to the WTO post-Brexit. ¹⁸⁰	This will depend on assessment to which the services affected by the BJB are covered by the UK's schedule of specific national treatment commitments under GATS, including any conditions and qualifications. The energy sector is not generally covered, but ancillary service e.g. construction and engineering, are covered

¹⁸⁰ Available here

[https://assets.publishing.service.gov.uk/media/5c0a991ee5274a0b3b60e2f3/SCW380 - UK GATS Schedule-FINAL_03_12_2018.pdf](https://assets.publishing.service.gov.uk/media/5c0a991ee5274a0b3b60e2f3/SCW380_-_UK_GATS_Schedule-FINAL_03_12_2018.pdf)

5.4.4. Trade and Cooperation Agreement

Key provisions		
<p>Art. 366. "...the granting of a subsidy respects the following principles...(a) subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns ("the objective"); (b) subsidies are proportionate and limited to what is necessary to achieve the objective... (e) subsidies are an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means; (f) subsidies' positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.</p> <p>Art. 367(12) "...subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services shall be prohibited."</p> <p>Art. 367(14) "without prejudice to Article 366, subsidies in relation to energy and environment shall be aimed at, and incentivise the beneficiary in, delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market or increasing the level of environmental protection compared to the level that would be achieved in absence of the subsidy"</p> <p>Art. 364 (3) "Subsidies that are granted on a temporary basis to respond to a national or global economic emergency shall be targeted, proportionate and effective in order to remedy that emergency. Articles 367...do not apply to such subsidies."</p> <p>Art.132(2) "A Party shall not condition the receipt or continued receipt of an advantage, in connection with the establishment or operation of an enterprise in its territory, on compliance with any of the following requirements: (a) achieving a given level or percentage of domestic content; (b) purchasing, using or according a preference to goods produced or services supplied in its territory, or to purchase goods or services from natural or legal persons or any other entity in its territory..."</p> <p>Art. 132 (3) "Paragraph 2 shall not be construed as preventing a Party from conditioning the receipt or continued receipt of an advantage, in connection with the establishment or operation of any enterprise in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory."</p> <p>Art. 302 "Each Party preserves the right to adopt, maintain and enforce measures necessary to pursue legitimate public policy objectives, such as securing the supply of energy goods and raw materials, protecting society, the environment, including fighting against climate change...consistent with the provisions of this Agreement."</p> <p>Art.401 "(1) The Parties recognise the importance of taking urgent action to combat climate change and its impacts...(2) In light of paragraph 1, each Party...(c) shall facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation, such as renewable energy, energy efficient products and services, for instance through addressing tariff and non-tariff barriers or through the adoption of policy frameworks conducive to the deployment of the best available solutions."</p> <p>Art. 412(1) "Nothing in Chapter 1 and Chapter 5 of Title I, Chapter 2 of Title II, Title III, Title VIII and Chapter 4 of Title XI shall be construed as preventing a Party from adopting or maintaining measures compatible with Article XX of GATT 1994."</p> <p>Art. 415 "Nothing in Titles I to XII of this Heading or Heading Six shall be construed...(b) to prevent a Party from taking an action which it considers necessary for the protection of its essential security interests...(iii) in time of war or other emergency in international relations"</p> <p>Art. 773(1) "If serious economic, societal or environmental difficulties of a sectorial or regional nature, including in relation to fishing activities and their dependent communities, that are liable to persist arise, the Party concerned may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to those measures which will least disturb the functioning of this Agreement."</p>		
Local supply chain bonus/local job creation		
Case for breach	Available defence	Likely outcome
BJB meets the definition of a subsidy under Art. 363(1)(b). BJB would have a "material effect on trade or investment between the Parties" (Art.366(2)). BJB is a subsidy contingent on the use of domestic over imported goods if delivered as supply chain bonus, or on domestic over imported services if targeting local job creation	BJB meets the principles in Art. 366 (e.g. it pursues a specific public policy objective to remedy an identified market failure, and is proportionate and limited to what is necessary to achieve the objective, as it is only a "top-up" bonus) and in Art.367(14) (i.e. supports the delivery of a "secure,	To date there have been no formal disputes between the UK and the EU under the TCA, so there are no examples of arbitration tribunals under the TCA assessing similar issues.

<p>(favouring domestic labour, a form of service, over overseas labour). Therefore BJB is in violation of Art. 367(12).</p> <p>BJB is “an advantage” conditioned on “purchasing, using or according a preference to goods produced or services supplied in its [the UK’s] territory”. Therefore it is in violation of Art.132(2).</p> <p>GATT Art. XX carve out does not apply to Art.363(1)(b) (Title XI, Chapter 3)</p> <p>Local content measures cannot be justified as response to climate change as “global economic emergency” (Art.364(3)) or as “necessary to pursue the [the fight] against climate change” (Art.302) or as response to “societal or environmental difficulties of a sectorial or regional nature” (Art.773(1)). Rather, the TCA <i>explicitly states</i> that the fight against climate change is aided by “the removal of obstacles to trade and investment in goods and services” (Art. 401)</p>	<p>affordable and sustainable energy system”).</p> <p>BJB is necessary to pursue legitimate public policy objective of fighting climate change (Art. 302).</p> <p>Lack of support for domestic renewable industries (i.e. local content measures) is itself an obstacle to trade and investment as per Art.401, as it limits the combined capacity of the UK and the EU to manufacture renewable technologies.</p> <p>The BJB is a measure compatible with GATT Art. XX (see section above on GATT) and therefore Art. 132(2) and therefore exempt from limitations of Art. 132(2).</p> <p>There is a current emergency in international relations (Russia’s invasion of Ukraine). Development of domestic energy manufacturing capacity is an “essential security interest” in light of global supply chain pressures and shortages. Therefore targeted local content bonuses justified under Art.415.</p> <p>Targeted local content bonus also meets definition of a safeguard measure under Art.773(1), in that it is a restricted, necessary remedy to address a serious societal and environmental difficulty.</p>	<p>However, on balance a tribunal would be more likely to find the BJB in violation of the TCA. The TCA is categorical on the prohibition of local content measures, and it is telling that carve-outs afforded to other areas (e.g. GATT Art. XX exceptions) do not apply to Art.367 on prohibited subsidies. The tribunal would also likely be persuaded by language in the TCA which links the removal of trade barriers with the fight against climate change.</p> <p>It is difficult to predict how a tribunal would assess a defence of security grounds, as per GATT, and this would depend on the international context at the time of a decision. But security exceptions are typically interpreted very narrowly in trade disputes, and bilateral tribunal, in which both parties face the same or similar security risk, likely grant UK less deference than WTO panel.</p>
Manufacturing investment bonus not tied to SIR		
Case for breach	Available defence	Likely outcome
<p>Subsidising UK renewable manufacturing will have “a material effect on trade or investment between the Parties”. Seeking to position the UK as a winner in “the global race for the clean industries of the future” and seeking to establish the UK as “a clean energy export superpower” (Labour policy document on making Britain a “clean energy superpower) goes beyond “what is necessary to achieve the objective” (Art.366(b)) of decarbonisation and just transition. Therefore BJB violates principles of TCA.</p>	<p>BJB meets the principles in Art. 366: it “pursue[s] a specific public policy objective” (tackling climate change), “to address an equity rationale such as social difficulties” (ensure just transition by developing domestic renewables sector, targeting deprived regions), it is “proportionate and limited to what is necessary to achieve the objective” (non-trade distortionary subsidy with no export/local content conditions), and the objective could not be achieved “in the absence of subsidies” and objective “cannot be achieved through other less distortive means”. Given the need to dramatically scale up renewables production and deployment in the UK and EU to meet net zero targets, boosting UK productive capacity will not disadvantage EU producers, and therefore the measure does not “have a material effect on trade or investment between the Parties”.</p> <p>BJB does not meet definition of prohibited subsidies under Art. 367, and as per Art.367(14) is “aimed at, and incentivise the beneficiary in, delivering a secure, affordable and sustainable energy system</p>	<p>BJB as proposed unlikely to be found to breach TCA, as long as the procedural elements (e.g. Art. 369 Transparency requirements) are met. This is particularly the case if the policy would meet the General Block Exemption Regulation on EU State Aid, for environmental and regional development exemptions.</p>



	and a well-functioning and competitive energy market”.	
Manufacturing investment bonus tied to SIR		
As with GATT section, assessment will depend on whether BJB is deemed to subsidise renewable developers/CfD bidders (thus potentially a prohibited subsidy violating national treatment provisions), or whether it is deemed to subsidise manufacturing capacity (thus potentially violating subsidy principles).		

5.4.5. Subsidy Control Act 2022

Key provisions		
<p>Art. 17(1) “A subsidy that is contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services is prohibited by this section.”</p> <p>Schedule 1 “(A) Subsidies should pursue a specific policy objective in order to...(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...(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...(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.”</p> <p>Schedule 2(A) “Subsidies in relation to energy and environment shall be aimed at and incentivise the beneficiary in— (a) delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market”</p> <p>Art.44 “(1)The prohibitions and restrictions imposed by sections 15 to 29 do not apply to a subsidy given to respond to a national or global economic emergency. (2)Subsection (1) applies only if the subsidy is given on a temporary basis.”</p> <p>Art. 45 “The subsidy control requirements do not apply to the giving of a subsidy for the purpose of safeguarding national security.”</p> <p>Art.50 “ (1) Section 12(1) does not apply to a subsidy if (a) it is given in the context of a large cross-border or international cooperation project...(3) A project meets the condition in this subsection if (a) the benefits of the project are not limited to the enterprise or to the sector or the States participating, and (b) the project has wider benefits and relevance through spillover effects that do not exclusively accrue to (i) the United Kingdom, (ii) the relevant sector, and (iii) the beneficiary of the subsidy or subsidies concerned (4) The projects that may be regarded as large cross-border or international cooperation projects include (a) those for transport, energy, the environment or research and development”</p> <p>Schedule 2(c)(1) “Subsidies for electricity generation adequacy, renewable energy or cogeneration...shall be determined by means of a transparent, non-discriminatory and effective competitive process.”</p>		
Local supply chain bonus/local job creation		
Case for breach	Available defence	Likely outcome
<p>BJB meets the definition of a subsidy under Art. 2(1). BJB is a subsidy contingent on the use of domestic over imported goods if delivered as supply chain bonus, or on domestic over imported services if targeting local job creation (favouring domestic labour, a form of service, over overseas labour). Therefore BJB is in violation of Art. 17(1).</p> <p>None of the exemptions listed in Part 3 would apply to the BJB.</p> <p>The SCA makes specific provision for renewable generation subsidies, stating</p>	<p>BJB satisfies Art. 45 exemption – it is given for the purpose of safeguarding national security, which includes energy security.</p>	<p>Art.45 of the SCA is a broader exemption than Art.415 of the TCA, which only covers measures <i>necessary</i> for protection of <i>essential</i> security interests “in time of war or other emergency in international relations”. None of these conditions apply to Art.45, which only requires that a subsidy is given “for the purpose of safeguarding national security”. The Competition Appeal Tribunal would likely afford the government broad discretion to determine whether an action is in the</p>

they must be “non-discriminatory”. The BJB would discriminate against overseas producers/services		interests of national security ¹⁸¹ , and in any case, more discretion than an arbitration panel established under the TCA. Therefore a defence on national security grounds is uncertain, but more likely to be successful than under the TCA.
Manufacturing investment bonus not tied to SIR		
Case for breach	Available defence	Likely outcome
Argument as with TCA: BJB is not proportionate and goes beyond what is necessary to achieve policy objective.	<p>BJB meets the Subsidy Control Principles in Schedule 1 (esp. A, B, E and G) – see rationale for consistency with TCA principles.</p> <p>BJB consistent with aim of subsidies in relation to energy and environment in Schedule 2 (increasing renewables manufacturing capacity in the UK will support delivery of a “secure, affordable and sustainable energy system and a well-functioning and competitive energy market”).</p> <p>Even if BJB found to be inconsistent with Subsidy Control Principles, there is no obligation to consider and apply these principles as the BJB meets the definition of Large cross-border or international cooperation project as described in Art. 50 (investing in increased manufacturing capacity for renewable energy will have positive spillover effects beyond the UK’s borders).</p>	BJB as proposed unlikely to be found to breach SCA, as long as the procedural elements (e.g. Chapter 3 Transparency requirements) are met.
Manufacturing investment bonus tied to SIR		
As with GATT section, assessment will depend on whether BJB is deemed to subsidise renewable developers/CfD bidders (thus potentially a prohibited subsidy violating national treatment provisions), or whether it is deemed to subsidise manufacturing capacity (thus potentially violating subsidy principles).		

5.4.6. Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Key provisions
<p>Art.9(4)(1) “Each Party shall accord to investors of another Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.”</p> <p>Art.9(10)(2) “No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement: (a) to achieve a given level or percentage of domestic content; (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory”</p> <p>Art.9(10)(3)(a) “Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a</p>

¹⁸¹ See discussion in context of National Security and Investment Act 2021 here <https://www.engage.hoganlovells.com/knowledgeservices/news/challenging-decisions-made-under-the-national-security-and-investment-act-2021-key-considerations>

<p>non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.”</p> <p>Art.9(10)(3)(d) “Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, paragraphs...2(a) and 2(b) shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures: (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement; (ii) necessary to protect human, animal or plant life or health; or (iii) related to the conservation of living or non-living exhaustible natural resources.”</p> <p>29.2: “Nothing in this Agreement shall be construed to... (b) preclude a Party from applying measures that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.”</p>		
Local supply chain bonus/local job creation		
Case for breach	Available defence	Likely outcome
<p>BJB is “an advantage” conditioned on “purchase, use or accord a preference to goods produced or services supplied in its [the UK’s] territory”. Therefore it is in violation of Art.9(10)2.</p> <p>BJB accords less favourable treatment to investors of non-UK countries, which may have existing non-UK based supply chains, than UK-based investors, more able to invest in the local supply chain. Therefore violation of Art. 9(4)(1).</p> <p>Environmental exceptions do not apply as per GATT argument.</p>	<p>The Government “considers necessary” LCRs to ensure the UK’s energy security, which is an “essential security interest” under Art.29.2.</p> <p>Environmental exceptions as per GATT (LCR related to/necessary to achieve carbon reduction targets).</p>	<p>As with GATT, may be challenging to prove close relationships between LCR and environmental outcomes (i.e. protection of human/animal/plant health, or conservation of exhaustible natural resources).</p> <p>As with GATT, UK would be granted some deference to define its security interests, but arbitral tribunal would likely take an objective assessment.</p>
Manufacturing investment bonus not tied to SIR		
<p>BJB is subsidy for UK-based manufacturing (i.e. conditioned on requirement to locate production in the UK), and as envisaged (i.e. no local content supply chain requirements) does not raise national treatment issues. As such it is covered by Art.9(10)(3)(a). CPTPP does not contain broad provisions on trade distorting subsidies as per the WTO agreements.</p>		
Manufacturing investment bonus tied to SIR		
<p>As with GATT section, assessment will depend on whether BJB is deemed to subsidise renewable developers/CfD bidders (thus potentially a prohibited subsidy violating national treatment provisions), or whether it is deemed to subsidise manufacturing capacity (in which case not within scope of CPTPP).</p>		

5.5. Remedies and consequences

5.5.1. WTO agreements

Where a panel or the Appellate Body concludes that a measure is inconsistent with a WTO agreement, it recommends that the Member brings the measure into conformity with that agreement¹⁸² within a “reasonable period of time” not exceeding 15 months.¹⁸³ If the violating Member does not bring the measure into compliance, then either both parties can agree a mutually acceptable level of compensation, or the complaining party can retaliate with the suspension of concessions (e.g. tariffs) in a way that is proportionate and as closely related as is practicable to the impact of the violation.¹⁸⁴

¹⁸² Understanding on rules and procedures governing the settlement of disputes, Annex 2 of the WTO Agreement, Article 19

¹⁸³ Id. Art.21

¹⁸⁴ Id. Art.22

In the context of the BJB, a complaining party would likely be able to retaliate against the UK by introducing tariffs or other restrictive measures with an equivalent impact to the harm deemed to be caused to their domestic industries by the BJB.

The UK Government may assess that maintaining the inconsistent measure is worth incurring the impact of countervailing measures. It would also consider that beyond the economic impact, failure to comply with an Appellate Body ruling would have an impact on the UK's international reputation. The UK is a GATT founding member and has been a driving force in the expansion on international trade and investment agreements, and therefore historically has placed significant value on compliance with international trade and investment treaty obligations.

5.5.2. Trade and Cooperation Agreement

The TCA requires that “Each Party shall have in place an effective mechanism of recovery” if a domestic court or tribunal rules that a subsidy has been given in a way that violates the TCA subsidy principles.¹⁸⁵ This is given effect in the UK by the Subsidy Control Act.

The TCA would also allow the EU to “take appropriate remedial measures” if there is evidence that a UK subsidy causes, or there is a serious risk that it will cause, a significant negative effect on trade or investment between the UK and the EU.¹⁸⁶ Remedial measures “shall be restricted to what is strictly necessary and proportionate in order to remedy the significant negative effect caused or to address the serious risk of such an effect”¹⁸⁷ and “shall not exceed the level equivalent to the nullification or impairment caused by the violation”.¹⁸⁸ If the UK considers remedial measures too severe, it can request the establishment of an arbitration tribunal to consider and potentially determine an appropriate level of remedial measures.

If an arbitral tribunal established following a complaint by the EU finds the UK has violated a TCA obligation, the UK must “take the necessary measures to comply immediately with the ruling of the arbitration tribunal in order to bring itself in compliance with the covered provisions”¹⁸⁹ within a “reasonable period of time”.¹⁹⁰ If the UK does not comply, the EU would be able to take remedial measures appropriate to the harm, as described above.

5.5.3. Subsidy Control Act 2022

The Competition Appeal Tribunal has powers to make a recovery order (i.e. force the beneficiary/recipient of the subsidy to repay it)¹⁹¹ or, following judicial review principles, compel the government to remove the subsidy in question via a quashing order, or to modify

¹⁸⁵ TCA Art.373

¹⁸⁶ Id. Art.374


¹⁸⁷ Id.

¹⁸⁸ Id. Art.749

¹⁸⁹ Id. Art.746

¹⁹⁰ Id. Art. 747

¹⁹¹ Subsidy Control Act Article 74



the subsidy in question through a mandatory order (though this would be unlikely in practice).¹⁹²

5.5.4. Comprehensive and Progressive Agreement for Trans-Pacific Partnership

State to state

If an arbitral tribunal finds that an offending Party has introduced a measure which is inconsistent with their obligations under the CPTPP, the offending Party must “eliminate the non-conformity” within a “reasonable period of time”.¹⁹³ If the offending Party does not take action, the complaining Party has the option to suspend benefits, and/or seek compensation. If the offending Party considers the remedial steps too severe, it can refer the matter back to the arbitral tribunal.¹⁹⁴

Investor to state

If a tribunal finds that a state has violated its obligations under the Investment Chapter of the CPTPP, it can order the state to compensate the affected investor (monetary damages and applicable interest) equivalent to the damages sustained by the investor.¹⁹⁵ Payable damages are “those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages.”¹⁹⁶ Arbitral awards can be enforced under ICSID Convention, the New York Convention or the Inter-American Convention.¹⁹⁷ In practice, this means that claimants are able to enforce the award in the domestic courts of most countries, which ensures strong enforceability.

¹⁹² Id. Art.72

¹⁹³ CPTPP Art. 28(19)

¹⁹⁴ CPTPP Art. 28(20)

¹⁹⁵ Id. Art.9(29)(1)(a)

¹⁹⁶ Id. Art.9(29)(4)

¹⁹⁷ Id. Art.9(29)(12)