

# SCOTTISH ENTERPRISE REGIONAL AND SME INVESTMENT SUBSIDY SCHEME 2022 – 2025 – SC10674

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## 1. OBJECTIVES

- 1.1 The Scottish Enterprise Regional and SME Investment Subsidy Scheme 2022 – 2025 (the “**Scheme**”) aims to promote sustainable economic growth by:
- (a) encouraging economic actors to invest in projects which create or safeguard jobs in Scotland that would, but for the subsidy, not be created or safeguarded;
  - (b) supporting the development of premises and buildings for commercial purposes in Scotland where there is a market failure (e.g. where development costs of a property exceed its estimated end market value or where risk aversion and uncertainty in forecasting project outcomes prevents property development);
  - (c) promoting the development of all areas of Scotland, with additional support available through regional investment subsidy for the assisted areas identified in Appendix 1; and
  - (d) supporting the growth of early growth enterprises and SMEs across Scotland.

## 2. LEGAL BASIS

- 2.1 Scottish Enterprise (“**SE**”) is established under the Enterprise and New Towns (Scotland) Act 1990 and provides support to enterprises across Scotland under the provisions of that Act.
- 2.2 Following the expiry of the Brexit transition period on 31 December 2020, the UK is no longer subject to EU State aid rules. The only exceptions to this are for aid that is caught by the NI Protocol and for awards of funding that include contributions from EU Structural Funds.
- 2.3 The Scheme is required to comply with the provisions on subsidy control listed below, insofar as they are relevant to the specific facts and circumstances of the proposed support:
- a) Part Two, Heading One, Title XI, Chapter 3 of the UK-EU Trade and Cooperation Agreement signed on 30 December 2020 (as implemented by section 29 of the European Union (Future Relationship) Act 2020) (the “**TCA**”);
  - b) the Northern Ireland Protocol to the UK-EU Withdrawal Agreement agreed on 17 October 2019 (as implemented by section 7A of the European Union (Withdrawal) Act 2018) (the “**NI Protocol**”);
  - c) Article 138 of the UK-EU Withdrawal Agreement agreed on 17 October 2019 in respect of EU Structural Funds (as implemented by section 7A of the

European Union (Withdrawal) Act 2018) (“**Article 138**”);

- d) WTO Agreement on Subsidies and Countervailing Measures (“**WTO ASCM**”);
- e) Trade Agreements entered into between the UK and other countries; and
- f) Relevant UK Government guidance.

- 2.4 From 1 January 2021, the Scheme operates under and satisfies as relevant and/or necessary:
- (i) the principles in Article 366 of Title XI of the TCA;
  - (ii) Article 10 of the NI Protocol; and
  - (iii) Article 138.

### **3. GENERAL PROVISIONS**

- 3.1 The Scheme runs from 23 December 2022 to 31 December 2025. SE may at any time extend the duration of the Scheme by amending the end date provided for in the Scheme, without limitation as to the number of extensions or total duration of the Scheme, provided that SE is satisfied that the Scheme remains both relevant and consistent with the legal requirements that apply to it. The anticipated amount budgeted by SE for the Scheme is £80 million. SE may at any time increase the total budget of the scheme, without limitation as to the number or aggregate value of such increases, provided that SE is satisfied that the budget increase is both required to meet the Scheme's objectives and consistent with the legal requirements that apply to it.
- 3.2 Terms used in this Scheme are defined in Appendix 2.
- 3.3 There is no automatic entitlement to support from SE and any funding is provided on a discretionary basis. Any award is subject to SE’s assessment against the Scheme conditions, SE approval and acceptance of standard terms and conditions of grant. The amounts and subsidy intensities stated reflect the maximum potential levels of support that may be made available. There is no guarantee of funding under the Scheme and any funding which is made available may be made at lower intensities than those stated below.
- 3.4 Assistance may be offered through a range of instruments, products and services. Any award will be based on the merits of the proposed project. Requests for support will also be subject to an assessment of need for assistance, rigorous due diligence appraisal and internal approval by SE. Any business interested in assistance from SE under this Scheme should consult [www.scottish-enterprise.com](http://www.scottish-enterprise.com) or contact us on 0300 013 3385 or by e-mail to [enquiries@scotent.co.uk](mailto:enquiries@scotent.co.uk).
- 3.5 Subsidy may be awarded to enterprises of all sizes.

- 3.6 Applicants must submit a written application for assistance to SE before work on the project or activity has started, and the application must be approved in writing before work can commence on the project, unless otherwise agreed by SE. The application must include information on the applicant's name and size, a description of the project (including start and end date), the location of the project, a list of project costs and the type of subsidy (e.g. grant).
- 3.7 The applicant may be required to provide documentation to allow SE to assess whether the subsidy will achieve one or more of the following: a material increase in the scope of the project/activity; a material increase in the total amount spent by the prospective beneficiary on the project/activity; or a material increase in the speed of completion. This is in order for SE to ensure that the subsidy will bring about a change in the economic behaviour of the beneficiary that is conducive to achieving objectives and that would not be achieved in the absence of subsidies being provided.
- 3.8 SE is required to provide annual returns to the Scottish and UK Governments detailing subsidy provided under this Scheme, and to maintain detailed records regarding individual subsidies provided under the Scheme. Such records must contain all information necessary to establish that the conditions of the Scheme are fulfilled, including information on the status of any economic actor whose entitlement to subsidy or a bonus depends on its status as an SME, information on the incentive effect of the subsidy, and information making it possible to establish the precise amount of eligible costs for the purpose of applying the rules of the Scheme. The information which must be provided to SE and/or retained by the subsidy recipient, and the length of time for which records must be maintained, will be set out in any offer of grant made under the Scheme. SE will maintain detailed records regarding subsidy provided under the Scheme and will provide reports to the Scottish and UK Governments on subsidies awarded under the Scheme. SE will maintain records with all information necessary to establish that the conditions laid down in the Scheme are fulfilled. Information to be provided to SE and/or retained by the subsidy recipient will be set out in any offer of grant.
- 3.9 All grants identified as being over the reporting threshold at any given time must be registered as specified by reporting requirements in force at the relevant time. Details of grants may also be published on SE's website.
- 3.10 SE may at any time modify any or all of the legislative references in this Scheme, provided that i) SE deems it necessary to ensure that appropriate recognition is given to any updated legislation applicable in the UK, and ii) SE is satisfied that such modification is both required to meet the Scheme's objectives and consistent with the legal requirements that apply to it.

#### **4. TYPES OF SUBSIDY UNDER THE SCHEME**

*Note: The information below is intended to be a helpful summary of the types of subsidy which may be granted under the Scheme. It should be noted that the subsidy amounts stated reflect the maximum levels of support permitted under the Scheme at*

*a single point in time and SE may set lower subsidy intensities for specific support, specific products or programmes created under the Scheme, taking into account the strategic rationale and market failure being addressed through the subsidy.*

**Section A: Regional investment subsidy**

4.1 The subsidy shall be granted in assisted areas.

4.2 Subsidy may be granted:

- to SMEs for any form of initial investment; and
- to large economic actors for initial investment in favour of new economic activity in the assisted area concerned.

4.3 Eligible costs are:

- a) investment costs in tangible and intangible assets;
- b) the estimated wage costs arising from job creation as a result of an initial investment, calculated over a period of two years; or
- c) a combination of a) and b), not exceeding the amount of a) or b), whichever is higher.

4.4 Maximum subsidy intensities are set out in the table below:

	Large	Medium	Small
Areas shown green on the map at Appendix 1 (Non-predefined areas)	15%	25%	35%
Areas shown blue on the map at Appendix 1 (Sparsely populated assisted areas: Caithness & Sutherland, Ross & Cromarty, Lochaber, Skye and Lochalsh, Arran & Cumbrae and Argyll & Bute)	20%	30%	40%

4.5 Where the subsidy intensity is calculated on the basis of a combination of eligible costs as described in paragraph 4.3 (c) above, the maximum subsidy intensity shall not exceed the most favourable amount resulting from the application of that intensity on the basis of investment costs or wage costs.

4.6 Any supported investment shall be maintained in the recipient area:

- in the case of large economic actors, for at least 5 years after completion of the investment; or
- in the case of SMEs, for at least 3 years after completion of the investment.

4.7 This shall not prevent the replacement of plant or equipment that has become outdated or broken within this period, provided that the economic activity is retained in the area concerned for the relevant minimum period.

- 4.8 The assets acquired shall be new except for SMEs and for the acquisition of an establishment.
- 4.9 Costs related to the lease of tangible assets may be taken into account under the following conditions:
- a) for land and buildings, the lease must continue for at least five years after the expected date of completion of the investment project for large economic actors or three years in the case of SMEs;
  - b) for plant or machinery, the lease must take the form of financial leasing and must contain an obligation for the beneficiary of the subsidy to purchase the asset upon expiry of the term of the lease.
- 4.10 In the case of acquisition of the assets of an establishment only the costs of buying the assets from third parties unrelated to the buyer shall be taken into consideration. The transaction shall take place under market conditions. If subsidy has already been granted for the acquisition of assets prior to their purchase, the costs of those assets shall be deducted from the eligible costs related to the acquisition of an establishment. Where a member of the family of the original owner, or an employee, takes over a small economic actor, the condition that the assets be bought from third parties unrelated to the buyer shall be waived. The acquisition of shares does not constitute initial investment.
- 4.11 For subsidy granted to large economic actors for a fundamental change in the production process, the eligible costs must exceed the depreciation of the assets linked to the activity to be modernised in the course of the preceding three fiscal years.
- 4.12 For subsidy granted for a diversification of an existing establishment, the eligible costs must exceed by at least 200 % the book value of the assets that are reused, as registered in the fiscal year preceding the start of works.
- 4.13 Intangible assets are eligible for the calculation of investment costs if they fulfil the following conditions:
- a) they must be used exclusively in the establishment receiving the subsidy;
  - b) they must be amortisable;
  - c) they must be purchased under market conditions from third parties unrelated to the buyer; and
  - d) they must be included in the assets of the economic actor receiving the subsidy and must remain associated with the project for which the subsidy is granted for at least five years or three years in the case of SMEs.
- 4.14 For large economic actors, costs of intangible assets are eligible only up to a limit of 50 % of the total eligible investment costs for the initial investment.
- 4.15 Where eligible costs are calculated on the basis of estimated wage costs:
- the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous 12 months, meaning that any job lost shall be deducted from the apparent created number of jobs during that period;

- each post shall be filled within three years of completion of works; and
  - each job created through the investment shall be maintained in the area concerned for a period of at least five years from the date the post was first filled, or three years in the case of SMEs.
- 4.16 Regional subsidy for broadband network development shall fulfil the following conditions:
- a) subsidy shall be granted only in areas where there is no network of the same category (either basic broadband or NGA) and where no such network is likely to be developed on commercial terms within three years from the decision to grant the subsidy; and
  - b) the subsidised network operator must offer active and passive wholesale access under fair and non-discriminatory conditions including physical unbundling in the case of NGA networks; and
  - c) subsidy shall be allocated on the basis of a competitive selection process.
- 4.17 Regional subsidy for research infrastructures shall be granted only if the subsidy is made conditional on giving transparent and non-discriminatory access to the subsidised infrastructure.
- 4.18 Any initial investment started by the same beneficiary (at group level) within a period of three years from the date of start of works on another investment which has received subsidy or state aid in the same level 3 region of the Nomenclature of Territorial Units for Statistics shall be considered to be part of a single investment project. Where such single investment project is a large investment project, the total subsidy amount for the single investment project shall not exceed the adjusted subsidy amount.
- 4.19 The subsidy beneficiary must provide a financial contribution of at least 25 % of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support.
- 4.20 The beneficiary shall confirm that it has not carried out a relocation to the establishment in which the initial investment for which subsidy is requested is to take place, in the two years preceding the application for subsidy and give a commitment that it will not do so up to a period of two years after the initial investment for which subsidy is requested is completed.
- 4.21 The subsidy beneficiary must provide a financial contribution of at least 25% of the eligible costs, either through its own resources or by external financing, in a form, which is free of any public support.
- 4.22 The subsidy beneficiary must confirm that it has not carried out a relocation to the establishment in which the initial investment for which subsidy is requested is to take place, in the two years preceding the application for subsidy and give a commitment that it will not do so up to a period of two years after the initial investment for which subsidy is requested is completed.
- 4.23 The maximum subsidy amount per economic actor per project is:

- £10.125 million in areas where the maximum regional investment subsidy intensity for large economic actors is 15%; and
- £13.5 million in areas where the maximum regional investment subsidy intensity for large economic actors is 20% areas.



## **Section B: Investment subsidy to SMEs**

- 4.24 Investment subsidy to SMEs can be granted in all areas of Scotland.
- 4.25 The eligible costs shall be either or both of:
- costs of investment in tangible and intangible assets
  - estimated wage costs of employment directly created by the investment project, calculated over 2 years.
- 4.26 To be eligible, an investment shall be either:
- an investment in tangible or intangible assets relating to the setting-up of an establishment, the extension of an existing establishment, diversification of the output of an establishment into new additional products or a fundamental change in the overall production process of an existing establishment; or
  - the acquisition of assets belonging to an establishment, where the following conditions are fulfilled:
    - the establishment has closed or would have closed if it had not been purchased
    - the assets are purchased from third parties unrelated to the buyer (except where a member of the family of the original owner, or an employee, takes over a small economic actor) and excludes sole acquisition of the shares of an economic actor
    - the transaction takes place under market conditions.
- 4.27 Intangible assets shall fulfil all of the following conditions:
- they shall be used exclusively in the establishment receiving the subsidy;
  - they shall be regarded as amortizable assets;
  - they shall be purchased under market conditions from third parties unrelated to the buyer;
  - they shall be included in the assets of the economic actor for at least three years
- 4.28 Employment directly created by the investment project:
- shall be created within three years of completion of the investment
  - shall result in a net increase in the number of employees compared with the average over the previous 12 months; and
  - shall be maintained for at least 3 years from the date the post was first filled
- 4.29 The subsidy intensity shall not exceed:
- 20% for small economic actors; and
  - 10% for medium sized economic actors.
- 4.30 The maximum amount of subsidy that can be granted under this provision is £6.75 million per economic actor per investment project.

### **Section C: Investment subsidy for local infrastructures**

- 4.32 Investment subsidy may be provided for the construction or upgrade of local infrastructures that contribute at a local level to improving the business and consumer environment and modernising and developing the industrial base.
- 4.33 The infrastructure shall be made available to interested users on an open, transparent and non-discriminatory basis. The price charged for the use or the sale of the infrastructure shall correspond to market price.
- 4.34 Any concession or other entrustment to a third party to operate the infrastructure shall be assigned on an open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.
- 4.35 The eligible costs shall be the investment costs in tangible and intangible assets.
- 4.36 The subsidy amount shall not exceed the difference between the eligible costs and the operating profit of the investment. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
- 4.37 Dedicated infrastructure, airport infrastructure and port infrastructure are ineligible for support under this provision.
- 4.38 The maximum subsidy amount shall not exceed £9 million or the total costs exceeding £18 million for the same infrastructure.

## 5. EXCLUSIONS

### *Export subsidy*

5.1 The Scheme does not apply to:

- subsidies that are contingent in law or in fact, whether solely or as one of several other conditions, upon export performance relating to goods or services; or
- subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services.

### *Sectoral*

5.2 The Scheme applies to all sectors of the economy, with the exception of:

- activities in the fishery and aquaculture sector, as covered by Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council regulations (EC) 1184/2006 and (EC) 1224/2009 and repealing Council regulation (EC) 104/2000, as amended from time to time.
- activities in the primary agricultural sector;
- activities in the processing and marketing of agricultural products where subsidy is aimed at directly influencing the price or quantity of primary production (i.e. where the amount of the subsidy is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the economic actors concerned or the subsidy is conditional on being partly or entirely passed on to primary producers);
- subsidy to facilitate the closure of uncompetitive coal mines; and
- subsidy to air carriers for the operation of routes except: (a) where there is a public service obligation, in accordance with Article 365 of the TCA; (b) in special cases where the funding provides benefits for society at large; or (c) as start-up subsidies for opening new routes to regional airports provided that such subsidies increase the mobility of citizens and stimulate regional development.

5.3 Regional investment subsidy shall not be granted under this Scheme for activities in the following sectors:

- steel sector
- coal sector
- shipbuilding
- synthetic fibres sector
- transport sector (including related infrastructure)
- energy generation, distribution and infrastructure

5.4 Regional subsidy shall not be granted through schemes which are targeted at a limited number of specific sectors of economic activity (schemes aimed at tourism activity, broadband infrastructures or processing and marketing of agricultural products are not considered to be targeted at specific sectors of economic activity).

## ***Recovery of illegal subsidy / Ailing or insolvent economic actors***

5.5 The following are explicitly excluded from the Scheme:

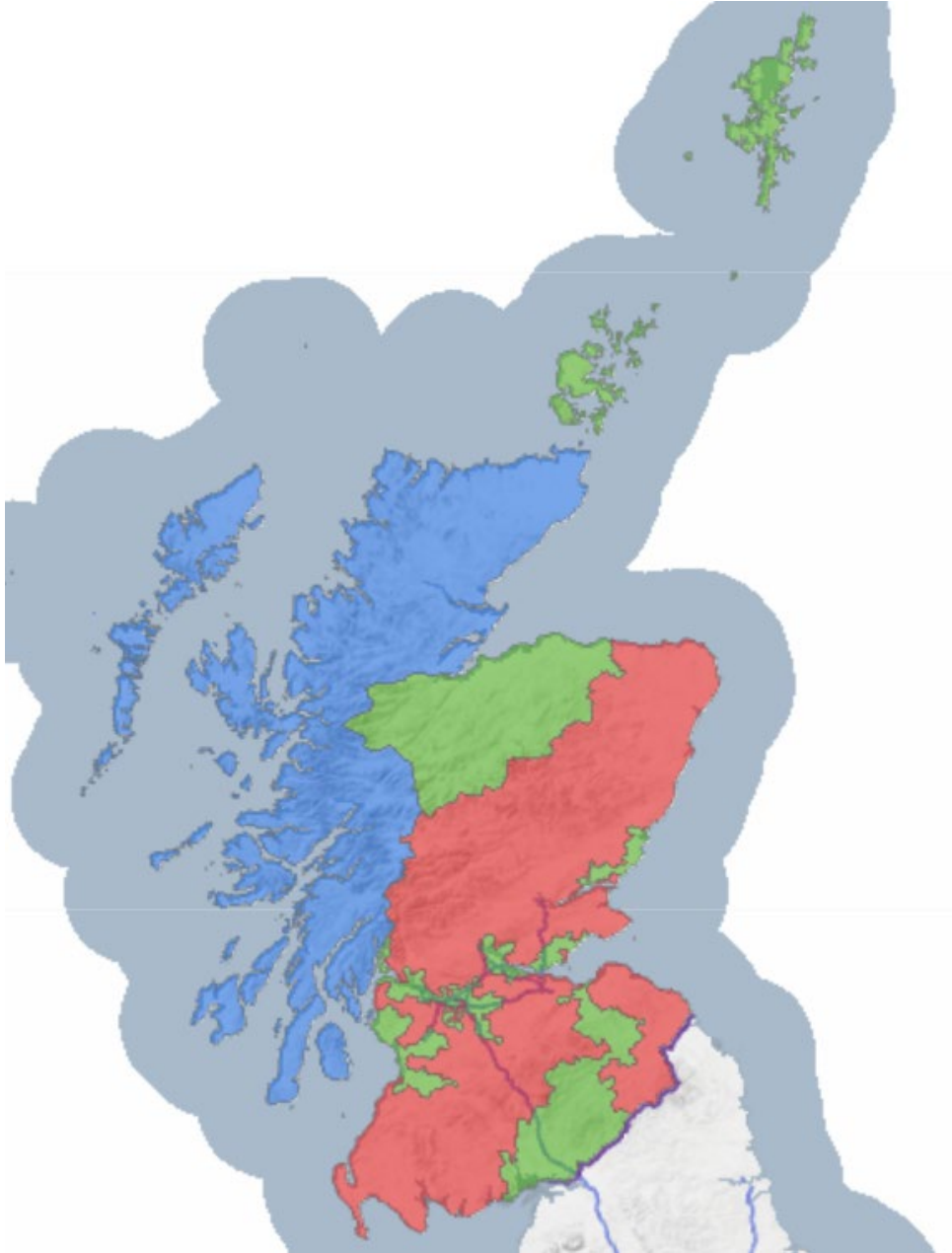
- payment of subsidy in favour of an economic actor which is subject to an outstanding recovery order following i) a previous Commission decision declaring an aid illegal and incompatible with the common market or ii) an order requiring recovery of subsidy issued by any domestic UK courts or tribunal; and
- subsidies for restructuring an ailing or insolvent economic actor without a credible plan being in place to return the economic actor to viability. For the purposes of this paragraph, an ailing or insolvent economic actor is one that would almost certainly go out of business in the short to medium term without the subsidy.

## **6. CUMULATION OF SUBSIDY**

- 6.1 Subsidy provided under the Scheme may be cumulated with other permitted subsidy provided through this or another SE scheme (or another registered scheme) as long as those subsidy measures concern different identifiable eligible costs.
- 6.2 Subsidy provided under this Scheme may only be cumulated with other permitted subsidy, where, in respect of the same totally or partially overlapping eligible costs, such cumulation does not result in the highest permissible subsidy intensity or subsidy amount under this Scheme being exceeded.
- 6.3 All sources of public funding shall be taken into account when considering cumulation and in determining that the relevant subsidy intensity or subsidy amount is not exceeded.

**APPENDIX 1**

**MAP IDENTIFYING ASSISTED AREAS AND SUPPORT LEVELS**



	Large	Medium	Small
Green areas on map - non-predefined assisted areas (see below)	15%	25%	35%
Blue areas on map - sparsely populated assisted areas (Caithness & Sutherland, Ross & Cromarty, Lochaber, Skye and Lochalsh, Arran & Cumbrae and Argyll & Bute)	20%	30%	40%
Red areas – SME investment/local infrastructure subsidy	-	10%	20%

The map above shows in green and blue the areas of Scotland which are assisted areas and may be eligible for support under the regional investment subsidy provisions of this Scheme. An interactive version of the map can be accessed at [Regional Selective Assistance 2022-2025 Map \(arcgis.com\)](#).

Red areas are not eligible for regional investment subsidy but may benefit from SME investment subsidy or subsidy for local infrastructure under this Scheme.

## APPENDIX 2

### DEFINITIONS

**‘agricultural product’** means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013, both as amended from time to time;

**‘Article 138’** means Article 138 of the UK-EU Withdrawal Agreement agreed on 17 October 2019 in respect of EU Structural Funds (as implemented by section 7A of the European Union (Withdrawal) Act 2018)

**‘assisted areas’** means areas identified as green areas and blue areas in Appendix 1;

**‘coal’** means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe and clarified in the Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;

**‘date of granting the subsidy’** means the date when the legal right to receive the subsidy is conferred on the beneficiary;

**‘dedicated infrastructure’** means infrastructure that is built for ex-ante identifiable economic actor(s) and tailored to their needs.

**‘economic actor’** means an entity or a group of entities constituting a single economic entity, regardless of its legal status, that is engaged in an economic activity by offering goods or services on a market;

**‘employment directly created by an investment project’** means employment concerning the activity to which the investment relates, including employment created following an increase in the utilisation rate of the capacity created by the investment;

**‘energy infrastructure’** means any physical equipment or facility which is located within the United Kingdom or linking the United Kingdom to one or more third countries and falling under the following categories:

(a) concerning electricity:

(i) infrastructure for transmission, as defined in Article 2(3) by Directive 2009/72/EC of 13 July 2009 concerning common rules for internal market in electricity;

(ii) infrastructure for distribution, as defined in Article 2(5) by Directive 2009/72/EC;

(iii) electricity storage, defined as facilities used for storing electricity on a permanent or temporary basis in above-ground or underground infrastructure or geological sites, provided they are directly connected to high-voltage transmission lines designed for a voltage of 110 kV or more;

(iv) any equipment or installation essential for the systems defined in points (i) to (iii) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations; and L 187/28 Official Journal of the

European Union EN 26.6.2014 OJ L 283, 31.10.2003, p. 51. OJ L 211, 14.8.2009, p. 55.

(v) smart grids, defined as any equipment, line, cable or installation, both at transmission and low and medium voltage distribution level, aiming at two-way digital communication, real-time or close to realtime, interactive and intelligent monitoring and management of electricity generation, transmission, distribution and consumption within an electricity network in view of developing a network efficiently integrating the behaviour and actions of all users connected to it — generators, consumers and those that do both — in order to ensure an economically efficient, sustainable electricity system with low losses and high quality and security of supply and safety;

(b) concerning gas:

(i) transmission and distribution pipelines for the transport of natural gas and bio gas that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;

(ii) underground storage facilities connected to the high-pressure gas pipelines mentioned in point (i);

(iii) reception, storage and regasification or decompression facilities for liquefied natural gas ('LNG') or compressed natural gas ('CNG'); and

(iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;

(c) concerning oil:

(i) pipelines used to transport crude oil;

(ii) pumping stations and storage facilities necessary for the operation of crude oil pipelines; and

(iii) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems and reverse-flow devices;

(d) concerning CO<sub>2</sub>: networks of pipelines, including associated booster stations, for the transport of CO<sub>2</sub> to storage sites, with the aim to inject the CO<sub>2</sub> in suitable underground geological formations for permanent storage;

**'enterprise'** has the same meaning as 'economic actor';

**'intangible assets'** means assets that do not have a physical or financial embodiment such as patents, licences, know-how or other intellectual property;

**'initial investment'** means: (a) an investment in tangible and intangible assets related to the setting-up of a new establishment, extension of the capacity of an existing establishment, diversification of the output of an establishment into products not previously produced in the establishment or a fundamental change in the overall production process of an existing establishment; or (b) an acquisition of assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an **investor** unrelated to the seller and excludes sole acquisition of the shares of an economic actor;

**'initial investment in favour of new economic activity'** means: (a) an investment in tangible and intangible assets related to the setting up of a new establishment, or to



the diversification of the activity of an establishment, under the condition that the new activity is not the same or a similar activity to the activity previously performed in the establishment; (b) the acquisition of the assets belonging to an establishment that has closed or would have closed had it not been purchased, and is bought by an investor unrelated to the seller, under the condition that the new activity to be performed using the acquired assets is not the same or a similar activity to the activity performed in the establishment prior to the acquisition;

**‘large economic actors’** means economic actors not fulfilling the criteria in Appendix 3 to be classified as a small or medium sized economic actor;

**‘net increase in the number of employees’** means a net increase in the number of employees in the establishment concerned compared with the average over a given period in time, and that any posts lost during that period must therefore be deducted and that the number of persons employed full-time, part-time and seasonal has to be considered with their annual labour unit fractions;

**‘next generation access (NGA) networks’** means advanced networks which have at least the following characteristics: (a) deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed; (b) support a variety of advanced digital services including converged all-IP services, and (c) have substantially higher upload speeds (compared to basic broadband networks). At the current stage of market and technological development, NGA networks are: (a) fibre-based access networks (FTTx), (b) advanced upgraded cable networks and (c) certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber.

**‘NI Protocol’** means the Northern Ireland Protocol to the UK-EU Withdrawal Agreement agreed on 17 October 2019 (as implemented by section 7A of the European Union (Withdrawal) Act 2018)

**‘operating profit’** means the difference between the discounted revenues and the discounted operating costs over the economic lifetime of the investment, where this difference is positive. The operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, but exclude depreciation charges and the costs of financing if these have been covered by investment subsidy. Discounting revenues and operating costs using an appropriate discount rate allows a reasonable profit to be made.

**‘marketing of agricultural products’** means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose;

**‘processing of agricultural products’** means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale;

**‘regional investment subsidy’** means regional subsidy granted for an initial investment or an initial investment in favour of a new economic activity;

**‘relocation’** means a transfer of the same or similar activity or part thereof from an establishment in a contracting party to the EEA Agreement (initial establishment) to the establishment in which the investment in receipt of subsidy takes place (subsidised establishment). There is a transfer if the product or service in the initial and in the subsidised establishments serves at least partly the same purposes and meets the demands or needs of the same type of customers and jobs are lost in the same or similar activity in one of the initial establishments of the beneficiary in the EEA;

**‘SE’** means Scottish Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990;

**‘small and medium sized economic actors’ or ‘SMEs’** means economic actors fulfilling the criteria in Appendix 3 to be classified as either a small or a medium sized economic actor;

**‘start of works’** means the earlier of either the start of construction works relating to the investment, or the first legally binding commitment to order equipment or any other commitment that makes the investment irreversible. Buying land and preparatory work such as obtaining permits and conducting feasibility studies are not considered start of works. For take-overs, ‘start of works’ means the moment of acquiring the assets directly linked to the acquired establishment;

**‘steel sector’** means all activities related to the production of one or more of the following products:

- a) pig iron and ferro-alloys: pig iron for steelmaking, foundry and other pig iron, spiegeleisen and high-carbon ferro-manganese, not including other ferro-alloys;
- b) crude and semi-finished products of iron, ordinary steel or special steel: liquid steel whether or not cast into ingots, including ingots for forging semi-finished products: blooms, billets and slabs; sheet bars and tinplate bars; hot-rolled wide coils, with the exception of production of liquid steel for castings from small and medium-sized foundries;
- c) hot finished products of iron, ordinary steel or special steel: rails, sleepers, fishplates, soleplates, joists, heavy sections of 80 mm and over, sheet piling, bars and sections of less than 80 mm and flats of less than 150 mm, wire rod, tube rounds and squares, hot-rolled hoop and strip (including tube strip), hot-rolled sheet (coated or uncoated), plates and sheets of 3 mm thickness and over, universal plates of 150 mm and over, with the exception of wire and wire products, bright bars and iron castings;
- d) cold finished products: tinplate, terneplate, blackplate, galvanised sheets, other coated sheets, cold-rolled sheets, electrical sheets and strip for tinplate, cold-rolled plate, in coil and in strip;
- e) tubes: all seamless steel tubes, welded steel tubes with a diameter of over 406.4 mm;

**‘subsidy’** means financial assistance which:

- 1) is given directly or indirectly from public resources by a public authority, including:
  - a) a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
  - b) the forgoing of revenue that is otherwise due; or
  - c) the provision of goods or services, or the purchase of goods or services;
- 2) confers an economic advantage on one or more economic actors:
- 3) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- 4) has, or could have, an effect on trade or investment between the United Kingdom and a country or territory outside the United Kingdom.

**'subsidy intensity'** means the gross subsidy amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge;

**'synthetic fibres sector'** means:

- a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses; or
- b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used; or
- c) any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another economic actor in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used;

**'tangible assets'** means assets consisting of land, buildings and plant, machinery and equipment;

**'TCA'** means the UK-EU Trade and Cooperation Agreement signed on 30 December 2020 (as implemented by section 29 of the European Union (Future Relationship) Act 2020)

**'the map'** means the map identifying assisted areas set out in Appendix 1 to this Scheme;

**'the same or a similar activity'** means an activity falling under the same class (four-digit numerical code) of the NACE Rev. 2 statistical classification of economic activities as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains, as amended from time to time;

**'tourism activity'** means the following activities in terms of NACE Rev. 2:

- (a) NACE 55: Accommodation;
- (b) NACE 56: Food and beverage service activities; 26.6.2014 EN Official Journal of the European Union L 187/21;
- (c) NACE 79: Travel agency, tour operator reservation service and related activities;
- (d) NACE 90: Creative, arts and entertainment activities;
- (e) NACE 91: Libraries, archives, museums and other cultural activities;

(f) NACE 93: Sports activities and amusement and recreation activities;

**‘transport sector’** means the transport of passengers by aircraft, maritime transport, road or rail and by inland waterway or freight transport services for hire or reward; more specifically, the ‘transport sector’ means the following activities in terms of NACE Rev. 2:

- a) NACE 49: Land transport and transport via pipelines, excluding NACE 49.32 Taxi operation, 49.42 Removal services, 49.5 Transport via pipeline;
- b) NACE 50: Water transport;
- c) NACE 51: Air transport, excluding NACE 51.22 Space transport.

**‘Treaty’** means the Treaty on the Functioning of the European Union; and

**‘wage cost’** means the total amount actually payable by the beneficiary of the subsidy in respect of the employment concerned, comprising over a defined period of time the gross wage before tax and compulsory contributions such as social security, child care and parent care costs.

## **APPENDIX 3**

### **SME DEFINITION**

#### **Section A: Economic actors**

- 1.1 An economic actor is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

#### **Section B: Staff headcount and financial thresholds determining economic actor categories**

- 2.1 The category of micro, small and medium-sized economic actors ('SMEs') is made up of economic actors which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
- 2.2 Within the SME category, a small economic actor is defined as an economic actor which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
- 2.3 Within the SME category, a micro-economic actor is defined as an economic actor which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

#### **Section C: Types of economic actor taken into consideration in calculating staff numbers and financial amounts**

- 3.1 An 'autonomous economic actor' is any economic actor which is not classified as a partner economic actor within the meaning of paragraph 3.2 or as a linked economic actor within the meaning of paragraph 3.3.
- 3.2 'Partner economic actors' are all economic actors which are not classified as linked economic actors within the meaning of paragraph 3.3 and between which there is the following relationship: an economic actor (upstream economic actor) holds, either solely or jointly with one or more linked economic actor within the meaning of paragraph 3.3, 25 % or more of the capital or voting rights of another economic actor (downstream economic actor).

However, an economic actor may be ranked as autonomous, and thus as not having any partner economic actors, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3.3, either individually or jointly to the economic actor in question:

- a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses (business angels), provided the

total investment of those business angels in the same economic actor is less than EUR 1 250 000;

- b) universities or non-profit research centres;
- c) institutional investors, including regional development funds;
- d) autonomous local authorities with an annual budget of less than EUR 10 million and less than 5 000 inhabitants.

3.3 'Linked economic actors' are economic actors which have any of the following relationships with each other:

- a) an economic actor has a majority of the shareholders' or members' voting rights in another economic actor;
- b) an economic actor has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another economic actor;
- c) an economic actor has the right to exercise a dominant influence over another economic actor pursuant to a contract entered into with that economic actor or to a provision in its memorandum or articles of association;
- d) an economic actor, which is a shareholder in or member of another economic actor, controls alone, pursuant to an agreement with other shareholders in or members of that economic actor, a majority of shareholders' or members' voting rights in that economic actor.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 3.2 are not involving themselves directly or indirectly in the management of the economic actor in question, without prejudice to their rights as shareholders.

Economic actors having any of the relationships described in the first subparagraph of paragraph 3.2 through one or more other economic actors, or any one of the investors mentioned in paragraph 3.2, are also considered to be linked.

Economic actors which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked economic actors if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

3.4 Except in the cases set out in paragraph 3.2, second subparagraph, an economic actor cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

3.5 Economic actors may make a declaration of status as an autonomous economic actor, partner economic actor or linked economic actor, including the data regarding the thresholds set out in Section B. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the economic actor may declare in

good faith that it can legitimately presume that it is not owned as to 25 % or more by one economic actor or jointly by economic actors linked to one another.

#### **Section D: Data used for the staff headcount and the financial amounts and reference period**

- 4.1 The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.
- 4.2 Where, at the date of closure of the accounts, an economic actor finds that, on an annual basis, it has exceeded or fallen below the headcount or financial thresholds stated in Section B, this will not result in the loss or acquisition of the status of medium-sized, small or micro- economic actor unless those thresholds are exceeded over two consecutive accounting periods.
- 4.3 In the case of newly-established economic actors whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

#### **Section E: Staff headcount**

- 5.1 The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked full-time within the economic actor in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:
  - a) employees;
  - b) persons working for the economic actor being subordinated to it and deemed to be employees under national law;
  - c) owner-managers;
  - d) partners engaging in a regular activity in the economic actor and benefiting from financial advantages from the economic actor.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

#### **Section F: Establishing the data of an economic actor**

- 6.1 In the case of an autonomous economic actor, the data, including the number of staff, are determined exclusively on the basis of the accounts of that economic actor.
- 6.2 The data, including the headcount, of an economic actor having partner economic actors or linked economic actors are determined on the basis of the

accounts and other data of the economic actor or, where they exist, the consolidated accounts of the economic actor, or the consolidated accounts in which the economic actor is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner economic actor of the economic actor in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph are added 100 % of the data of any economic actor, which is linked directly or indirectly to the economic actor in question, where the data were not already included through consolidation in the accounts.

- 6.3 For the application of paragraph 6.2, the data of the partner economic actors of the economic actor in question are derived from their accounts and their other data, consolidated if they exist. To these are added 100 % of the data of economic actors which are linked to these partner economic actors, unless their accounts data are already included through consolidation.

For the application of the same paragraph 6.2, the data of the economic actors which are linked to the economic actor in question are to be derived from their accounts and their other data, consolidated if they exist. To these are added, pro rata, the data of any possible partner economic actor of that linked economic actor, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 6.2.

- 6.4 Where in the consolidated accounts no staff data appear for a given economic actor, staff figures are calculated by aggregating proportionally the data from its partner economic actors and by adding the data from the economic actors to which the economic actor in question is linked.

*Note: SE may at any time modify the content of this Appendix, provided that SE is satisfied that such modification is both required to meet the Scheme's objectives and consistent with the legal requirements that apply to it.*