



# Subsidy Control Act 2022

## 2022 CHAPTER 23

### PART 4

#### CMA: REFERRALS AND FUNCTIONS

### CHAPTER 1

#### FUNCTIONS ON REFERRALS OF SUBSIDIES AND SCHEMES

##### *Mandatory referrals*

#### **52 Mandatory referral to CMA**

- (1) A public authority must request a report from the CMA—
  - (a) before giving a subsidy, or making a subsidy scheme, of particular interest, or
  - (b) where directed to do so by the Secretary of State under section 55.
- (2) The request must—
  - (a) include the information in relation to the subsidy or subsidy scheme that would be required under section 34, if the subsidy or scheme were to be given or made,
  - (b) provide such other information as is specified in regulations under subsection (3)(a),
  - (c) explain, in the case of a request under subsection (1)(a), why the public authority considers that the subsidy or subsidy scheme would meet the criteria for being a subsidy, or subsidy scheme, of particular interest,
  - (d) include an assessment by the public authority as to whether the subsidy or scheme would comply with the requirements of Chapters 1 and 2 of Part 2, and the reasons for that conclusion, and
  - (e) include any evidence relevant to that assessment.
- (3) The Secretary of State may by regulations—

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- (a) specify further information that must be included in a request under this section;
  - (b) make provision as to the form of a request under this section.
- (4) Regulations under subsection (3)(a) and (b) are subject to the negative procedure.

### **53 CMA reporting period for mandatory referral**

- (1) The CMA must, before the end of five working days beginning with the day on which a request is received under section 52(1), give a notice to the public authority—
- (a) that the request complies with the requirements under section 52, or
  - (b) providing reasons as to why the request does not comply with those requirements.
- (2) Where the CMA gives a notice under subsection (1)(a), the CMA must—
- (a) before the end of the reporting period, publish a report on the proposed subsidy or subsidy scheme, in such manner as the CMA considers appropriate, and
  - (b) give a copy of the report to the public authority and the Secretary of State as soon as reasonably practicable after it is published.
- (3) Subject to subsections (4) and (6), “reporting period” means the period of 30 working days beginning with the day on which the notice under subsection (1)(a) is given to the public authority.
- (4) The reporting period may be extended if an extension is agreed in writing between the CMA and the public authority before the end of the reporting period.
- (5) Where the reporting period is extended under subsection (4), the CMA must publish, in such manner as the CMA considers appropriate, a notice stating that the reporting period has been extended and by how much, and the reasons for the extension.
- (6) The Secretary of State may direct that the reporting period is extended, in response to a request from the CMA.
- (7) A request under subsection (6)—
- (a) may only be made if the CMA considers that there are exceptional circumstances to justify an extension,
  - (b) must include the reasons for seeking an extension, and
  - (c) must be published, with those reasons, in such manner as the CMA considers appropriate.
- (8) A direction under subsection (6)—
- (a) may only be given if the Secretary of State is satisfied that there are exceptional circumstances which justify an extension,
  - (b) may not be given in relation to a subsidy or subsidy scheme given or made by the Secretary of State, and
  - (c) may not be given so as to provide for an extension which exceeds 40 working days beginning with the day on which the reporting period would otherwise end.
- (9) As soon as reasonably practicable after receiving a request under subsection (6), the Secretary of State must—

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- (a) send a copy of a direction given under that subsection to the CMA and to the public authority, or
  - (b) give notice to the CMA and the public authority that the request has been rejected and provide reasons for that decision.
- (10) Any day falling within the period beginning with the day on which a request is published by the CMA under subsection (7) and ending with the day on which a direction is given under subsection (6), or a notice is given under subsection (9), does not count for the purposes of calculating the reporting period.
- (11) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, a direction given under subsection (6) or a notice given under subsection (9).
- (12) The Secretary of State may by regulations amend the periods of time specified in subsections (1) and (3).
- (13) Regulations under subsection (12) are subject to the affirmative procedure.

#### **54 Cooling off period following mandatory referral**

- (1) A public authority may not give a subsidy or make a subsidy scheme, in relation to which the CMA has provided a report, before the end of the cooling off period.
- (2) “Cooling off period” means the period of five working days beginning with the day after the day on which the CMA publishes the report under section 53(2).
- (3) If the CMA does not publish a report before the end of the reporting period, the public authority may give the subsidy or make the subsidy scheme after the day on which the reporting period expires.
- (4) The Secretary of State may direct that the cooling off period is extended where the Secretary of State considers that the CMA’s report has identified that there are serious deficiencies in the public authority’s assessment under section 52(2)(d).
- (5) The Secretary of State—
- (a) must send a copy of a direction given under subsection (4) to the public authority, and
  - (b) must publish the direction in such manner as the Secretary of State considers appropriate.
- (6) The power in subsection (4) may not be exercised so as to provide for an extension which exceeds 30 working days beginning with the day on which the cooling off period would otherwise end under subsection (2).
- (7) The Secretary of State may by regulations—
- (a) amend the period of time specified in subsection (2);
  - (b) amend subsection (4) to reflect any changes made to the content of the CMA’s report by regulations made under section 59.
- (8) Regulations under subsection (7)(a) or (b) are subject to the affirmative procedure.

## **55 Call-in direction**

- (1) The Secretary of State may direct a public authority to request a report from the CMA in relation to a proposed subsidy or subsidy scheme.
- (2) A direction under this section may be given in relation to—
  - (a) a subsidy or subsidy scheme of interest, or
  - (b) any subsidy or subsidy scheme in respect of which the Secretary of State considers—
    - (i) there is a risk of failure to comply with the requirements of Chapters 1 and 2 of Part 2, or
    - (ii) there is a risk of negative effects on competition or investment within the United Kingdom.
- (3) The Secretary of State—
  - (a) must send a copy of a direction given under this section to the public authority and to the CMA, and
  - (b) must publish the direction in such manner as the Secretary of State considers appropriate.

### *Voluntary referrals*

## **56 Voluntary referral to CMA**

- (1) A public authority may request a report from the CMA before giving a subsidy, or making a subsidy scheme, of interest.
- (2) The request must—
  - (a) include the information in relation to the subsidy or subsidy scheme that would be required under section 34, if the subsidy or scheme were to be given or made,
  - (b) provide such other information as is specified in regulations under subsection (3)(a),
  - (c) explain why the public authority considers that the subsidy or subsidy scheme would meet the criteria for being a subsidy, or subsidy scheme, of interest,
  - (d) include an assessment by the public authority as to whether the subsidy or scheme would comply with the requirements of Chapters 1 and 2 of Part 2, and the reasons for that conclusion, and
  - (e) include any evidence relevant to that assessment.
- (3) The Secretary of State may by regulations—
  - (a) specify further information that must be included in a request under this section;
  - (b) make provision as to the form of a request under this section.
- (4) Regulations under subsection (3)(a) and (b) are subject to the negative procedure.

## **57 CMA reporting period for voluntary referral**

- (1) Where the CMA receives from a public authority a request under section 56(1) that complies with the requirements under section 56(2), the CMA must decide whether to prepare a report in response to the request.

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- (2) The CMA must, before the end of five working days beginning with the day on which a request is received under section 56(1), give notice to the public authority—
  - (a) that a report will be prepared in response to the request, or
  - (b) providing reasons as to why the CMA has decided not to prepare a report.
- (3) Subject to subsection (4), where the CMA gives a notice under subsection (2)(a), the CMA must—
  - (a) before the end of the reporting period, publish a report on the proposed subsidy or subsidy scheme, in such manner as the CMA considers appropriate, and
  - (b) give a copy of the report to the public authority and the Secretary of State as soon as reasonably practicable after it is published.
- (4) If the proposed subsidy is given, or scheme is made, before the CMA has prepared or published its report, the CMA may decide whether or not to prepare or publish the report.
- (5) Subject to subsection (6), “reporting period” means—
  - (a) the period of 30 working days beginning with the day on which the notice under subsection (2)(a) is given to the public authority, or
  - (b) such other period as is agreed in writing between the CMA and the public authority.
- (6) The reporting period may be extended if an extension is agreed in writing between the CMA and the public authority before the end of the reporting period.
- (7) Where the reporting period is agreed under subsection (5)(b) or extended under subsection (6), the CMA must publish a notice setting out the agreement or extension, and the reasons for it, in such manner as the CMA considers appropriate.
- (8) The Secretary of State may by regulations amend the periods of time specified in subsections (2) and (5)(a).
- (9) Regulations under subsection (8) are subject to the affirmative procedure.

## **58 Call-in direction following voluntary referral**

- (1) This section applies where—
  - (a) the CMA has given a notice under section 57(2)(a) that it will prepare a report in response to a voluntary referral request made in relation to a subsidy or subsidy scheme, and
  - (b) the Secretary of State has given a call-in direction under section 55 in relation to that subsidy or scheme.
- (2) The voluntary referral request is treated as if it was a mandatory referral request (and sections 53 and 54 apply accordingly) where—
  - (a) the report in response to the voluntary referral request has not been published, and
  - (b) the reporting period for that report has not expired.
- (3) The voluntary referral request is treated as if it was a mandatory referral request (and sections 53 and 54 apply accordingly) where—
  - (a) the report in response to the voluntary referral request has not been published, and

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- (b) the reporting period for that report has expired, but the reporting period under section 53(3) is to be read as a period of 10 working days.
- (4) Where the report in response to the voluntary referral request has been published, but the subsidy has not been given, or the subsidy scheme has not been made, section 54 applies, and the references in that section to the CMA’s report are to be read as references to the report published in response to the voluntary referral request.
- (5) In this section—
  - “mandatory referral request” means a request made under section 52;
  - “voluntary referral request” means a request made under section 56.

*Mandatory and voluntary referrals: contents of CMA report*

**59 CMA report following mandatory or voluntary referral**

- (1) The CMA’s report under section 53 or 57 must include an evaluation of the public authority’s assessment under section 52(2)(d) or 56(2)(d).
- (2) The evaluation must take into account any effects of the proposed subsidy or scheme on competition or investment within the United Kingdom.
- (3) The report may also include—
  - (a) advice about how the public authority’s assessment under section 52(2)(d) or 56(2)(d) might be improved, and
  - (b) advice about how the proposed subsidy or scheme may be modified to ensure compliance with the requirements of Chapters 1 and 2 of Part 2.
- (4) The Secretary of State may by regulations—
  - (a) amend subsection (1), (2) or (3) to make provision about the content of the CMA’s report;
  - (b) make provision as to the form of the report.
- (5) Regulations under subsection (4)(a) are subject to the affirmative procedure.
- (6) Regulations under subsection (4)(b) are subject to the negative procedure.

*Post-award referrals*

**60 Post-award referrals**

- (1) The Secretary of State may refer a subsidy or subsidy scheme to the CMA after the subsidy has been given or the subsidy scheme has been made.
- (2) A referral under subsection (1) may be made in relation to any subsidy or subsidy scheme in respect of which the Secretary of State considers—
  - (a) that there has or may have been a failure to comply with the requirements of Chapters 1 and 2 of Part 2, or
  - (b) that there is a risk of negative effects on competition or investment within the United Kingdom.

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- (3) The Secretary of State must, at the same time as making a referral under subsection (1), direct the public authority to provide to the CMA—
  - (a) any assessment carried out by the public authority, before the subsidy was given or the scheme was made, as to whether the subsidy or scheme would comply with the requirements of Chapters 1 and 2 of Part 2, and the reasons for that conclusion,
  - (b) any evidence relevant to that assessment,
  - (c) in a case where such an assessment is not provided, the reasons for that,
  - (d) any information that the public authority failed to enter in the subsidy database in accordance with Chapter 3 of Part 2, and
  - (e) such other information as is specified in regulations under subsection (8)(a).
- (4) Where the Secretary of State decides to make a referral under subsection (1), the referral, together with a direction given under subsection (3), must be made before the end of 20 working days beginning with—
  - (a) the day on which the entry in respect of the subsidy or scheme is entered into the subsidy database, or
  - (b) the day on which the subsidy is given or the scheme is made, in the case of a subsidy or scheme to which section 41 applies.
- (5) The Secretary of State—
  - (a) must publish a referral made under subsection (1) in such manner as the Secretary of State considers appropriate, and
  - (b) must send a copy of a direction given under subsection (3) to the public authority and the CMA.
- (6) The public authority must provide to the CMA the information required under subsection (3) before the end of the information period.
- (7) “Information period” means the period of 20 working days beginning with the day on which the direction is given.
- (8) The Secretary of State may by regulations—
  - (a) specify further information that must be provided under subsection (3);
  - (b) prescribe the form in which the information required under subsection (3) is to be provided;
  - (c) amend the periods of time specified in subsections (4) and (7).
- (9) Regulations under subsection (8)(a) or (b) are subject to the negative procedure.
- (10) Regulations under subsection (8)(c) are subject to the affirmative procedure.

## **61 CMA reporting period for post-award referrals**

- (1) Where the CMA receives from the Secretary of State a referral under section 60, the CMA must—
  - (a) before the end of the reporting period, publish a report on the subsidy or subsidy scheme to which the referral relates, in such manner as the CMA considers appropriate, and
  - (b) give a copy of the report to the public authority and the Secretary of State as soon as reasonably practicable after it is published.

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- (2) Subject to subsections (3) and (5), “reporting period” means the period of 30 working days beginning with the earlier of—
  - (a) the day on which the information required under section 60(3) is provided to the CMA by the public authority, and
  - (b) the day after the information period in section 60(7) ends.
- (3) The reporting period may be extended if an extension is agreed in writing between the CMA and the public authority before the end of the reporting period.
- (4) Where the reporting period is extended under subsection (3), the CMA must publish, in such manner as the CMA considers appropriate, a notice that the reporting period has been extended and by how much, and the reasons for the extension.
- (5) The Secretary of State may direct that the reporting period is extended, in response to a request from the CMA.
- (6) A request under subsection (5)—
  - (a) may only be made if the CMA considers that there are exceptional circumstances to justify an extension,
  - (b) must include the reasons for seeking an extension, and
  - (c) must be published, with those reasons, in such manner as the CMA considers appropriate.
- (7) A direction under subsection (5)—
  - (a) may only be given if the Secretary of State is satisfied that there are exceptional circumstances to justify an extension,
  - (b) may not be given in relation to a subsidy or subsidy scheme given or made by the Secretary of State, and
  - (c) may not be given so as to provide for an extension which exceeds 40 working days beginning with the day on which the reporting period would otherwise end.
- (8) As soon as reasonably practicable after receiving a request under subsection (5) the Secretary of State must—
  - (a) send a copy of a direction given under subsection (5) to the CMA and to the public authority, or
  - (b) give notice to the CMA and the public authority that the request has been rejected and provide reasons for that decision.
- (9) Any day falling within the period beginning with the day on which a request is published by the CMA under subsection (6) and ending with the day on which a direction is given under subsection (5), or a notice is given under section (8), does not count for the purposes of calculating the reporting period.
- (10) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, a direction given under subsection (5) or a notice given under subsection (8).
- (11) The Secretary of State may by regulations amend the period of time specified in subsection (2).
- (12) Regulations under subsection (11) are subject to the affirmative procedure.



## **62 CMA report following post-award referral**

- (1) The CMA's report under section 61 must include an evaluation of the public authority's assessment under section 60(3)(a).
- (2) The evaluation must take into account any effects of the proposed subsidy or scheme on competition or investment within the United Kingdom.
- (3) If an assessment was not provided under section 60(3)(a), that fact should be stated in the report, along with any reasons provided under section 60(3)(c).
- (4) If the subsidy or subsidy scheme is ongoing, the report may also include advice about how the subsidy or scheme may be modified to ensure compliance with the requirements of Chapters 1 and 2 of Part 2.
- (5) The Secretary of State may by regulations—
  - (a) amend subsection (1), (2), (3) or (4) to make provision about the content of the CMA's report under section 61;
  - (b) make provision as to the form of that report.
- (6) Regulations under subsection (5)(a) are subject to the affirmative procedure.
- (7) Regulations under subsection (5)(b) are subject to the negative procedure.

### *Exemptions*

## **63 Referrals in relation to subsidy schemes**

The preceding provisions of this Chapter relating to subsidies do not apply to a subsidy given under a subsidy scheme.

## **64 Other exemptions**

- (1) This Chapter does not apply in relation to subsidies, or subsidy schemes that provide only for the giving of such subsidies, as described in the following sections—
  - (a) section 10 (streamlined subsidy schemes);
  - (b) section 36 (minimal financial assistance);
  - (c) section 38 (SPEI assistance);
  - (d) section 43 (natural disasters and other exceptional circumstances);
  - (e) section 44 (national or global economic emergencies);
  - (f) section 45 (national security);
  - (g) section 46 (Bank of England monetary policy);
  - (h) section 48 (legacy and withdrawal agreement subsidies);
  - (i) section 49 (tax measures);
  - (j) section 50 (large cross-border or international cooperation projects).
- (2) This Chapter does not apply in relation to a subsidy, or subsidy scheme—
  - (a) to which a financial stability direction given under section 47 (financial stability) applies, or
  - (b) which is otherwise given or made by the Treasury or the Bank of England (or by both acting jointly) only for the reasons mentioned in subsection (3) of that section (prudential reasons).

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- (3) The Secretary of State may direct that sections 52, 53, 54 and 55 (mandatory referral requirements) do not apply, or cease to apply, in relation to a specified subsidy or subsidy scheme.
- (4) A direction under subsection (3) may only be given where the Secretary of State is satisfied that there are urgent and exceptional circumstances that justify the direction being given in the public interest.
- (5) A direction given under subsection (3) must be laid before Parliament.
- (6) The Secretary of State—
  - (a) must send a direction given under this section to the public authority giving the subsidy or making the subsidy scheme, and
  - (b) must publish the direction in such manner as the Secretary of State considers appropriate.