



Sarah Cardell
General Counsel
Competition and Markets Authority

25 March 2024

Dear Ms Cardell,

Thank you for the opportunity to provide input to your public consultation on proposed approach to monitoring under the Subsidy Control Act 2022. As Minister for Small Business, Innovation, Tourism & Trade with portfolio responsibility for Subsidy Control, I have provided comments below.

I welcome the CMA's on-going commitment to involve Scottish Government, at both Ministerial and official level, on the operation of the Subsidy Control functions of the SAU. As a Devolved Government, my officials remain committed to maintaining their constructive engagement with this process and I hope their input helps ensure the new regime meets the needs of all the devolved nations. To this effect, I have outlined some specific points officials have raised below:

- Scottish Government ask that the SAU continue to monitor the advice that they provide and whether the Public Bodies receiving it are following their recommendations. It appears there are currently no plans for SAU to conduct a post-referral follow up for those who do not follow the SAU recommendations.
- Scottish Government have a long-standing concern over the lack of challenge and redress for non-compliant subsidies and the insufficient monitoring powers granted to the SAU, which restrict its effectiveness in ensuring subsidies abide by the regulations. These concerns remain a year into the new regime and have been regularly raised with UK Government at official level.
- Scottish Government have concerns that the financial cost of raising and pursuing a challenge will dissuade potential challenges being made. Not only could this result in an increase in non-compliant subsidies, but also a lack of viable case law to draw on in the future, which could be challenging in determining whether the regime is working effectively.
- The amount of time and resources required for any scheme and principles assessment is unreasonable and burdensome to Public Bodies. This goes

against the initial intention of the regime, which was meant to be 'light touch'. This risks increasing the occurrence of non-compliance, especially if there is little risk of challenge or redress.

- UK Government should implement further streamlined routes. Recent instances of flooding across the UK serve an example of a streamlined route that could be implemented by UKG to aid Public Bodies providing funding for a similar purpose, ensuring a unified approach.
- Due to the administrative burden placed on Public Bodies the process of assessing subsidies can be confusing and daunting. This could cause non-compliance as a result of misunderstanding what is required or a reluctance to take the time to understand and follow the rules.
- There is a greater need for user-friendly training resources such as online videos and guides. In particular, more comprehensive guidance on completing principles assessments for all levels of subsidy, not just low value subsidies.
- Scottish Government recognise the limited scope the SAU has to address the above issues and understand the SAU is bound by the restrictive powers granted to it by the UK Government via the Act. I therefore would ask what the proposed approach to performing its monitoring role would be if there does indeed continue to be an absence of legal precedent due to lack of challenge?

Officials look forward to continuing positive and constructive engagement with SAU. Scottish Government will endeavour to ensure this strong relationship continues throughout monitoring and development of the new regime.

Richard Lochhead

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