EXPLANATORY MEMORANDUM TO

SUBSIDY CONTROL (INFORMATION-GATHERING POWERS) (MODIFICATION) REGULATIONS 2022

2022 No. 1152

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 Section 67(1) of the Subsidy Control Act 2022 (the "Subsidy Control Act") applies sections 41 to 43 of the United Kingdom Internal Market Act 2020 (the "UKIM Act") (which make provision about information-gathering powers, enforcement, and penalties) for the purpose of assisting the Competition and Markets Authority (the "CMA") in carrying out monitoring and reporting functions on subsidy control under section 65 of the Subsidy Control Act.

2.2 This instrument makes modifications to sections 41 to 43 of the UKIM Act in how those sections are to apply by virtue of the Subsidy Control Act to the CMA's monitoring and reporting functions under the Subsidy Control Act.

2.3 Those modifications are to:

(a) remove the requirement on the CMA to consult the Devolved Administrations when the CMA consults on its policy statement under section 42(6) or (8) of the UKIM Act about enforcement of its information-gathering powers under section 41 of the UKIM Act, which are powers that may be used for the CMA's subsidy control monitoring and reporting functions under section 65 of the Subsidy Control Act. Where this modification applies, the CMA is therefore required to consult only the Secretary of State and such other persons as the CMA considers appropriate;

(b) remove the requirement on the Secretary of State to consult the Devolved Administrations when the Secretary of State consults on making regulations setting the penalties the CMA may impose under section 42(1) of the UKIM Act in relation to the CMA's functions under the Subsidy Control Act. Where this modification applies, the Secretary of State is therefore required to consult only the CMA and such other persons as the Secretary of State considers appropriate; and

(c) remove the requirement on the CMA, when it issues a notice requiring information for its functions under the Subsidy Control Act, to specify which of the functions listed under section 41(1) of the UKIM Act the notice relates to (as the notice can only be for a subsidy control function where this modification applies, meaning this requirement is unnecessary).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland, and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland, and Northern Ireland.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument modifies sections 41 to 43 of the UKIM Act in application of those sections by virtue of section 67(1) of the Subsidy Control Act.

6.2 Section 65 of the Subsidy Control Act gives the CMA certain monitoring and reporting functions in relation to subsidy control.

6.3 Section 67(1) of the Subsidy Control Act applies sections 41 to 43 of the UKIM Act (which make provision about information-gathering powers, enforcement, and penalties) for the purpose of assisting the CMA in carrying out those monitoring and reporting functions.

6.4 Section 67(2) of the Subsidy Control Act makes certain modifications to section 42 and 43 of the UKIM Act in application of those sections by virtue of section 67(1) of the Subsidy Control Act.

6.5 This instrument makes further necessary modifications to section 41 to 43 of the UKIM Act in application of those sections by virtue of section 67(1) of the Subsidy Control Act.

6.6 This is the first use of the power in section 67(3) of the Subsidy Control Act which allows the Secretary of State by regulations to make modifications to sections 41 to 43 of the UKIM Act in the application of those sections by virtue of section 67(1) of the Subsidy Control Act.

7. Policy background

What is being done and why?

7.1 This instrument modifies sections 41 to 43 of the UKIM Act in their application by virtue of the Subsidy Control Act. The Subsidy Control Act itself provides the framework for a new, UK-wide subsidy control regime. This regime will enable public authorities, including devolved administrations and local authorities, to give subsidies that are tailored to their local needs and that drive economic growth, while minimising distortion to UK competition and investment and protecting our international obligations.

7.2 The regime has been designed to replace the European Union State aid regime and builds on the regime put in place to implement the provisions agreed under the Trade and Cooperation Agreement with the European Union.

7.3 The Subsidy Control Act sets up a new unit at the Competition and Markets Authority (CMA) called the Subsidy Advice Unit (SAU). To support the SAU's monitoring functions, the Subsidy Control Act also applies certain information-gathering powers granted to the CMA under the UKIM Act for use by the SAU. These powers are set out in section 41 to 43 of the UKIM Act and are applied to the SAU by virtue of section 67 of the Subsidy Control Act.

7.4 The UKIM Act requires the CMA and the Secretary of State consult with the Devolved Administrations over certain changes made to the information-gathering powers, namely where the Secretary of State proposes to change the level of penalty imposed under the powers, or where the CMA prepares or changes the statement of policy under which the powers may be used. This requirement to consult the Devolved Administrations was introduced to the UKIM Act owing to the unique position of importance in the CMA's role between the four governments of the United Kingdom under that legislation.

7.5 The subsidy control regime, however, will apply uniformly across the United Kingdom and subsidy control is a power reserved to Westminster. This instrument therefore removes the obligation for the CMA to consult the Devolved Administrations when preparing or altering the statement of policy or for the Secretary of State to consult the Devolved Administrations when making regulations about penalties for the information-gathering powers, as they apply to the SAU for subsidy control purposes by virtue of the Subsidy Control Act.

7.6 The instrument does still, however, stipulate that the CMA and the Secretary of State must each consult such other persons they consider appropriate when issuing or revising a policy statement or making penalty regulations. Where the Devolved Administrations' interests are sufficiently affected by such changes to the information-gathering powers such that the CMA and/ or the Secretary of State consider it appropriate to consult them, they will be required to do so.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The issue of consolidation does not arise as this instrument does not amend any legislation.

10. Consultation outcome

10.1 No formal consultation has been conducted regarding this instrument. The Devolved Administrations have been informed and they did not raise any significant concerns.

11. Guidance

11.1 No guidance relating to this instrument specifically is due to be published. Guidance relating to the wider subsidy control regime is due to be published in autumn 2022, ahead of implementation of the Subsidy Control Act on 4 January 2023. This

guidance was subject to a public consultation from 1 July to 10 August 2022 and refers to the CMA's information-gathering powers at paragraph 11.45.[1] The CMA is also due to issue guidance concerning the role of the SAU in the Autumn. This guidance includes an explanation of the SAU's information-gathering powers and the policy statement it may issue in relation to them. The CMA guidance was also subject to a public consultation from 11 July to 10 August 2022.[2]

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector. Devolved administrations would not be required to be consulted by the Subsidy Advice Unit or Secretary of State in the limited circumstances in which the SAU chooses to issue or change the relevant policy statement or the Secretary of State chooses to change the level of penalty imposed by the information-gathering powers set out in the UKIM Act as they are applied by the Subsidy Control Act 2022.

12.3 An impact assessment has not been prepared for this instrument because the impact on business, charities or voluntary bodies is estimated to be negligible as the regulations directly impact public authorities rather than enterprises. The department has produced analysis in accordance with the Better Regulation Framework that sets out the evidence for this assessment.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause.

15. Contact

15.1 Anthony McDonough/ John Wallis at the Department for Business, Energy, and Industrial Strategy. Telephone: 07741 617 073/ 07385 948677 or email: anthony.mcdonough@beis.gov.uk / john.wallis@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Eve Cinnirella, Deputy Director for Subsidy Control at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Hollinrake MP, Parliamentary Under-Secretary of State for the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

[1] To view the statutory guidance consultation, please visit https://www.gov.uk/government/consultations/statutory-guidance-on-the-subsidy-control-act-2022

[2] To view the CMA's consultation, please visit https://www.gov.uk/government/consultations/draft-guidance-and-draft-policy-statement-for-the-cmas-subsidy-advice-unit