



Subsidy Control Act 2022

2022 CHAPTER 23

PART 4

CMA: REFERRALS AND FUNCTIONS

CHAPTER 1

FUNCTIONS ON REFERRALS OF SUBSIDIES AND SCHEMES

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.
- (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,

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- (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.

Commencement Information

- I1** S. 60 in force at Royal Assent for specified purposes, see [s. 91\(1\)\(b\)](#)
- I2** S. 60 in force at 4.1.2023 in so far as not already in force by [S.I. 2022/1359, reg. 2](#)

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.
- (2) Subject to subsections (3) and (5), “reporting period” means the period of 30 working days beginning with the earlier of—

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- (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.

Commencement Information

I3 S. 61 in force at Royal Assent for specified purposes, see [s. 91\(1\)\(b\)](#)

Changes to legislation: *There are currently no known outstanding effects for the Subsidy Control Act 2022, Cross Heading: Post-award referrals. (See end of Document for details)*

I4 S. 61 in force at 4.1.2023 in so far as not already in force by S.I. 2022/1359, reg. 2

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.

Commencement Information

I5 S. 62 in force at Royal Assent for specified purposes, see **s. 91(1)(b)**

I6 S. 62 in force at 4.1.2023 in so far as not already in force by S.I. 2022/1359, reg. 2

Changes to legislation:

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