EXPLANATORY MEMORANDUM TO

THE SUBSIDY CONTROL (SUBSIDIES AND SCHEMES OF INTEREST OR PARTICULAR INTEREST) (AMENDMENT) REGULATIONS 2025

2025 No. 845

1. Introduction

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

2. Declaration

2.1 Justin Madders, Parliamentary Under-Secretary of State (Minister for Employment Rights, Competition and Markets), at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Tessa Robins, Deputy Director for Subsidy Control, at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Lucy Price at the Department for Business and Trade, Telephone: 07926 704 887 or email: subsidycontrol@businessandtrade.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations amend the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) Regulations 2022 ("the 2022 Regulations").

4.2 The 2022 Regulations make provision as to the meaning of "subsidy, or subsidy scheme, of interest" and "subsidy, or subsidy scheme, of particular interest" for the purposes of the Subsidy Control Act 2022 ("the Act") including by reference to monetary thresholds. In non-sensitive sectors, subsidies over £10 million, or over £1 million but cumulating to over £10 million with other related subsidies over the previous three financial years, are deemed subsidies of particular interest. A subsidy scheme that allows one or more subsidies of particular interest to be given under it is deemed a scheme of particular interest.

4.3 These Regulations increase the threshold for determining a subsidy or scheme as a subsidy or scheme of particular interest in non-sensitive sectors from £10 million to £25 million.

Where does the legislation extend to, and apply?

4.4 The 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.

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

5. Policy Context

What is being done and why?

5.1 The Act provides the framework for a United Kingdom-wide subsidy control regime. This regime enables public authorities, including devolved administrations and local authorities, to deliver subsidies that are tailored and bespoke for local needs to deliver government priorities.

5.2 The subsidy control regime identifies subsidies and subsidy schemes that have greater potential to lead to undue distortion and negative effects on competition and investment within the United Kingdom and/or on international trade and investment. These subsidies and schemes should be subject to more in-depth assessment by the public authority before they are given, and in some cases, they will be referred to the Subsidy Advice Unit (SAU) within the Competition and Markets Authority (CMA) for additional scrutiny and review of the public authority's assessment.

5.3 The Act provides for the following subsidies and schemes to be subject to additional scrutiny before they are given or made:

- Subsidies or Schemes of Interest (SSoI), as defined in the 2022 Regulations, which may be referred to the SAU by the public authority giving or making the subsidy or scheme, and over which the SAU has discretion over whether to accept the referral,
- Subsidies or Schemes of Particular Interest (SSoPI), as defined in the 2022 Regulations, which must be referred to the SAU by the public authority giving or making the subsidy or scheme. The SAU must accept all SSoPI referrals, and
- Subsidies and Schemes where the Secretary of State has directed that a referral must be made under section 55 of the Act. The SAU must accept all such referrals.

5.4 The SAU scrutinises the public authority's assessment of the subsidy or scheme and publishes a report which may include non-binding recommendations of ways in which the assessment, or the subsidy design itself, may be improved. Upon acceptance of the referral, the SAU will publish its report within 30 working days, under normal circumstances.

5.5 These Regulations amend the 2022 Regulations with regards to which subsidies and schemes are defined as SSoI. They set out the following new general monetary thresholds that determine whether a subsidy is a SSoI or a SSoPI:

- Subsidies granted outside of sensitive sectors are SSoPI if they are over £25 million. All other subsidies between £5 to £25 million which do not meet the SSoPI criteria are SSoI.
- Lower monetary thresholds apply for subsidies granted in sensitive sectors. These will be SSoPI if they are over £5 million, as these subsidies can be assumed to be more likely to have a distortive effect than those of an equivalent value granted outside of sensitive sectors.

5.6 These monetary thresholds apply on a cumulative basis, taking into account certain other related subsidies which have been given for the same purpose within the previous three financial years. A subsidy must also exceed £1 million in its own right in order to be subject to mandatory referral to the SAU.

5.7 Regarding subsidy schemes, if the parameters of the scheme allow for the giving of a subsidy that meets the definition of a Subsidy of Particular Interest then that scheme

will be defined as a Scheme of Particular Interest. Similarly, a scheme which would allow for the giving of a Subsidy of Interest is defined as a Scheme of Interest. For example, if a scheme allowed for the giving of a subsidy of above £25 million (or which could exceed £25 million when combined with other related subsidies) then that scheme will be a Scheme of Particular Interest.

5.8 The previous £10 million threshold led to subsidies with a comparatively low risk of distorting competition and investment within the UK and/or international trade and investment, such as leisure centres and wellbeing hubs, being referred to the SAU and undergoing a disproportionate amount of scrutiny. Increasing the mandatory referral threshold will reduce the administrative burden on public authorities awarding smaller, lower risk subsidies and allow the SAU to focus their resources on the effective scrutiny of the largest subsidies that pose the highest risk to the UK's internal market and to international trade.

5.9 No changes are made to the other thresholds within the 2022 Regulations, including the sensitive sectors thresholds, cumulation thresholds or the subsidies of interest thresholds.

5.10 Following consideration of data on existing SAU referrals, evidence provided by the CMA in response to a public consultation and feedback from public authorities and subsidy control commentators, the new £25 million threshold represents a proportionate approach to increasing the thresholds. The £25 million threshold will continue to capture the largest subsidies, which have the greatest risk of distorting competition or investment.

What was the previous policy, how is this different?

5.11 These regulations amend the 2022 Regulations.

5.12 Regulation 3(2) of the 2022 Regulations provided that subsidies over £10 million, or over £1 million but cumulating to over £10 million with other related subsidies over the previous three financial years, were deemed Subsidies of Particular Interest. If the parameters of the scheme allow for the giving of a subsidy that meets the definition of a Subsidy of Particular Interest then that scheme will be defined as a Scheme of Particular Interest.

5.13 Regulation 2 of these regulations amends Regulation 3(2) of the 2022 Regulations by increasing the threshold for referral of Subsidies of Particular Interest to the CMA from £10 million to £25 million.

5.14 As such the following general monetary thresholds to determine whether a subsidy is a Subsidy or Scheme of Interest or a Subsidy or Scheme of Interest of Particular Interest will now apply:

- Subsidies granted outside of sensitive sectors are SSoPI if they are over £25 million.
- All other subsidies between £5 to £25 million which do not meet the SSoPI criteria are SoI.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 11(1) of the Act provides for the meaning of "subsidy, or subsidy scheme, of interest" and "subsidy, or subsidy scheme, of particular interest" to be set out in regulations made by the Secretary of State. The regulations may define these terms by

reference to the value of the subsidy or the value of the subsidies that can be given under a subsidy scheme, or the sector the expected beneficiaries operate in.

6.2 The Secretary of State exercised this power for the first time by making the 2022 Regulations that set the monetary threshold for subsidies or schemes to be deemed as SSoPI at £10 million. This is the second use of the power in section 11(1) of the Act, this time to amend the definitions in the 2022 Regulations by increasing the threshold for subsidies or schemes to be deemed as SSoPI from £10 million to £25 million.

Why was this approach taken to change the law?

6.3 The 2022 Regulations are being amended to make the necessary changes rather than being re-made/replaced, as the amendment is a simple specific change and does not warrant full redrafting and re-making.

7. Consultation

Summary of consultation outcome and methodology

7.1 Between 26 November 2024 to 21 January 2025 the government undertook a public consultation which sought views on:

- Amending the threshold for referring subsidies to the Competition and Markets Authority (CMA)
- Creating new "streamlined routes" (a type of subsidy scheme which is pre-assessed by the Department of Business and Trade, applicable to all public authorities across the UK, and not subject to review by the CMA)

7.2 The consultation received 55 responses. Respondents included a broad range of stakeholders from across the UK including public authorities (28), law firms (10), businesses and trade associations (6), members of the public (6), charities (2) and the CMA Subsidy Advice Unit. The Devolved Governments were also consulted.

7.3 Of the 45 respondents who responded to the question on the threshold for mandatory referral of Subsidies of Particular Interest, 23 suggested the mandatory referral threshold should be raised, 11 suggesting it should be maintained, 5 offering no comment, and a further 6 providing neutral comments or suggested alternatives for more nuanced approaches to thresholds. Of the respondents that suggested a specific monetary value for an increased threshold, suggestions ranged between £10 million and £100 million, with most popular response range was between £20 million and £30 million (suggested by 7 respondents).

7.4 The consultation also sought views on the voluntary Subsidy of Interest monetary threshold, the monetary threshold for sensitive sectors and the current list of sensitive sectors.

7.5 Some (13 of 31 respondents) felt the voluntary SSoI threshold should be increased in line with the SoPI, with suggestions ranging from £6 million to £60 million (the most common suggestion was £10 million). A common comment was a desire for clearer guidance on criteria and the value of the voluntary referral process to encourage voluntary referrals.

7.6 16 of 36 responses thought the monetary threshold for mandatory referral of sensitive sectors should also be increased. There were fewer responses to this question compared to the question on the primary SSoPI threshold, and responses to this question offered less detail because many respondents had limited interaction with the sensitive sectors. Regarding the list of sensitive sectors, the majority (13 of 23) were

content with the existing list of sensitive sectors, with a further 3 providing recommendations for further inclusions and exclusions, reflecting government policies. A further 2 responses questioned the necessity of the sensitive sectors list, but others suggested the list be reviewed regularly, with emphasis on analysing the supporting evidence for the inclusion of sectors.

7.7 After consideration of the responses received, the Government decided to increase the primary SSoPI threshold, but maintain the voluntary SSoI threshold, to allow public authorities to continue to refer lower value subsidies voluntarily to the SAU where they believe there is merit in doing so. The Government decided not to amend the list of sensitive sectors, as no new evidence was provided to suggest that the removal of existing sectors or the inclusion of new sectors was warranted, and wider global trends did not suggest any significant changes to the risk of trade disputes. The lower mandatory referral threshold for sensitive sectors is also maintained given the higher risk these subsidies pose in distorting international trade and investment.

7.8 A summary of the consultation and the government's response to the consultation is available at: https://www.gov.uk/government/consultations/refining-the-uk-subsidy-control-regime/public-feedback/consultation-response-refining-the-uk-subsidy-control-regime.

8. Applicable Guidance

8.1 Guidance on the application of these Regulations is included in the statutory guidance on the Subsidy Control Act 2022 which can be accessed here: https://www.gov.uk/government/publications/uk-subsidy-control-statutory-guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the low level of impact per business.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies. These regulations primarily affect the public authorities awarding large subsidies, rather than the beneficiaries of the subsidies (i.e. businesses, charities and voluntary bodies), though there may be secondary impacts for beneficiaries and/or their competitors.

9.3 It is estimated that amending these regulations will reduce the number of referrals made to the SAU. Through this reduction, the annual savings to businesses will total approximately £120,000. These savings are comprised of familiarisation costs associated with understanding the SSoPI process, monitoring costs tracking the process, the cost of expert advice including legal counsel on the process, and potential judicial costs.

9.4 Competitors of beneficiaries of subsidies may wish to challenge awards should they feel they are contestable under the Act. With fewer subsidies referred to the SAU and receiving a published report, any competitor will have less detailed information on awards they may wish to challenge and therefore may incur a greater cost when trying to identify whether their competitors are receiving non-compliant subsidies. It is important to note that awarding Public Authorities will still be required to upload subsidies to publish information on their subsidies on the transparency database.

9.5 The legislation will have no significant impact small or micro businesses, though any cost saving brought by the regulations would represent a greater overall cost saving as a proportion of total costs to smaller businesses. Additionally, the potential increased costs to competitors of beneficiaries who may wish to challenge the award of subsidies will realise this cost increase as a greater proportion of total costs.

9.6 The impact on the public sector is positive, with an estimated annual saving for the public sector (combined cost savings for public authorities and the SAU) of approximately £1M.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Under section 65 of the Act, the CMA will produce regular reports on the functioning of the subsidy control regime. It is anticipated that the SSoPI and SSoI thresholds and criteria as defined by these Regulations will be part of the CMA's monitoring reports. The CMA is required to publish a monitoring report within 3 years after implementation of the regime, with the first report due in 2026, and at regular intervals thereafter.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State (Minister for Employment Rights, Competition and Markets) has made the following statement regarding Human Rights:

"In my view the provisions of the Subsidy Control (Subsidies and Schemes of Interest or Particular Interest) (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts"). It does however relate to the withdrawal of the United Kingdom from the European Union because the Subsidy Control Act 2022 replaced European Union State aid regulation.