



Subsidy Control Act 2022

2022 CHAPTER 23

VALID FROM 04/01/2023

PART 5

ENFORCEMENT

Appeals to the Competition Appeal Tribunal

70 Review of subsidy decisions

- (1) An interested party who is aggrieved by the making of a subsidy decision may apply to the Competition Appeal Tribunal for a review of the decision.
- (2) Where an application for a review of a subsidy decision relates to a subsidy given under a subsidy scheme, the application must be made for a review of the decision to make the subsidy scheme (and may not be made in respect of a decision to give a subsidy under that scheme).
- (3) The means of making an application is by sending the Tribunal a notice of appeal in accordance with Tribunal Procedure Rules.
- (4) The notice of appeal must be sent within the period specified, in relation to the decision appealed against, in Part 5A of the Tribunal Procedure Rules.
- (5) In determining the application, the Tribunal must apply the same principles as would be applied—
 - (a) in the case of proceedings in England and Wales or Northern Ireland, by the High Court in determining proceedings on judicial review;
 - (b) in the case of proceedings in Scotland, by the Court of Session on an application to the supervisory jurisdiction of that Court.
- (6) Except so far as the Tribunal directs otherwise, the effect of a subsidy decision is not suspended by reason of the making of an application under this section.

Status: Point in time view as at 28/04/2022. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Subsidy Control Act 2022, PART 5. (See end of Document for details)

(7) In this Part—

“interested party” means—

- (a) a person whose interests may be affected by the giving of the subsidy or the making of the subsidy scheme in respect of which the application under subsection (1) is made, or
- (b) the Secretary of State;

“subsidy decision” means a decision to give a subsidy or make a subsidy scheme;

“the Tribunal” means the Competition Appeal Tribunal;

“Tribunal Procedure Rules” means rules made under section 15 of the Enterprise Act 2002.

Commencement Information

II S. 70 not in force at Royal Assent, see [s. 91\(2\)](#)

71 Time limits for applications under section 70

(1) The Competition Appeal Tribunal Rules 2015 ([S.I. 2015/1648](#)) are amended as follows.

(2) In rule 3 (application of Rules)—

- (a) in paragraph (b) after “5” insert “, 5A”;
- (b) after paragraph (e) insert—

“(ea) Part 5A applies to applications under section 70 of the Subsidy Control Act 2022 for reviews of subsidy decisions (within the meaning of that section);”.

(3) After rule 98 insert—

“PART 5A

APPLICATIONS UNDER SECTION 70 OF THE SUBSIDY CONTROL ACT 2022

98A Time limits for applications

(1) An application to the Tribunal under section 70 in respect of a subsidy decision must be made by sending a notice of appeal before the end of one month beginning with the relevant date in relation to that decision.

(2) The “relevant date” in relation to a subsidy decision is—

- (a) in a case where a pre-action information request in respect of the subsidy or scheme concerned is made within one month of the transparency date, the date on which the notice under paragraph (8) is given;
- (b) in a case where a post-award referral is made in respect of the subsidy or scheme, the date on which the post-award referral report is published under section 62;
- (c) in any other case, the transparency date for the subsidy or scheme.

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- (3) If both of sub-paragraphs (a) and (b) of paragraph (2) apply, the relevant date is the later of the dates given by those sub-paragraphs.
- (4) In paragraph (2)—
- (a) “pre-action information request” means a request for information under section 76;
- (b) “the transparency date” for a subsidy or scheme is—
- (i) in a case where the application relates to a subsidy or scheme in respect of which the duty under section 33(1) or (5) does not apply, the date on which the interested party first knew or ought to have known of the making of the subsidy decision;
- (ii) in any other case, the date on which an entry in respect of the subsidy or scheme is made on the subsidy database in accordance with the duty under section 33(1) or (5);
- (c) “post-award referral” means a referral made under section 60.
- (5) In determining for the purposes of paragraph (4)(b) the date on which an entry is made on the subsidy database in accordance with a duty under section 33(1) or (5), the Tribunal may direct that a minor omission or error in the making of the entry is to be disregarded.
- (6) An omission or error is “minor” for the purposes of paragraph (5) if it appears to the Tribunal that it had no prejudicial impact on the interested party in assessing whether to make a pre-action information request.
- (7) The Tribunal may not extend the time limits provided for in this rule unless it is satisfied that the circumstances are exceptional.
- (8) For the purpose of paragraph (2)(a), a public authority must give notice to the interested party that the public authority has provided information in response to a request made under section 76(1).
- (9) In this rule—
- (a) references to sections are to sections of the Subsidy Control Act 2022;
- (b) “public authority”, “subsidy”, “subsidy database” and “subsidy decision” have the same meanings as in that Act.”
- (4) Nothing in this section affects the power in section 15 of the Enterprise Act 2002 to revoke or amend the Competition Appeal Tribunal Rules 2015, as those Rules are amended by this section.

Commencement Information

I2 S. 71 not in force at Royal Assent, see [s. 91\(2\)](#)

72 CAT powers on review: England and Wales and Northern Ireland

- (1) This section applies to applications under section 70 in England and Wales or Northern Ireland.

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- (2) The Tribunal must either dismiss the application or grant the following kinds of relief—
 - (a) a mandatory order;
 - (b) a prohibiting order;
 - (c) a quashing order;
 - (d) a declaration;
 - (e) an injunction.
- (3) Where the Tribunal grants relief under subsection (2)(c), it may refer the matter back to the person who made the decision with a direction to reconsider and make a new decision in accordance with its ruling.
- (4) In making a reference under subsection (3) the Tribunal may not direct the person who made the decision to take any action that the person would not otherwise have the power to take in relation to the decision.
- (5) Relief under subsection (2) granted by the Tribunal—
 - (a) has the same effect as the corresponding relief granted by the High Court on the determination of proceedings for judicial review, and
 - (b) is enforceable as if it were relief granted by the High Court on an application for judicial review.
- (6) In deciding whether to grant relief under subsection (2) the Tribunal must apply the principles that the High Court would apply in deciding whether to grant that relief on an application for judicial review.
- (7) Where the Tribunal grants relief under subsection (2), it may also make a recovery order in accordance with section 74.
- (8) The Tribunal may refuse to grant any relief sought on an application if the Tribunal considers—
 - (a) that there has been undue delay in making the application, or
 - (b) that granting the relief sought on the application would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- (9) In cases arising under the law of England and Wales, subsections (2A) and (2B) of section 31 of the Senior Courts Act 1981 apply to the Tribunal in deciding whether to grant relief under this section as they apply to the High Court when deciding whether to grant relief on an application for judicial review.
- (10) If the Tribunal grants relief in reliance on section 31(2B) of the Senior Courts Act 1981 as applied by subsection (9), the Tribunal must certify that the condition in section 31(2B) as so applied is satisfied.
- (11) For the purposes of the application of subsection (5)(a) in relation to appeals in Northern Ireland—
 - (a) a mandatory order corresponds to an order of mandamus,
 - (b) a prohibiting order corresponds to an order of prohibition, and
 - (c) a quashing order corresponds to an order of certiorari.

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Commencement Information

I3 S. 72 not in force at Royal Assent, see [s. 91\(2\)](#)

73 CAT powers on review: Scotland

- (1) This section applies to applications under section 70 in Scotland.
- (2) The powers of the Tribunal in respect of such applications are the same as the powers of review of the Court of Session in an application to the supervisory jurisdiction of that Court.
- (3) In the exercise of its powers by virtue of subsection (2), the Tribunal may also make a recovery order in accordance with section 74.
- (4) In deciding how to exercise its powers, the Tribunal must apply principles that the Court of Session would apply in deciding an application to the supervisory jurisdiction of that Court.
- (5) An order of the Tribunal by virtue of subsection (2)—
 - (a) has the same effect as the corresponding order granted by the Court of Session on an application to the supervisory jurisdiction of that Court, and
 - (b) is enforceable as if it were an order so granted by that Court.

Commencement Information

I4 S. 73 not in force at Royal Assent, see [s. 91\(2\)](#)

74 Recovery orders

- (1) The Tribunal may make a recovery order if—
 - (a) in exercise of its powers under section 72 or 73, it grants relief in respect of a decision of a public authority to give a subsidy or make a subsidy scheme, and
 - (b) in granting that relief the Tribunal finds that the decision did not comply with a requirement of Chapter 1 or 2 of Part 2.
- (2) A recovery order is an order that—
 - (a) confers a right on a public authority that has given a subsidy to recover the amount of that subsidy from the beneficiary, and
 - (b) requires the public authority to exercise that right in accordance with the order.
- (3) A recovery order may—
 - (a) provide for how the right to recover a subsidy under the order is to be exercised;
 - (b) require that the right is exercised by such time as the order may specify;
 - (c) relate to the whole of a subsidy or to such part as the order may provide;
 - (d) where made in relation to subsidies given under a subsidy scheme, relate to all such subsidies or only to those subsidies specified in the order;
 - (e) require the payment of interest in accordance with the order.

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- (4) A recovery order is enforceable as though it were an order made by the High Court or, in relation to Scotland, the Court of Session.

Commencement Information

I5 S. 74 not in force at Royal Assent, see **s. 91(2)**

75 Appeals against decisions of the CAT

- (1) An appeal lies to the appellate court on any point of law arising from a decision of the Tribunal under the preceding provisions of this Part.
- (2) An appeal under this section may be brought by—
- (a) a party to the proceedings before the Tribunal, or
 - (b) any other person who has a sufficient interest in the matter.
- (3) An appeal under this section requires the permission of the Tribunal or the appellate court.
- (4) In this section “the appellate court” means—
- (a) in relation to England and Wales and Northern Ireland, the Court of Appeal, and
 - (b) in relation to Scotland, the Court of Session.

Commencement Information

I6 S. 75 not in force at Royal Assent, see **s. 91(2)**

Pre-action information

76 Duty to provide pre-action information

- (1) An interested party may make a request to a public authority for information about a subsidy, or subsidy scheme, that the authority has given or made.
- (2) A request under subsection (1)—
- (a) must be made in writing, and
 - (b) must state that it is being made only for the purpose of deciding whether to apply for a review of a subsidy decision under section 70, on the ground that the decision did not comply with a requirement of Chapter 1 or 2 of Part 2.
- (3) Where a public authority receives a request under subsection (1), the authority must provide such information as would enable, or assist in, the making of a determination as to whether the subsidy was given, or the scheme was made, in accordance with the requirements of Chapters 1 and 2 of Part 2.
- (4) The information must be provided by the public authority—
- (a) in writing, and
 - (b) within 28 days of receiving the request for information.

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- (5) In providing information, a public authority may impose such restrictions as it considers proportionate in order to protect—
- (a) commercially sensitive information,
 - (b) confidential information,
 - (c) information subject to legal privilege, or
 - (d) information, the disclosure of which would be contrary to the public interest.
- (6) Information provided in response to a request made under this section may be used only—
- (a) for the purpose for which it was requested, and
 - (b) in accordance with any restrictions imposed by the public authority under subsection (5).

Commencement Information

I7 S. 76 not in force at Royal Assent, see [s. 91\(2\)](#)

*Misuse***77 Misuse of subsidies**

- (1) A public authority which has given a subsidy has the right to recover from the beneficiary the whole or part of its amount to the extent that the subsidy is used for a purpose other than the purpose for which it was given.
- (2) The right conferred by subsection (1) is enforceable as if created by contract between the public authority and the beneficiary.
- (3) Nothing in this section affects any other remedy that the public authority may have in connection with the giving of the subsidy.

Commencement Information

I8 S. 77 not in force at Royal Assent, see [s. 91\(2\)](#)

Status:

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Changes to legislation:

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