



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 4

#### CMA: REFERRALS AND FUNCTIONS

### CHAPTER 1

#### FUNCTIONS ON REFERRALS OF SUBSIDIES AND SCHEMES

##### *Mandatory referrals*

#### **52 Mandatory referral to CMA**

- (1) A public authority must request a report from the CMA—
  - (a) before giving a subsidy, or making a subsidy scheme, of particular interest, or
  - (b) where directed to do so by the Secretary of State under section 55.
- (2) The request must—
  - (a) include the information in relation to the subsidy or subsidy scheme that would be required under section 34, if the subsidy or scheme were to be given or made,
  - (b) provide such other information as is specified in regulations under subsection (3)(a),
  - (c) explain, in the case of a request under subsection (1)(a), why the public authority considers that the subsidy or subsidy scheme would meet the criteria for being a subsidy, or subsidy scheme, of particular interest,
  - (d) include an assessment by the public authority as to whether the subsidy or scheme would comply with the requirements of Chapters 1 and 2 of Part 2, and the reasons for that conclusion, and
  - (e) include any evidence relevant to that assessment.
- (3) The Secretary of State may by regulations—

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- (a) specify further information that must be included in a request under this section;
  - (b) make provision as to the form of a request under this section.
- (4) Regulations under subsection (3)(a) and (b) are subject to the negative procedure.

### **53 CMA reporting period for mandatory referral**

- (1) The CMA must, before the end of five working days beginning with the day on which a request is received under section 52(1), give a notice to the public authority—
  - (a) that the request complies with the requirements under section 52, or
  - (b) providing reasons as to why the request does not comply with those requirements.
- (2) Where the CMA gives a notice under subsection (1)(a), the CMA must—
  - (a) before the end of the reporting period, publish a report on the proposed subsidy or subsidy scheme, in such manner as the CMA considers appropriate, and
  - (b) give a copy of the report to the public authority and the Secretary of State as soon as reasonably practicable after it is published.
- (3) Subject to subsections (4) and (6), “reporting period” means the period of 30 working days beginning with the day on which the notice under subsection (1)(a) is given to the public authority.
- (4) The reporting period may be extended if an extension is agreed in writing between the CMA and the public authority before the end of the reporting period.
- (5) Where the reporting period is extended under subsection (4), the CMA must publish, in such manner as the CMA considers appropriate, a notice stating that the reporting period has been extended and by how much, and the reasons for the extension.
- (6) The Secretary of State may direct that the reporting period is extended, in response to a request from the CMA.
- (7) A request under subsection (6)—
  - (a) may only be made if the CMA considers that there are exceptional circumstances to justify an extension,
  - (b) must include the reasons for seeking an extension, and
  - (c) must be published, with those reasons, in such manner as the CMA considers appropriate.
- (8) A direction under subsection (6)—
  - (a) may only be given if the Secretary of State is satisfied that there are exceptional circumstances which justify an extension,
  - (b) may not be given in relation to a subsidy or subsidy scheme given or made by the Secretary of State, and
  - (c) may not be given so as to provide for an extension which exceeds 40 working days beginning with the day on which the reporting period would otherwise end.
- (9) As soon as reasonably practicable after receiving a request under subsection (6), the Secretary of State must—

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- (a) send a copy of a direction given under that subsection to the CMA and to the public authority, or
  - (b) give notice to the CMA and the public authority that the request has been rejected and provide reasons for that decision.
- (10) Any day falling within the period beginning with the day on which a request is published by the CMA under subsection (7) and ending with the day on which a direction is given under subsection (6), or a notice is given under subsection (9), does not count for the purposes of calculating the reporting period.
- (11) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, a direction given under subsection (6) or a notice given under subsection (9).
- (12) The Secretary of State may by regulations amend the periods of time specified in subsections (1) and (3).
- (13) Regulations under subsection (12) are subject to the affirmative procedure.

#### **54 Cooling off period following mandatory referral**

- (1) A public authority may not give a subsidy or make a subsidy scheme, in relation to which the CMA has provided a report, before the end of the cooling off period.
- (2) “Cooling off period” means the period of five working days beginning with the day after the day on which the CMA publishes the report under section 53(2).
- (3) If the CMA does not publish a report before the end of the reporting period, the public authority may give the subsidy or make the subsidy scheme after the day on which the reporting period expires.
- (4) The Secretary of State may direct that the cooling off period is extended where the Secretary of State considers that the CMA’s report has identified that there are serious deficiencies in the public authority’s assessment under section 52(2)(d).
- (5) The Secretary of State—
- (a) must send a copy of a direction given under subsection (4) to the public authority, and
  - (b) must publish the direction in such manner as the Secretary of State considers appropriate.
- (6) The power in subsection (4) may not be exercised so as to provide for an extension which exceeds 30 working days beginning with the day on which the cooling off period would otherwise end under subsection (2).
- (7) The Secretary of State may by regulations—
- (a) amend the period of time specified in subsection (2);
  - (b) amend subsection (4) to reflect any changes made to the content of the CMA’s report by regulations made under section 59.
- (8) Regulations under subsection (7)(a) or (b) are subject to the affirmative procedure.

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## **55 Call-in direction**

- (1) The Secretary of State may direct a public authority to request a report from the CMA in relation to a proposed subsidy or subsidy scheme.
- (2) A direction under this section may be given in relation to—
  - (a) a subsidy or subsidy scheme of interest, or
  - (b) any subsidy or subsidy scheme in respect of which the Secretary of State considers—
    - (i) there is a risk of failure to comply with the requirements of Chapters 1 and 2 of Part 2, or
    - (ii) there is a risk of negative effects on competition or investment within the United Kingdom.
- (3) The Secretary of State—
  - (a) must send a copy of a direction given under this section to the public authority and to the CMA, and
  - (b) must publish the direction in such manner as the Secretary of State considers appropriate.