

EXPLANATORY MEMORANDUM TO
THE SUBSIDY CONTROL (SUBSIDY DATABASE INFORMATION
REQUIREMENTS) REGULATIONS 2022

2022 No. 1153

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes provision about the information that must be included in a public authority's entry in the subsidy database in relation to a subsidy or subsidy scheme for the purposes of complying with transparency requirements in the Subsidy Control Act 2022 (the "Act").

3. Matters of special interest to Parliament

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 32 of the Act requires the Secretary of State to make arrangements for the provision of a database of subsidies and subsidy schemes for the purposes of Part 2 of the Act.
- 6.2 Section 33 of the Act requires public authorities to include information in the subsidy database in relation to a subsidy or subsidy scheme.
- 6.3 Section 34 of the Act allows the Secretary of State by regulations to make provision about the information that must be included in a public authority's entry in the subsidy database in relation to a subsidy or subsidy scheme.
- 6.4 This is the first use of the power in section 34 of the Act.

7. Policy background

What is being done and why?

- 7.1 The Act received Royal Assent on 28 April 2022. The Act implements a UK domestic subsidy control regime that reflects the UK's strategic interests and particular national circumstances, providing a legal framework within which public authorities make subsidy decisions.
- 7.2 Public authorities must be transparent about the subsidies they provide. Transparency is of fundamental importance to the UK's new domestic subsidy control regime. Interested parties must be able to see which subsidies are being given by public authorities, how much is being given and to whom. This will allow an interested party to see sufficient information enabling it to make a decision over whether or not to seek to challenge the subsidy in the Competition Appeal Tribunal.
- 7.3 This instrument provides the detail of the information requirements that public authorities must include in a database entry. If a public authority fails to upload all the information requirements, it may not have made a full entry on the database as it is required to by the Act.
- 7.4 To facilitate subsidy transparency, the Government has developed a database of subsidies (the subsidy database) which is publicly accessible. A public authority will have access to the database for the purposes of uploading subsidies.
- 7.5 Not all subsidy awards must be uploaded. All subsidy schemes, no matter the amount, must be uploaded. Standalone subsidy awards must also all be uploaded, regardless of amount. However, a subsidy award given under a published scheme only needs to be uploaded to the database when it exceeds £100,000. Similarly, only those Minimal Financial Assistance (MFA) awards, Services of Public Economic Interest Assistance (SPEIA) awards, and subsidies for Services of Public Economic Interest (SPEI) need to be uploaded when they exceed the same £100,000 threshold. When uploading a subsidy, a public authority will need to indicate what kind of subsidy entry they are making, for example whether it is a subsidy scheme or a subsidy under a published scheme.
- 7.6 A public authority will then follow a process where the database asks for the information requirements contained in this instrument. Depending on the information requirement, the database will either provide a drop-down menu (for example for requirements such as subsidy purpose, location and sector) or multiple choice list (with set options) (for example for requirements such as enterprise size or unique ID type) or a free text box for the required information.
- 7.7 This will allow public authorities to comply with these information requirements in this instrument. The instrument sets out what information must be required for each different entry.
- 7.8 This instrument sets out different requirements based on whether the database entry relates to a subsidy or scheme, or modification. The instrument also provide specific provisions for MFA and SPEIA, which have fewer requirements, and tax measures, where the amount may be uploaded within a specified range. The date of the database upload will be generated automatically by the database. Finally, the instrument sets out the requirements for entering modifications of subsidies or schemes onto the database, where modifications are required to be entered onto the database under the Act.

- 7.9 Subsidy schemes will require the following information:
- 7.9.1 Legal basis for the scheme;
 - 7.9.2 Specific policy objective of the scheme;
 - 7.9.3 Purpose of the scheme e.g regional development or environmental protection (options will be provided using a drop-down menu on the subsidy database);
 - 7.9.4 Name of the public authority making the scheme;
 - 7.9.5 Date of the confirmation of the decision to make the scheme;
 - 7.9.6 Duration of the scheme, and a summary of any other time limits attached to the use of the scheme;
 - 7.9.7 Means (or form) subsidies under the scheme may be given e.g. grant, loan or equity;
 - 7.9.8 Whether the scheme relates to goods or services, or both;
 - 7.9.9 Locations and sectors to which the scheme relates (options will be provided using a drop-down menu on the subsidy database);
 - 7.9.10 Whether the scheme is a scheme of interest or of particular interest (SoI or SoPI);
 - 7.9.11 Whether the Secretary of State has issued a call-in direction under section 55 of the Act directing that a report is requested from the Competition and Market Authority (CMA);
 - 7.9.12 Whether the Secretary of State has issued a direction under section 64(3) of the Act that mandatory referral requirements do not apply, or cease to apply, to the scheme;
 - 7.9.13 Whether a report has been published by the CMA in relation to the scheme, following a mandatory or voluntary referral;
 - 7.9.14 Whether section 54(3) of the Act applies to the scheme and a report following a mandatory referral has not been published;
 - 7.9.15 Whether the Secretary of State has made a post award referral in relation to the scheme under section 60(1) of the Act;
 - 7.9.16 Whether a report has been published by the CMA under section 61(1) of the Act following a post-award referral, and the date of publication.
 - 7.9.17 Scheme name;
 - 7.9.18 Description of the scheme. This must include information such as categories of enterprise eligible under the scheme, a summary of terms and conditions for scheme eligibility, the basis for calculating subsidies under the scheme, including a summary of subsidy ratios or amounts;
 - 7.9.19 Budget for the scheme, expressed as the maximum amount of an individual subsidy that may be given under the scheme, and the overall budget for the scheme (where applicable).
- 7.10 Subsidies given under schemes will require the following information:
- 7.10.1 Legal basis for the subsidy;
 - 7.10.2 Specific policy objective of the subsidy;

- 7.10.3 Purpose of the subsidy e.g. R&D (options will be provided using a drop-down menu on the subsidy database);
- 7.10.4 Name of the scheme the subsidy is given under;
- 7.10.5 Name of the public authority giving the subsidy;
- 7.10.6 Name of the enterprise receiving the subsidy;
- 7.10.7 Identifier for the enterprise (e.g. Company registration number) (where applicable);
- 7.10.8 Date of the confirmation of the decision to give the subsidy;
- 7.10.9 Duration of the subsidy, and a summary of any other time limits attached to the use of the subsidy;
- 7.10.10 Amount of the subsidy;
- 7.10.11 The means (or form) the subsidy takes e.g. grant, loan or equity;
- 7.10.12 Size of the enterprise receiving the subsidy (number of employees, **options will be** provided using a multiple choice selection);
- 7.10.13 Whether the subsidy is for goods, services or both;
- 7.10.14 Locations and sectors to which the subsidy relates (options will be provided using a drop-down menu on the subsidy database);
- 7.11 Standalone subsidies will require:
 - 7.11.1 The same information required for subsidies given under schemes (except name of scheme);
 - 7.11.2 Standalone subsidies will also have to provide the information that is required for schemes listed above at paragraphs 7.9.10 to 7.9.16.

Whether specific requirements or exemptions under the Act apply

- 7.12 For subsidies and schemes, the instrument will also ask which, if any, of the various sections of the Act relating to specific requirements or exemptions apply to the subsidy or scheme, namely:
 - (a) section 13 (energy and environment principles);
 - (b) section 18 (relocation of activities);
 - (c) section 19 (rescuing);
 - (d) section 20 (restructuring);
 - (e) section 21 (restructuring deposit takers or insurance companies);
 - (f) section 22 (liquidating deposit takers or insurance companies);
 - (g) section 23 (liquidating provision for deposit takers or insurance companies);
 - (h) section 27 (subsidies for insurers that provide export credit insurance);
 - (i) section 28 (subsidies for air carriers for the operation of routes);
 - (j) section 29 (services of public economic interest);
 - (k) section 43 (natural disasters and other exceptional circumstances);
 - (l) section 44 (national or global economic emergencies);
 - (m) section 47 (financial stability) (so far as the Treasury directs under section 47 of the Act that the requirements as to transparency in Chapter 3 of Part 2 of the Act apply);

- (n) section 48(1)(a) (legacy subsidies);
- (o) section 50 (large cross-border or international cooperation projects).

(sub-paragraphs (a) to (j) would not be required for entries for subsidies given under schemes and sub-paragraph (n) would not be required for entries for schemes and standalone subsidies, as these provisions do not apply to these under the Act).

7.13 MFA and SPEIA will only require:

- 7.13.1 Name of the public authority providing the subsidy;
- 7.13.2 Name of the enterprise receiving the subsidy;
- 7.13.3 Identifier of the enterprise;
- 7.13.4 Date of the confirmation of the decision to give the subsidy;
- 7.13.5 The amount of the subsidy;
- 7.13.6 Whether the subsidy is MFA or SPEIA.

Explanations

What did any law do before the changes to be made by this instrument? And what will it now do?

- 7.14 The Trade and Co-operation Agreement (TCA) between the UK and EU contains transparency obligations on UK public authorities to upload information about subsidies and subsidy schemes. This instrument includes both these existing obligations under Articles 369(1) and (2) and 373(4) and additional information requirements to improve transparency of the UK's subsidy control regime.
- 7.15 These additional requirements are: the subsidy scheme name, the size of the enterprise receiving a subsidy, a unique identifier for the enterprise, whether the subsidy or scheme is for goods or services or both, the maximum amount of an individual subsidy that may be given under a scheme (when expressing the scheme budget), the means (or form) a subsidy takes, the sectors and locations to which the subsidy or scheme relates, the date of the confirmation of the decision to make the scheme, whether the subsidy or scheme is a SoPI or SoI, information about CMA referrals, for example, whether the subsidy or scheme has been referred to the CMA, whether CMA reports have been published following mandatory or voluntary referrals or post award referrals, and whether various specified requirements or exemptions in the Act apply.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 The issue of consolidation does not arise as this instrument does not amend any legislation.

10. Consultation outcome

- 10.1 The Act includes in Section 34 the power to make regulations laying out the information requirements for subsidy transparency. There is no requirement to consult on this instrument and no consultation on these Regulations was carried out.

11. Guidance

- 11.1 The statutory guidance accompanying the Subsidy Control Act contains a chapter on transparency. The transparency chapter explains each of the information requirements contained in this instrument. In addition, there is information contained on the database itself which has been drafted to assist public authorities in meeting their transparency obligations. The government undertook a separate public consultation on a draft version of the statutory guidance which is available at: <https://www.gov.uk/government/consultations/statutory-guidance-on-the-subsidy-control-act-2022>. The Government considered responses to the consultation when drafting these Regulations.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is very low. This instrument is binding on public authorities. However, public authorities will require a beneficiary of a subsidy to provide information as a condition of receiving the subsidy.
- 12.2 This instrument will impact on the public sector, but the impact will not be significant. The instrument will be binding on public authorities and will lay out the information requirements they need to provide in order to meet the obligations in the Act.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the impact assessment covering the Act is sufficient to cover the impact of this instrument. However, a de minimis impact assessment has been produced.

13. Regulating small business

- 13.1 This instrument does not apply to activities that are undertaken by small businesses, as it is binding on public authorities rather than businesses.

14. Monitoring & review

- 14.1 The approach to monitoring and review of the new subsidy control regime is set out in full in the impact assessment produced in relation to the provisions of the Act. These set out a monitoring and evaluation plan covering the following key areas:
- The objectives of the regime as a whole, including SMART objectives
 - Past research on the objectives of the regime and how these are impacted by subsidy control arrangements
 - Purpose of the various strands of monitoring and evaluation review, methods and approach, and expected end users
 - Proportionality, resourcing and data collection.
- 14.2 This plan sets out that the data collection will primarily be through the subsidy database provided for under section 32 of the Act, and that the broader monitoring and evaluation will primarily be through regular CMA reports on the functioning of the regime which are provided for under section 65 of the Act.
- 14.3 This instrument will also be included within the same monitoring and evaluation plan and the information requirements are expected to be part of the CMA's monitoring reports. The CMA is required to publish a monitoring report 3 years after implementation of the regime, and at regular intervals thereafter.
- 14.4 This instrument does not include a statutory review clause.

15. Contact

- 15.1 Christian Garrard at the Department for Business, Energy & Industrial Strategy, email: Christian.garrard@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Eve Cinnirella, Deputy Director for Subsidy Control, at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kevin Hollinrake MP, Parliamentary Under-Secretary of State for the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.