



Department for  
Business, Energy  
& Industrial Strategy

# Government response to the consultation on subsidy control statutory guidance

Subsidy Control Act 2022



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# Overview

## Summary

1. The Subsidy Control Act 2022 (“the Act”) provides the framework for a new, United Kingdom-wide subsidy control regime. This regime will enable public authorities, including devolved administrations and local authorities, to deliver subsidies that are tailored and bespoke for local needs to deliver government priorities such as delivering growth and meeting the UK’s net zero commitments to reduce the effects of climate change, as well as supporting the economy’s recovery from COVID-19.
2. The aim of the statutory guidance is to explain the provisions of the Act and help public authorities to navigate the new regime. It provides 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 requirements of the new regime.
3. 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.
4. Further guidance has also been issued by the Competition and Markets Authority (CMA) on the operation of its new Subsidy Advice Unit (SAU).<sup>1</sup>
5. Between 1 July and 10 August 2022, the government undertook a public consultation of the draft subsidy control statutory guidance, which sought views on:
  - The structure, style, and form of the draft guidance,
  - the scope and content of the draft guidance, and
  - what further support should be available for public authorities and other stakeholders.

## Consultation details

6. The consultation was published online, and responses were submitted through an online response platform (Citizenspace) or by email. The consultation received 30 responses. Respondents included a broad range of stakeholders from across the UK including legal firms, academics, business representative organisations and trade industry groups, local government, and other public sector organisations. In addition to the formal

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<sup>1</sup> <https://www.gov.uk/government/publications/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit>.

consultation, BEIS has been working closely with a number of public authorities, including UK government departments and those in devolved administrations, to make improvements to the statutory guidance.

7. The government has analysed the responses to this public consultation and this document includes a summary of the responses received. A full list of respondents to this consultation is provided in [Annex A](#).
8. Respondents generally expressed broad support for the style, content, and form of the draft guidance, with most comments focusing on requests for additional information or expansion of material already included in the draft guidance. We have considered these suggestions and set out the government's response below.

# Responses to the consultation

## Overview of responses

9. In the government response sections, 'we' refers to the UK government.
10. We received a total of 30 responses to the consultation. Of these, 7 responded through the online platform and 23 responded by email. Of the responses, 11 were from business representative groups, industry bodies or enterprise partnerships, 8 were from legal or professional services firms, 4 were from higher education or research organisations, 3 were from public authorities, 2 were from private enterprises and 2 were from charities.
11. BEIS continues to liaise with the devolved administrations on the roll-out of the new subsidy control regime. The Secretary of State for Business, Energy, and Industrial Strategy (BEIS) received notification from the Scottish Government explaining they would not formally respond to this public consultation but would instead provide views directly in correspondence.

## Overall structure, form & style

12. The following question was posed in the consultation:

- 1. Do you have any comments regarding the overall structure, form, or style of the guidance?**

### Consultation position

13. The draft guidance was structured to lead public authorities through the process of giving a subsidy – or making a subsidy scheme – from start to finish. The draft guidance covered the definition of a subsidy, how to make an assessment against the principles, the various exemptions to the requirements set out in the Act

### Summary of stakeholder responses to the consultation

14. Not all respondents commented directly on the overall structure and clarity of the draft guidance, but those that did generally commented positively on its presentation. One respondent suggested that the length and technical nature of the guidance would be confusing for the beneficiaries of subsidies looking to understand their obligations under the new regime.
15. Among the comments on the overall structure were several suggestions for improvements to the document, including simplifying some of the technical language (particularly around assessment against the principles), using more worked examples to help illustrate the processes more clearly for public authorities, including more explicit

information where “no subsidy” would apply, making it clearer how the guidance applies to setting up subsidy schemes, restructuring the assessment chapter around the four-step assessment framework.

16. Other specific suggestion focused on a shorter-form version of the guidance designed with a broader audience in mind, as a way of introducing the subsidy regime and its concepts to people who have little or no prior experience of the policy. This was also a theme of many responses to question 5 (see [the further support section](#) below).

### Government response

17. The main purpose of the statutory guidance is to expand upon and explain the intention behind the provisions included in the Subsidy Control Act 2022. The main intended audience is public authorities, to help them to understand the obligations placed on them by the Act. With this in mind, we have tried to structure the statutory guidance in a way that mirrors the steps and processes a public authority must follow when awarding a subsidy or making a scheme.
18. However, the new subsidy regime can be organised in a number of ways and is not necessarily a linear progression of steps – the subsidy control requirements should be taken into account when designing a subsidy or scheme, but once the subsidy or scheme is finalised it is important to confirm that it is compliant with all these requirements.
19. Taking this into consideration we have rearranged the presentation of chapters based on feedback from the consultation and our wider stakeholder engagement. This included moving the energy and environment principles directly after the subsidy control principles, and then proceeding to the prohibitions and other specific requirements, which should be considered at an early stage of the design process along with possible exemptions.
20. We have also incorporated many of the changes suggested by consultation respondents, for example:
- We have made changes to simplify and streamline both the definitions and principles assessment chapters, placing emphasis on the key concepts and processes that should be followed, and moving the more detailed, technical information to the annexes.
  - We have also reorganised the principles assessment chapter to follow the structure of the four-step assessment framework, making this process easier to follow.
  - Where possible we have included more examples to better illustrate how concepts and processes will work in practice.
  - We have included more explicit information on situations where no subsidy is present and made more explicit references to making subsidy schemes throughout the statutory guidance.
  - We are also producing a shorter, summary “quick guide” to help introduce key concepts and processes for the new regime.

21. Taken together, we hope these changes have improved the overall utility of the statutory guidance for public authorities, simplifying some sections to improve readability and clarity for a wider audience without sacrificing the necessary technical detail.

## Definitions and terminology

22. The following question was posed in the consultation:

**2. Do you have any comments regarding the proposed wording of any part of the guidance?**

### Consultation position

23. The draft statutory guidance aimed to expand on the terminology and definitions set out in the Act, providing more detailed information for public authorities about the new processes and their new obligations under the regime.

### Summary of stakeholder responses to the consultation

24. Given the open nature of this question respondents suggested a large number of potential changes to specific text within the guidance, not all of which can be easily summarised here. However, several common themes were identified.

25. Several respondents suggested greater clarity on legal standing of the statutory guidance and whether public authorities should consider the guidance binding or otherwise. Another common request was to clearly define in the text terms that were open to interpretation, for example, which “certain” subsidies would qualify for referral to the Subsidy Advice Unit.

26. Much of the feedback received concerned expanding the text or clarifying procedural elements such as the timing for uploading information to the incentives to public authorities for doing so. This theme was also raised frequently in relation to the chapters on assessment against the principles, with several respondents asking for additional detail on objective criteria, measures and statistical measures that could be used to evidence things like inequality, economic benefit across the whole UK and market failure. Conversely, the inclusion of an equation for calculating amount of subsidy required was criticised by some respondents for being too subjective or prescriptive. Some confusion also arose around **Subsidies for Services of Public Economic Interest (SPEI)** as a category of support to address specific kinds of market failure and the concept of **SPEI assistance (SPEIA)**, exemptions to subsidy control requirements that apply to lower value SPEI subsidies.

27. As with questions 3 and 4, several respondents requested more specific guidance relating to specific sectors, notably the agricultural and research, development & innovation (RD&I) sectors, or asked for additional detail on specific aspects of the



regime that had implications for certain sectors. An example of the latter is the distinction between economic and non-economic activities for the purposes of defining a subsidy, which was noted to raise particular issues around charities and again in the RD&I sectors.

## Government response

28. In analysing the feedback from respondents, we have incorporated as many of the suggested changes as possible. Where this has not been possible, it has generally been for one of the following reasons:

- **The comments did not reflect the underlying policy or legislation** – the statutory guidance by necessity must reflect the underlying legislation and as such, any such issues cannot be addressed in the guidance.
- **The comments were beyond the scope of the statutory guidance** – the statutory guidance aims to be a comprehensive guide to the new regime, but some issues sit outside the core purpose of the guidance or are necessarily dealt with elsewhere, for example, requests for comparisons to EU State aid processes and concepts. While these may be superficially useful in some instances, they are beyond the scope of the statutory guidance on domestic subsidy control because EU State aid no longer applies to the UK, except in very limited circumstances.<sup>2</sup>
- **The comments will be dealt with in supplementary guidance** – as noted above we are producing a short-form, simple version of the guidance that will be published as a companion “quick guide” alongside the main statutory guidance, as many respondents requested. We are also producing separate guidance relating to subsidies in the agricultural and fisheries sectors and for the three streamlined routes currently in development.<sup>3</sup> We will also continue to consider publishing further products that will support public authorities to understand the new regime.

29. In terms of specific themes from the consultation responses, we have made efforts to more clearly describe how public authorities should treat specific elements of the guidance - i.e., where we are describing provisions of the Act (a public authority “must” or “has to”), where we are advising on compliance with the Act (a public authority is “advised to” or “recommended to”) and where guidance is beyond the scope of the Act but considered best practice (a public authority “may”, “could” or “is encouraged” to).

30. We have also made improvements throughout the document to clarify and expand on terminology used, with particular attention to the definitions chapter and annex, assessment chapter and annex, the transparency chapter and the chapters dealing with **Subsidies and Schemes of Interest and Particular Interest (SSoI and SSoPI)** and

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<sup>2</sup> Subsidies in scope of the Northern Ireland Protocol are exempt from the domestic subsidy control regime and are dealt with [in separate guidance](#).

<sup>3</sup> The three streamlined routes currently in development are for Research, Development & Innovation, Levelling Up and Clean Energy.

the process of referrals to the **Subsidy Advice Unit (SAU)**.<sup>4</sup> To minimise confusion between SPEI and SPEIA, we have now incorporated information on SPEIA into the chapter dealing with **Minimum Financial Assistance (MFA)**.

31. In making these changes we have attempted to maintain the balance between covering as much detail as possible without being too prescriptive, and therefore stifling interpretation or decision-making which should rightly sit with public authorities.

## Scope and specific content

32. The following questions were posed in the consultation:

3. **Would you prefer to see additional information or advice put into any sections of the guidance?**
4. **Are there any sections of the guidance you do not think it is necessary to include in the final publication of the document?**

## Consultation position

33. The draft statutory guidance aims to be comprehensive, empowering public authorities to understand and fulfil their obligations under the Act, without being overly prescriptive. This avoids taking decision-making out of the hands of public authorities, something which is a key aim and benefit of the new regime.

## Summary of stakeholder responses to the consultation

34. As with the previous question, respondents suggested a wide range of potential changes to the draft statutory guidance, often in relation to issues specific to their sector or sphere of influence. However, a number of recurring themes were identified, as summarised below.

35. Treatment of schemes was raised multiple times, with respondents generally feeling that the guidance was not sufficiently clear on when and how the various processes and requirements applied to subsidy schemes. A number of comments also concerned additions to the assessment chapters to improve clarity for public authorities.

36. Several comments related to SSol and SSoPI and related processes, seeking further clarity on relocation subsidies, how and when to engage with the SAU and the specific processes related to referrals. Another common question was around intermediary awards, i.e., where one public authority such as a government department distributed subsidies through another, such as a local authority, and which public authority would therefore be responsible for meeting the subsidy control requirements.

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<sup>4</sup> Additional information on the role of the SAU and the referrals process is set out in separate guidance published by the Competition and Markets Authority - [Guidance on the operation of the subsidy control functions of the Subsidy Advice Unit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guidance-on-the-operation-of-the-subsidy-control-functions-of-the-subsidy-advice-unit).

37. Requests were made for further information relating to the four-limb test for defining a subsidy, with particular focus on the concept of common control, the **Commercial Market Operator (CMO)** principle and the concept of specificity. In particular, consultation respondents were keen to understand how these latter concepts related to similar concepts under the EU State aid regime.
38. As with previous questions, a number of respondents asked for specific changes to address issues in the agricultural, RD&I, charitable and heritage sectors. There were also a number of comments seeking to clarify instances where no subsidy would be considered to have been awarded, and on the rules related to how subsidies should be valued.

## Government response

39. As with responses to question 2, we have incorporated as many of the suggested changes from respondents as possible, noting again the main exceptions were where feedback was out of scope, addressed elsewhere or otherwise could not be appropriately dealt with through guidance.
40. As noted above, an example of the latter is where respondents asked for the guidance to make direct comparisons to the EU State aid regime, for instance, in relation to the CMO principle or concept of specificity. While we accept that comparisons may be helpful in some instances for stakeholders who have previously used the EU regime, we do not feel it is appropriate to include direct comparisons in this statutory guidance document. While the two regimes are linked through shared compliance with the UK-EU Trade and Cooperation Agreement (TCA) and share some similar concepts, they are not the same, and inviting direct comparisons may cause confusion to those stakeholders unfamiliar with the EU rules or who are new to subsidy control policy.
41. As noted above in our responses to question 1 and 2, we have taken steps to streamline and improve the utility of the assessment chapters by organising the different principles into a four-step assessment framework, and we have improved the overall representation of subsidy schemes throughout the document. We have also included further guidance on who subsidy requirements will apply to in situations where more than one public authority is involved in distributing subsidies or managing schemes.
42. The chapters on SSol and SSoPI have been extensively redrafted to reflect the forthcoming regulations, and we have also made improvements to the chapter dealing with SAU referral. The CMA has also [produced separate guidance](#) on the role of the SAU and referral processes, which will be published at the same time as the main statutory guidance.
43. In response to specific feedback, we have included additional detail covering sectors such as RD&I, while expanding guidance on economic versus non-economic activities to better encompass sectors such as heritage and charities. As noted above, we are also producing supplementary guidance that will cover subsidies and schemes in the agricultural and fisheries sectors.

44. The Government will also make regulations on gross cash amount and gross cash equivalent, which set out how public authorities should value subsidies. These regulations will be reflected in a further annex to the main statutory guidance, which will be available before the commencement of the new regime on 4 January 2023. Updates will also be made to Chapter 12 on transparency to reflect the forthcoming regulations on the information requirements for public authorities to upload to the database. These future additions have been clearly identified in the version published alongside this consultation response.

## Further support

45. The following question was posed in the consultation:

- 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.**

## Consultation position

46. In order to help public authorities and other stakeholders familiarise themselves with the new regime, the Government is developing a suite of products that will sit alongside the main statutory guidance and will run introductory sessions through the autumn.

## Summary of stakeholder responses to the consultation

47. Respondents to the consultation made numerous suggestions for the content of supporting material and explanatory sessions. A summary of the most common requests follows:

- A short-form version of the guidance to help introduce key concepts and requirements to a broad audience.
- More worked examples to help public authorities plan their own assessment against the principles.
- Introductory sessions covering key topics and providing a forum to feed back to policy teams. Specific topics mentioned included transparency requirements, the role of the Competition Appeal Tribunal, the role of the SAU, the four-limb test and assessment against the principles.
- Additional guidance on specific schemes and streamlined routes.

## Government response

48. As noted above, the Government will be running a series of in-person and online sessions for stakeholders throughout the autumn, covering the topics mentioned above in greater detail and allowing the opportunity for questions to be answered.

49. In addition to the main statutory guidance, we will be producing a range of supplementary guidance and products designed to support public authorities, more details of which are set out in the [next steps](#) section. This will include specific guidance on streamlined routes as they are developed.

## Public Sector Equality Duty

### Consultation position

50. We invited respondents' views on whether the proposed statutory 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.

51. We provisionally considered that the statutory guidance did not create any foreseeable impacts of concern under the Public Sector Equality Duty.

### Summary of stakeholder responses to the consultation

52. Question 6 invited respondents' views on whether the proposed statutory guidance might have any potential impact on people who share protected characteristics, in different ways from people who do not share them. Of those who responded to the question (30% of overall respondents) a majority (67%) did not consider there would be any impact stemming from either the statutory guidance or the underlying regime. Of the remaining 33%, two respondents noted that the complexity of the new regime could be a barrier to those without the means to pay for legal advice to interpret it, while another suggested there was insufficient data to make an assessment at this time.

### Government response

53. We welcome respondents' engagement with this question. Based on the consultation feedback we believe our original position was correct, and do not consider that the guidance will impact those with particular protected characteristics differently to those who do not share those protected characteristics. Further still, we believe that the statutory guidance, accompanying documents and other outreach materials will support and empower public authorities to give subsidies without needing to seek legal advice in most cases.

54. Generally, we consider that cross-referring to existing PSED guidance is good practice and will consider doing so where appropriate in the statutory guidance and other supporting material. More broadly, we consider that incorporating existing legal requirements beyond those related to subsidy control into the design of subsidies or schemes is the responsibility of individual public authorities.

## Next steps

### Publication of statutory and non-statutory guidance

55. The statutory guidance has been published<sup>5</sup> in its final form alongside this consultation response. It will be updated from time to time to reflect the development of best practice as the new regime beds in or in response to changes to the regime, for instance, judgements handed down by the Competition Appeal Tribunal.

56. Additional non-statutory guidance and other materials will continue to be produced as necessary, for example, in support of new streamlined routes. Further products published, or planned for publication, ahead of commencement of the regime include a shorter “quick guide” version of the guidance, which serves as an introduction to the new regime, and guidance on subsidies relating to the agricultural sector.

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<sup>5</sup> See <https://www.gov.uk/government/publications/uk-subsidy-control-statutory-guidance> for details.

# ANNEX A: List of respondents to the consultation on draft subsidy control statutory guidance

- Advanced Propulsion Centre
- Anthony Collins Solicitors
- Arts Council England
- British Beer & Pub Association
- British Film Institute
- Clive Owen LLP
- Competere Advisory Council
- Dentons
- DWF Group
- East Suffolk Council
- Enterprise Holdings
- Food Standards Agency
- Highlands and Islands Enterprise
- Industrial Communities Alliance
- Lawyers in Local Government
- Linklaters LLP
- London School of Economics
- Manufacturing Technology Centre
- NNB Generation Company (SZC) Limited
- Pembrokeshire County Council
- Scottish Enterprise
- Society of Maritime Industries (SMI)
- South of Scotland Enterprise
- The British Vehicle Rental and Leasing Association (BVRLA)
- The English Sports Council (Sport England)
- The National Lottery Community Fund

- The National Lottery Heritage Fund
- Trowers & Hamlins LLP
- University of Cambridge Legal Services Division
- UNW LLP



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