



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Status: This is the original version (as it was originally enacted).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