

SCOTTISH ENTERPRISE ENVIRONMENTAL PROTECTION SCHEME 2014-2023 SC10437

LEGAL BASIS

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.

Until such time as the UK adopts a domestic subsidy control regime, Scottish Enterprise (“**SE**”) is required to comply with the provisions on subsidy control as provided for in:

- (a) Chapter 3 of Title XI 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**”) and/or
- (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**”) and/or
- (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**”) (as relevant).

From 1 January 2021, the Scottish Enterprise Environmental Protection Scheme 2014 - 2023 (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.

Until 31 December 2020, the Scheme operated under Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the common market in application of Articles 107 and 108 of the Treaty as published in the Official Journal of the European Union on 26 June 2014 (the “**Regulation**”). During that time the Scheme reference number was SA.39216 and the legal basis for the Scheme was the European Communities Act 1972 and the Enterprise and New Towns (Scotland) Act 1990, as amended 1 April 2001, by Scottish Statutory Instrument 2001 No. 126.

Although the Scheme no longer legally operates under the Regulation, the Regulation remains relevant to interpretation of the Scheme and terms from the Regulation are referred to throughout.

OBJECTIVE

This Scheme covers discretionary funding awarded to enterprises to assist them with activities in the areas of environmental protection as set out below. The principal objective of the Scheme is to encourage investment in environmental protection measures by companies in Scotland to secure both long term economic benefits to Scotland and help achieve Scotland’s low carbon targets.

GENERAL PROVISIONS

There is no automatic entitlement to support from SE. Assistance may be offered through a range of products and services delivered by SE, based on the merits of the proposed project, and an assessment of need for assistance. Any funding is subject to rigorous due diligence appraisal and internal approval by SE. Any business interested in assistance from SE relating to the Scheme outlined below should consult www.scottish-enterprise.com, or contact us by phone on **0845 607 8787** or by e-mail to enquiries@scotent.co.uk.

Aid can be awarded to enterprises of all sizes.

Applicants must submit an 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.

Where the applicant is a large company, additional conditions will be applied to ensure that the aid has an incentive effect. The applicant must provide documentation which establishes that the aid 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 beneficiary on the project/activity; or a material increase in the speed of completion. This documentation will be verified by SE before the application is approved.

SE is required to provide annual returns to the Scottish and UK Governments detailing aid provided under this Scheme, and to maintain detailed records regarding individual aid provided under the Scheme. Such records must contain all information necessary to establish that the conditions laid down in the Regulation are fulfilled, including information on the status of any undertaking whose entitlement to aid or a bonus depends on its status as an SME, information on the incentive effect of the aid, and information making it possible to establish the precise amount of eligible costs for the purpose of applying the Regulation. Records must be maintained for 10 years from the date on which the last aid was granted under the Scheme. The information which must be provided to SE and/or retained by the aid recipient will be set out in any offer of grant made under the Scheme.

DEFINITIONS

For the purposes of the Scheme:

- Any reference to an “**Article**” shall mean an Article of the Regulation
- The definitions set out in Article 2 of the Regulation shall apply to the descriptions of the types of aid outlined below.

TYPES OF AID UNDER THE SCHEME

The information below is intended to be a helpful summary of the types of aid which may be granted under the Scheme. Any award will, however, be subject to assessment against the detailed conditions of the Regulation. It should be noted that the aid amounts stated reflect the maximum levels of support permitted under the Regulation and SE may set lower aid intensities for specific products or programmes created under the Scheme, taking into account the strategic rationale and market failure being addressed through the aid.

Investment aid enabling undertakings to go beyond Union standards for environmental protection or to increase the level of environmental protection in the absence of Union standards

Any aid to support company investment in environmental protection going beyond Union standards (or increasing the level of protection in the absence of such standards) shall be provided in accordance with the conditions of Article 36.

The eligible costs are generally the extra investment costs necessary to go beyond the applicable Union standards or to increase the level of environmental protection in the absence of Union standards. Costs must be directly linked to the achievement of a higher level of environmental protection.

The aid intensity shall not exceed: 40% for large companies, 50% for medium sized companies and 60% for small companies. A further 5% bonus may be applied to investments located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).

Investment aid for early adaption to future Union standards

Any aid to support company investment in complying with new Union standards which are not yet in force shall be provided in accordance with the conditions of Article 37.

Union standards shall have been adopted and the investment must be implemented and finalised at least one year before the date of the standard coming into force.

The eligible costs are generally the extra investment costs necessary to go beyond the Union standards. Costs must be directly linked to the achievement of a higher level of environmental protection.

The aid intensity shall not exceed:

- where implementation and finalisation of the investment take place more than three years before the date of entry into force of the new Union standard: 20% for small companies, 15% for medium sized companies and 10% for large companies
- where implementation and finalisation of the investment take place between one and three years before the date of entry into force of the new Union standard: 15% for small companies, 10% for medium-sized companies and 5% for large companies.

These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).

Investment aid for energy efficiency measures

Any aid to support company investment in energy efficiency measures shall be provided in accordance with the conditions of Article 38.

The eligible costs are generally the extra investment costs necessary to go beyond the Union standards. Costs must be directly linked to the achievement of a higher level of environmental protection.

The aid intensity shall not exceed: 30% for large companies, 40% for medium sized companies and 50% for small companies. These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).

The maximum amount of aid that can be granted under this provision is EUR 15 million per undertaking per investment project.

Investment aid for energy efficiency projects in buildings

Any investment aid for energy efficiency projects in building shall be provided in accordance with the conditions set out in Article 39.

The maximum amount of aid that can be granted under this provision is EUR 10 million as set out in Article 39(5).

Investment aid for high-efficiency cogeneration

Any investment aid for high-efficiency cogeneration shall be provided in accordance with the conditions set out in Article 40.

Investment aid will only be granted in respect of newly installed or refurbished capacities.

The eligible costs shall be:

- the extra investment costs for the equipment needed for the installation to operate as a high-efficiency cogeneration installation, compared to conventional electricity or heating installations of the same capacity; or
- the extra investment cost to upgrade to a higher efficiency when an existing installation already meets the high-efficiency threshold.

The aid intensity shall not exceed: 45% of the eligible costs for large companies, 55% for medium sized companies and 65% for small companies. These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).

The maximum amount of aid that can be granted under this provision is EUR 15 million per undertaking per investment project.

Investment aid for the promotion of energy from renewable sources

Any investment for the promotion of energy from renewable energy sources shall be provided in accordance with the provisions set out in Article 41.

Investment aid for the production of biofuels shall only be exempted under this provision to the extent the aided investments are used exclusively for the production of sustainable biofuels. (This exclusion does not apply where existing food based bio-fuel plants are being converted into advanced biofuel plants, so long as the food-based production reduces commensurate with the new capacity.)

Aid shall not be granted for:

- biofuels which are subject to a supply or blending obligation.
- hydropower installations that do not comply with Directive 2000/60/EC of the European Parliament.

The investment aid shall be granted to new₄ installations only.

The eligible costs are generally the extra investment costs necessary to promote the production of energy from renewable sources, to be determined as set out in Article 41. Only costs which are directly linked to the achievement of a higher level of environmental protection are eligible.

The relevant aid intensity depends on the method of calculating the eligible costs, but will be either:

- where costs are calculated under para 6(a) or (b) of Article 41: 45% of the eligible costs for large companies, 55% for medium sized companies and 65% for small companies. These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023)
- where costs are calculated under para 6(c) of Article 41: 30% for large companies, 40% for medium sized companies and 50% for small companies. These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023)

Where aid is granted in a competitive bidding process on the basis of clear transparent and non-discriminatory criteria, the aid intensity may reach 100% of the eligible costs.

The maximum amount of aid that can be granted under this provision is EUR 15 million per undertaking per investment project.

Operating aid for the promotion of electricity from renewable sources

Operating aid for the promotion of energy from renewable sources shall be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria which shall be open to all generators producing electricity from renewable energy sources on a non-discriminatory basis.

The bidding process may be limited to specific technologies where a process open to all generators would lead to a suboptimal result, in particular:

- the longer-term potential of a given new and innovative technology; or
- the need to achieve diversification; or
- network constraints and grid stability; or
- system (integration) costs; or
- the need to avoid distortions on the raw material markets from biomass support.

Aid shall be granted to new and innovative renewable energy technologies in a competitive bidding process. Aid shall not be granted for more than 5% of the planned new electricity capacity from renewable energy sources per year in total.

Any aid granted under this provision will comply in full with the additional detailed provisions set out in Article 42.

The maximum amount of aid that can be granted under this provision is set out in the Regulation.

Operating aid for the promotion of energy from renewable sources in small scale installations

Any operating aid for the promotion of energy from renewable sources in small scales installations shall be provided in accordance with the conditions set out in Article 43.

The maximum amount of aid that can be granted under this provision is EUR 15 million per undertaking per investment project.

Investment aid for remediation of contaminated sites

Any investment aid for remediation of contaminated sites shall be provided in accordance with the conditions set out in Article 45.

The investment shall lead to the repair of the environmental damage, including damage to the quality of the soil or of surface water or groundwater.

The aid will only be granted where a person liable under the applicable law is not identified or cannot be made to bear the costs of the remediation or decontamination work.

The eligible costs shall be the costs incurred for the remediation work, less the increase in the value of the land. All expenditure incurred by an undertaking in remediating its site, whether or not such expenditure can be shown as a fixed asset on its balance sheet, may be considered as eligible investment in the case of the remediation of contaminated sites. Evaluations in the increase of value of land resulting from the remediation shall be carried out by an independent expert.

The aid intensity shall not exceed 100% of the eligible costs.

The maximum amount of aid that can be granted under this provision is EUR 20 million per undertaking per investment project.

Investment aid for energy for energy efficient district heating and cooling

Any investment aid for energy efficient district heating and cooling shall be provided in accordance with the conditions set out in Article 46.

The eligible costs for the production plant shall be the extra costs needed for the construction, expansion and refurbishment of one or more generation units to operate as an energy efficient district heating and cooling system compared to a conventional production plant. The investment shall be an integral part of the new system.

The aid intensity for the production plant shall not exceed: 45% of the eligible costs for large companies, 55% for medium sized companies and 65% for small companies. These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).

The eligible costs for the distribution network shall be the investment costs. The aid amount shall not exceed the difference between the eligible costs and the operating profit.

The maximum amount of aid that can be granted under this provision is EUR 20 million per undertaking per investment project.

Investment aid for waste recycling and re-utilisation

Any investment aid for waste recycling and re-utilisation shall be provided in accordance with the conditions set out in Article 47.

The investment aid shall be granted for the recycling and re-utilisation of waste generated by other undertakings where the recycled or re-used materials treated would otherwise be disposed of (or treated in a less environmentally friendly manner). Aid to waste recovery operations other than recycling shall not be covered.

The aid shall not relieve polluters from a burden under Union law and should not be used to meet a normal company cost. Aid cannot be granted under this provision to investments relating to the recycling and re-utilisation of the beneficiary's own waste.

Any investment should go beyond state of the art.

The eligible costs shall be the extra investment costs necessary to realise an investment leading to recycling or re-use activities compared to a conventional process of re-use and recycling activities with the same capacity that would be constructed in the absence of the aid.

The aid intensity shall not exceed: 35% of the eligible costs for large companies, 45% for medium sized companies and 55% for small companies. These intensities can be increased by 5% where the investment is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).

The maximum amount of aid that can be granted under this provision is EUR 15 million per undertaking per investment project.

Investment aid for energy infrastructure

Any investment aid for the construction or upgrade of energy infrastructures shall be provided in accordance with the conditions set out in Article 48.

Aid shall be granted for infrastructure located in assisted areas. The energy infrastructure supported shall be subject to full tariff and access regulation according to internal energy market legislation.

The eligible costs shall be the investment costs.

The aid amount shall not exceed the difference between the eligible costs and the operating profit of the investment.

Investments in electricity and oil and gas storage projects are not eligible for support.

The maximum amount of aid that can be granted under this provision is EUR 50 million per undertaking per investment project.

Any aid for environmental studies (including energy audits) directly linked to investments in environmental protection shall be provided in accordance with the conditions set out in Article 49.

Eligible costs are the costs of the study.

The aid intensity shall not exceed: 50% of the eligible costs for large companies, 60% for medium sized companies and 70% for small companies.

Large companies cannot receive support for mandatory energy audits.

The maximum amount of aid that can be granted under this provision is EUR 15 million per undertaking per investment study.

Investment aid to SMEs

Any investment aid to SMEs shall be provided in accordance with the conditions set out in Article 17.

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.

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 enterprise)
 - the transaction takes place under market conditions.

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
- shall be maintained for at least 3 years from the date the post was first filled

The aid intensity shall not exceed:

- 20% for small enterprises; and
- 10% for medium sized enterprises.

The maximum amount of aid that can be granted under this provision is EUR 7.5 million per undertaking per investment project.

Aid for consultancy in favour of SMEs

Any aid for consultancy in favour of SMEs shall be provided in accordance with the conditions set out in Article 18.

Eligible costs shall be the costs of consultancy services provided by external consultants.

The aid intensity shall not exceed 50% of eligible costs.

The services concerned shall not be a continuous or periodic activity nor relate to a company's usual operating costs (e.g. routine tax consultancy, legal services or advertising).

The maximum amount of aid that can be granted under this provision is EUR 2 million per undertaking per project.

Aid to SMEs for participation in fairs

Any aid for SMEs for participation in fairs shall be provided in accordance with Article 19.

Eligible costs shall be the costs incurred for renting, setting up and running the stand for the participation of an undertaking in any particular fair or exhibition.

The aid intensity shall not exceed 50% of eligible costs.

The maximum amount of aid that can be granted under this provision is EUR 2 million per year.

Aid for cooperation costs incurred by SMEs participating in European Territorial Cooperation (“ETC”) projects

Any aid for cooperation costs incurred by SMEs participating in ETC projects shall be provided in accordance with Article 20.

Eligible costs shall be:

- costs for organisational cooperation including costs of staff and offices to the extent linked to the ETC project
- costs of advisory and support services linked to cooperation and delivered by external consultants and service providers (so long as not of a continuous or periodic nature and not related to usual operating costs)
- travel expenses, costs of equipment and investment expenditure directly related to the ETC project, as well as depreciation of tools and equipment used in the project.

The aid intensity shall not exceed 50% of eligible costs.

The maximum amount of aid that can be granted under this provision is EUR 2 million per undertaking per project.

EXCLUSIONS

Export Aid

The Regulation and accordingly the Scheme does not apply to:

- aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity.
- aid contingent upon the use of domestic over imported goods.

Sectoral

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.
- activities in the processing and marketing of agricultural products where aid is aimed at directly influencing the price or quantity of primary production (i.e. where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned or the aid is conditional on being partly or entirely passed on to primary producers).
- aid to facilitate the closure of uncompetitive coal mines.

Recovery of Illegal Aid / Undertakings in Difficulty

The following are explicitly excluded from the Scheme:

- payment of aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the common market; and
- aid to undertakings in difficulty.

CUMULATION OF AID

Aid provided under the Scheme may be cumulated with other forms of aid exempted under the Regulation and provided through this or another SE scheme as long as those aid measures concern different identifiable eligible costs.

Aid provided under this Scheme may only be cumulated with other aid exempted under the Regulation and/or the de minimis regulation, where, in respect of the same totally or partially overlapping eligible costs, such cumulation does not result in the highest aid intensity or aid amount applicable under the Regulation and/or relevant scheme(s) being exceeded.

All sources of public funding shall be taken into account when considering cumulation and in determining that the relevant aid intensity or aid amount is not exceeded.