



Subsidy Control Act 2022

2022 CHAPTER 23

PART 6

MISCELLANEOUS AND GENERAL

CHAPTER 1

MISCELLANEOUS

78 Subsidies and schemes in primary legislation

- (1) Schedule 3 applies provisions of this Act in the case of financial assistance provided, or schemes for the provision of financial assistance made, by means of primary legislation.
- (2) Nothing in this Act applies to the giving of any such assistance, or to the making of any such schemes, except so far as provided for by that Schedule.

79 Guidance

- (1) The Secretary of State may issue guidance about the practical application of—
 - (a) the subsidy control principles;
 - (b) the energy and environment principles;
 - (c) the subsidy control requirements in Chapters 2 and 3 of Part 2;
 - (d) the exemptions under Part 3 in respect of the subsidy control requirements;
 - (e) Chapter 1 of Part 4 (including the criteria to be used in determining whether a subsidy or subsidy scheme falls within the meaning of a subsidy, or subsidy scheme, of interest or particular interest under section 11 when applying that Chapter);
 - (f) section 76 (duty to provide pre-action information);
 - (g) section 77 (misuse of subsidies);
 - (h) section 81 (modifications to subsidies and schemes).

Status: This is the original version (as it was originally enacted).

- (2) Guidance under subsection (1)(a) to (c) may, in particular, deal with (or with any matter connected with)—
- (a) the determination of whether financial assistance constitutes a subsidy for the purposes of this Act;
 - (b) the meaning or effect of the subsidy control principles;
 - (c) the meaning or effect of the energy and environment principles;
 - (d) the operation of the duty under section 12 or 13 as it applies to—
 - (i) public authorities generally, or
 - (ii) public authorities of a particular description,
 when exercising functions within the scope of the duty.
- (3) The powers conferred by this section include power to give guidance about the practical application of principles, requirements and exemptions in different descriptions of case (including different descriptions of persons benefiting from subsidies).
- (4) The Secretary of State—
- (a) must publish guidance issued under this section,
 - (b) must keep the guidance under review, and
 - (c) may from time to time revise or replace the guidance.
- (5) Before issuing guidance under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) A public authority must have regard to guidance issued under this section (so far as applicable to the authority and the circumstances of the case) when giving a subsidy or making a subsidy scheme.
- (7) The requirement in subsection (5) may be met by consultation carried out before this section comes into force.

80 Disclosure of information

- (1) This section applies to a duty or power to disclose or use information where the duty or power is imposed or conferred by or under any provision of this Act.
- (2) A duty or power to which this section applies does not operate to require or authorise the disclosure or use of information if the disclosure or use would contravene the data protection legislation (but the duty or power is to be taken into account in determining whether the disclosure or use would contravene that legislation).
- (3) In Schedule 14 to the Enterprise Act 2002 (disclosure of information: specified functions), at the appropriate place insert—
 “Subsidy Control Act 2022.”
- (4) For the purposes of the law relating to defamation, absolute privilege attaches to any advice given, or report made, by the CMA (or a person acting on the CMA’s behalf) in the exercise of any functions of the CMA under this Act.
- (5) In this section “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

81 Modifications to subsidies and schemes

- (1) The modification of a subsidy or a subsidy scheme is to be treated for the purposes of this Act as the giving of a new subsidy, or the making of a new subsidy scheme, for the purposes of the application of the subsidy control requirements.
- (2) Subsection (1) does not apply—
 - (a) for the purposes of section 33(1) and (3) (see instead section 33(5)), or
 - (b) if the modification is only a permitted modification (but section 33(5) applies to a permitted modification as it applies to other modifications).
- (3) A modification to a subsidy or subsidy scheme is a “permitted modification” if it is a modification of any of the following kinds—
 - (a) a legacy subsidy modification;
 - (b) a withdrawal agreement subsidy modification;
 - (c) a modification (whether made under section 8 of the European Union (Withdrawal) Act 2018 or otherwise) to prevent, remedy or mitigate—
 - (i) any failure of the subsidy or scheme to operate effectively, or
 - (ii) any other deficiency relating to the subsidy or scheme,arising from the withdrawal of the United Kingdom from the European Union;
 - (d) the amendment made by section 48(4);
 - (e) an administrative modification;
 - (f) an increase of up to 25% of the original budget for the subsidy or subsidy scheme;
 - (g) an extension of a subsidy scheme by up to six years (in total) beginning with the date on which the subsidy scheme would otherwise have terminated.
- (4) In subsection (3)(a), “legacy subsidy modification” means the modification of a legacy subsidy, or a legacy scheme, as permitted under the subsidy or scheme in accordance with its terms as they had effect before the coming into force of this section.
- (5) In subsection (3)(b), “withdrawal agreement subsidy modification” means the modification of a withdrawal agreement subsidy, or a withdrawal agreement scheme, as permitted under the subsidy or scheme in accordance with its terms as they had effect before the coming into force of this section.
- (6) Where the terms of the subsidy or subsidy scheme provide for changes to the original budget, the 25% referred to in subsection (3)(f) is to be calculated by reference to the financial year in which the permitted modification to that subsidy or scheme is made.
- (7) In this section—

“legacy subsidy” and “legacy scheme” mean the subsidies and schemes listed in section 48(1);

“withdrawal agreement subsidy” and “withdrawal agreement scheme” mean the subsidies and schemes listed in section 48(3).

82 Gross cash and gross cash equivalent amount of financial assistance

- (1) The Secretary of State may by regulations make provision about how the gross cash amount, and the gross cash equivalent amount, is to be determined for the purposes of—
 - (a) section 33(8);

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- (b) section 36(5);
- (c) section 38(5);
- (d) section 41(2);
- (e) provision in regulations or schemes made under this Act.

(2) Regulations under this section are subject to the negative procedure.

83 Minor amendment to the Financial Services Act 2021

In the Financial Services Act 2021, in Schedule 8 (Gibraltar: minor and consequential amendments) at the end insert—

“Subsidy Control Act 2022

- 20 (1) The Subsidy Control Act 2022 is amended as follows.
- (2) In section 25 (meaning of “deposit taker”) in subsection (1) omit paragraph (b) and the “or” preceding it.
 - (3) In section 26 (meaning of “insurance company”) in subsection (1) omit paragraph (b) and the “or” preceding it.
 - (4) In section 27 (subsidies for insurers that provide export credit insurance) in subsection (2), in the definition of “insurer”, omit paragraph (b) and the “or” preceding it.”

CHAPTER 2

GENERAL

84 Financial provision

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State in connection with the establishment and maintenance of the subsidy database, and
- (b) any increase attributable to this Act in sums payable under any other Act out of money so provided as a result of the carrying out of functions by the CMA under or by virtue of Part 4.

85 Crown application

- (1) This Act, and any provisions made under it, bind the Crown.
- (2) The reference to the Crown in subsection (1) does not include—
 - (a) Her Majesty in Her private capacity,
 - (b) Her Majesty in right of the Duchy of Lancaster, or
 - (c) the Duke of Cornwall.

86 Power to make consequential provision

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) Regulations under this section may amend, repeal, revoke or otherwise modify any provision of primary legislation, retained direct EU legislation or subordinate legislation.
- (3) Regulations under this section are subject to the affirmative procedure if they amend, repeal or revoke any provision of primary legislation or retained direct principal EU legislation.
- (4) Regulations under this section to which subsection (3) does not apply are subject to the negative procedure.

87 Regulations

- (1) Any power to make regulations under this Act is exercisable by statutory instrument.
- (2) Any power to make regulations under this Act includes power—
 - (a) to make different provision for different purposes;
 - (b) to make supplementary, incidental, consequential, transitional, transitory or saving provision.
- (3) Where regulations under this Act are subject to “the affirmative procedure”, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Where regulations under this Act are subject to “the negative procedure”, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Any provision that may be made by regulations under this Act subject to the negative procedure may be made in regulations subject to the affirmative procedure.
- (6) Any power to make regulations under Part 4 to amend a provision of this Act may not be exercised after the period of one year beginning with the day on which the CMA publishes its second report under section 65.
- (7) A power to make regulations under this Act is not to be taken as limiting the power to make regulations under section 31 of the European Union (Future Relationship) Act 2020 (general implementation power).
- (8) This section does not apply to regulations under section 91.

88 Directions

- (1) A direction under this Act must be given in writing.
- (2) A direction under this Act may be varied or revoked by a further direction.

89 Interpretation

- (1) In this Act—

“the CMA” means the Competition and Markets Authority;

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“energy and environment principles” means the principles set out in Schedule 2;

“enterprise” has the meaning given by section 7;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“Northern Ireland Protocol” means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

“primary legislation” means—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament,
- (c) an Act or Measure of Senedd Cymru, or
- (d) Northern Ireland legislation;

“public authority” has the meaning given by section 6(1);

“special drawing rights” means special drawing rights as defined by the International Monetary Fund;

“SPEI enterprise” and “SPEI services” have the meanings given in section 29(9);

“streamlined subsidy scheme” has the meaning given by section 10(4);

“subordinate legislation” means an instrument made under primary legislation or under retained direct EU legislation;

“subsidy” has the meaning given by section 2(1);

“subsidy control principles” means the principles set out in Schedule 1;

“subsidy control requirements” has the meaning given by section 1(2);

“subsidy database” means the database of subsidies established under section 32;

“subsidy scheme” has the meaning given by section 10(1);

“subsidy scheme of interest” and “subsidy scheme of particular interest” have the meanings given by section 11;

“the Trade and Cooperation Agreement” and “supplementing agreement” have the same meanings as in the European Union (Future Relationship) Act 2020 (see section 37(1) of that Act);

“working day”, in relation to a part of the United Kingdom, means a day other than—

- (a) a Saturday or Sunday, or
- (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in that or any other part of the United Kingdom.

- (2) Section 30 of the European Union (Future Relationship) Act 2020 (interpretation of agreements: public international law) applies where a court or tribunal has regard to the Trade and Cooperation Agreement or a supplementing agreement for the purposes of interpreting a provision of this Act.

90 Extent

- (1) Subject to subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Section 48(4) extends to England and Wales and Scotland only.

91 Commencement

- (1) The following come into force on the day on which this Act is passed—
 - (a) Part 1;
 - (b) any power to make regulations under Part 2, 3 or 4 or Chapter 1 of this Part;
 - (c) this Chapter.
- (2) The rest of this Act comes into force on such day as the Secretary of State may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) The power to make regulations under subsection (4) includes power to make different provision for different purposes.
- (6) Regulations under this section are to be made by statutory instrument.

92 Short title

This Act may be cited as the Subsidy Control Act 2022.