



Department for
Business, Energy
& Industrial Strategy

Consultation on the guidance for the Subsidy Control Act 2022

Closing date: 10 August 2022



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Any enquiries regarding this publication should be sent to us at:
subsidycontrolconsultation@beis.gov.uk

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General information

Consultation details

Issued: 1 July 2022

Respond by: 11:59pm on 10 August 2022

Enquiries to:

subsidycontrolconsultation@beis.gov.uk

Consultation reference:

Consultation on statutory guidance for Subsidy Control Act 2022

Audiences:

The government seeks views from businesses and business representative organisations, public authorities, legal advisers and all other parties interested in subsidy control.

Territorial extent:

United Kingdom

How to respond

Email to: subsidycontrolconsultation@beis.gov.uk

A response form is available on the GOV.UK consultation page:

www.gov.uk/government/consultations/statutory-guidance-on-the-subsidy-control-act-2022

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Context

Introduction

1. The Department for Business, Energy and Industrial Strategy (BEIS) is consulting on the draft guidance for the Subsidy Control Act 2022 (the Act). The Act provides a new framework for the provision of subsidies within the United Kingdom. It builds on the provisions in the subsidy control chapters of the Trade and Co-operation Agreement (TCA) with the European Union, which have applied in the interim of the UK's exit from the European Union. Please note that the TCA and all our other international obligations will continue to apply once the regime has commenced and must be complied with.¹
2. The new regime will enable public authorities, including devolved administrations and local authorities, to deliver subsidies that are tailored and bespoke for local needs as well as in delivering government priorities such as levelling up the United Kingdom and achieving net zero carbon, as well as supporting the economy's recovery from COVID-19.
3. The aim of the guidance is to explain the provisions of the Act and aid public authorities in navigating the new regime. It will provide advice to help public authorities to develop subsidies and subsidy schemes that are appropriate, well-designed, and in compliance with the Act. It will also support subsidy recipients and wider stakeholders to understand the new requirements.

Background

4. The Act received Royal Assent in April 2022, and the new regime is due to come into force in the autumn. Section 79 of the Act provides for the Secretary of State to issue guidance on the practical application of the regime, to which public authorities must have regard when granting a subsidy or making a subsidy scheme.
5. The statutory guidance will sit alongside other explanatory products that will provide a brief overview of the regime. An outreach programme will ensure that public authorities are ready and able to fulfil their obligations under the Act with confidence.
6. Further guidance will be issued by the Competition and Markets Authority (CMA) on the operation of its new Subsidy Advice Unit (SAU). The CMA expects to consult on the SAU guidance shortly and to publish this guidance ahead of implementation of the regime.

¹ Some functions of the subsidy control regime are subject to ongoing negotiations with the European Union over the Northern Ireland Protocol. The sections that detail these functions have been omitted from this draft of the guidance. For further information, please see: www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/technical-guidance-on-the-uks-international-subsidy-control-commitments#section-6

7. The government will also lay the following secondary legislation before Parliament ahead of implementation of the regime:
 - a. regulations setting out the definitions of categories for Subsidies or Schemes of Interest or Particular Interest;
 - b. regulations specifying the information to be included in a public authority's entry in the subsidy database;
 - c. regulations setting out a methodology for public authorities to follow when calculating the gross cash equivalent of subsidies; and
 - d. regulations which specify modifications to the CMA's information gathering powers under the United Kingdom Internal Market Act 2020.
8. The final version of the statutory guidance will include information about how to apply the provisions in these regulations as well as the Act itself. However, for the purpose of this consultation, sections have been omitted or appropriately caveated where policy is subject to further detail in regulations. These sections are clearly labelled throughout the document.
9. The government will also create a number of Streamlined Routes, which are subsidy schemes that any public authority can use without carrying out a separate assessment. We are currently designing three Streamlined Routes: Research, Development & Innovation; Energy Usage; and Levelling Up. Routes will offer public authorities a way to award certain subsidies more quickly. They will promote confidence and legal certainty to public authorities and businesses undertaking projects that are routine and low risk or aligned to UK priorities. We will publish the Streamlined Routes in due course.

Guidance structure

10. The draft guidance is structured to lead public authorities through the process of giving a subsidy – or making a subsidy scheme – from start to finish. The guidance starts by describing the design of subsidies, including the definition of a subsidy and the points a public authority will need to consider if they are going to give a subsidy or make a subsidy scheme. It then details the subsidy control principles and sets out how public authorities should assess subsidies for compliance with the regime.
11. The guidance also explains the permitted modifications that can be made to a subsidy once it has been made, as well as the specific rules for subsidies given as Minimum Financial Assistance and Services of Public Economic Interest. It also sets out the specific rules for specific types of subsidy and specific principles for subsidies in relation to energy and environment.
12. The guidance then explains the transparency and enforcement of the regime. It explains the types of subsidies that public authorities will need to refer to the SAU for further advice as well as the procedure for requesting a report. It also explains the regime's

transparency requirements which will enable the public, as well as any potentially interested parties, to monitor subsidies given under the regime. The guidance concludes by explaining how the regime will be enforced and what a public authority can do to recover a subsidy it believes is being misused.

Public Sector Equality Duty

13. The government is considering the impacts that this guidance would have on persons who share a protected characteristic, in accordance with the Public Sector Equality Duty. In doing so, the government has considered the evidence set out in the government's response to the previous subsidy control consultation.²
14. Based on this evidence the government provisionally believes that this proposed guidance does not create any foreseeable impacts of concern under the Public Sector Equality Duty. We will continue to analyse equalities impacts as the guidance develops and we welcome any views and evidence that respondents may have to assist this analysis.

² www.gov.uk/government/consultations/subsidy-control-designing-a-new-approach-for-the-uk see page 20 for a summary of this evidence and the government's response.

Consultation questions

- 1. Do you have any comments regarding the overall structure, form, or style of the guidance?**
- 2. Do you have any comments regarding the proposed wording of any part of the guidance? Please refer to relevant paragraph numbers in your answer.**
- 3. Would you prefer to see additional information or advice put into any sections of the guidance? If necessary, please explain why the suggested additions would aid your understanding of the regime.**
- 4. Are there any sections of the guidance you do not think it is necessary to include in the final publication of the document? Please refer to relevant paragraph numbers in your answer.**
- 5. Would further support, such as teach-in sessions or brief explanatory products, be helpful to you or your organisation to better explain any elements of the regime? If so, please specify which areas of the regime you would like that further support to cover and which form you would prefer that support to take.³**
- 6. We invite respondents' views on whether the proposed guidance may have any potential impact on people who share a protected characteristic (age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation), in different ways from people who don't share them. Please provide any evidence that may be useful to assist with our analysis of these impacts.**

Next steps

The government will consider responses to this consultation and produce a response within 12 weeks of the close of the consultation.

³ Responses to this question will be analysed and may inform further outreach to be delivered ahead of implementation of the regime. BEIS is not able to commit to further training will specific respondents at this time, although the department will try to engage with respondents regarding any specific queries they may have.

This consultation is available from: www.gov.uk/government/consultations/statutory-guidance-on-the-subsidy-control-act-2022

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