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DRAFT STATUTORY INSTRUMENTS

2022 No.

SUBSIDY CONTROL

The Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State, in exercise of the powers conferred by sections 11(1) and 87(2) of the Subsidy Control Act 2022(a), makes the following Regulations.

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022.
- (2) These Regulations come into force on [TBC].
- (3) These Regulations extend to England and Wales, Scotland and Northern Ireland.

Interpretation

2. In these Regulations—

“the Act” means the Subsidy Control Act 2022;

“input activity” means an economic activity that entails the provision of goods or services for the purpose of a specified economic activity;

“SIC code” means a code included in the UK Standard Industrial Classification of Economic Activities 2007 (SIC 2007) published by the Office for National Statistics in December 2009(b);

“specified economic activity” means an economic activity that—

- (a) is of a description which falls within a SIC code listed in the table in the Schedule to these Regulations, and
- (b) entails offering goods or services on a market.

Subsidy, or subsidy scheme, of particular interest

3.—(1) A subsidy(a) is a subsidy of particular interest if paragraph (2), (3) or (4) applies to the subsidy.

(a) c.xxx.

(b) ISBN 978-0-230-21012-7.

- (2) This paragraph applies to a subsidy if—
- (a) the total amount of the subsidy, taken together with any other related subsidy given to the same enterprise^(b) within the applicable period, exceeds £10 million, and
 - (b) none of the provisions mentioned in regulation 4(3) applies to the giving of the subsidy.
- (3) This paragraph applies to a subsidy if—
- (a) the total amount of the subsidy, taken together with any other related subsidy given to the same enterprise within the applicable period, exceeds £5 million (but does not exceed the amount specified in paragraph (2)(a)),
 - (b) the subsidy concerns a sensitive sector, and
 - (c) none of the provisions mentioned in regulation 4(3) applies to the giving of the subsidy.
- (4) This paragraph applies to a subsidy if the giving of the subsidy would be subject to either of the following provisions of the Act:
- (i) section 20 (Restructuring);
 - (ii) section 21 (Restructuring deposit takers or insurance companies).
- (5) For the purposes of paragraph (3)(b), a subsidy concerns a sensitive sector if—
- (a) it is given to an enterprise which is engaged in a specified economic activity or an input activity, and
 - (b) it confers, directly or indirectly, an economic advantage on an enterprise which is engaged in a specified economic activity in relation to that activity.
- (6) But the condition in paragraph 5(b) is to be treated as not met if—
- (a) the subsidy is given under a subsidy scheme, and
 - (b) the criteria or conditions which determine whether an enterprise is eligible to receive a subsidy under that scheme are based on objective factors which do not favour enterprises engaged in specified economic activities or input activities over others.
- (7) The objective factors referred to in paragraph (6)(b) may (among other things) include—
- (a) size of enterprise;
 - (b) number of employees;
 - (c) geographical location.
- (8) A subsidy scheme of particular interest is a subsidy scheme under which a subsidy of particular interest could be given.

Subsidy, or subsidy scheme, of interest

- 4.—**(1) A subsidy is a subsidy of interest if paragraph (2) or (3) applies to the subsidy.
- (2) This paragraph applies to a subsidy if—
- (a) the total amount of the subsidy, taken together with any other related subsidy given to the same enterprise within the applicable period, exceeds £5 million, and
 - (b) None of paragraphs (2), (3) or (4) of regulation 3 applies to the subsidy.
- (3) This paragraph applies to a subsidy if the giving of the subsidy would be subject to any of the following provisions of the Act:
- (a) section 19 (Rescuing);
 - (b) section 22 (Liquidating deposit takers or insurance companies);
 - (c) section 23 (Liquidity provision for deposit takers or insurance companies).

(a) As defined in section 2 of the Subsidy Control Act 2022.

(b) As defined in section 7 of the Subsidy Control Act 2022.

(4) A subsidy scheme of interest is a subsidy scheme under which a subsidy of interest could be given (and which is not a subsidy scheme of particular interest within the meaning of regulation 3(8)).

Supplementary provision

- 5.—(1) This regulation applies for the purposes of regulations 3(2)(a), (3)(a) and 4(2)(a).
- (2) A “related subsidy” is a subsidy which—
- (a) is given by any public authority^(a) in respect of the same (or substantially the same) project, costs or activities, and
 - (b) pursues the same (or substantially the same) specific policy objective as referred to in Schedule 1 to the Act.
- (3) But a subsidy is not a “related subsidy” if it falls within any of the exemptions in section 64(1) or (2) of the Act.
- (4) The “applicable period” is the period comprising—
- (a) the elapsed part of the current financial year, and
 - (b) the two financial years immediately preceding the current financial year.
- (5) In paragraph (4)—
- (a) “financial year” means a period of 12 months ending with 31 March,
 - (b) the “current financial year” is the financial year in which the subsidy is given, and
 - (c) the “elapsed part” of that year is so much of it as has passed at the time it is given.
- (6) If a subsidy is provided in cash, the gross cash amount given is to be used in determining the amount of the subsidy.
- (7) If a subsidy is provided otherwise than in cash, the amount of the subsidy given is to be determined by reference to the gross cash equivalent of the subsidy.

[Date] [Name]
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

SCHEDULE

Regulation 2

Table

<i>SIC Code</i>	<i>Description</i>
24.10	Manufacture of basic iron and steel and of ferro-alloys
24.42	Aluminium production
24.44	Copper production
29.10	Manufacture of motor vehicles
30.11	Building of ships and floating structures
30.91	Manufacture of motorcycles
30.30	Manufacture of air and spacecraft and related machinery
35.11	Production of electricity

(a) As defined in section 6 of the Subsidy Control Act 2022.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations make provision as to the meaning of “subsidy, or subsidy scheme, of interest” and “subsidy, or subsidy scheme, of particular interest” for the purposes of the Subsidy Control Act 2022 (“the Act”). Section 52 of the Act provides that a public authority must refer a subsidy, or subsidy scheme, of particular interest to the Competition and Markets Authority (“the CMA”) before the subsidy is given or the scheme is made. Section 56 of the Act provides that a public authority may voluntarily choose to refer a subsidy, or subsidy scheme, of interest to the CMA before the subsidy is given or the scheme is made.