

SCOTTISH ENTERPRISE SME AID SCHEME 2014 - 2021

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 SME Aid Scheme 2014 - 2021 (the “**Scheme**”) operates under and satisfies as relevant and/or necessary:

- (i) the principles in Article 3.4 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.39147 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 the areas of activity outlined below. The principal objective of the Scheme is to encourage development and growth of businesses in Scotland through increasing competitiveness, efficiency and exploitation of commercial potential.

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.

In general, aid will only be provided to SMEs. Aid to large enterprises under this Scheme is only permitted for environmental studies.

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

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 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.

Risk finance aid

Any risk finance aid shall be provided in accordance with the Article 21.

Aid to eligible undertakings may be provided through equity, quasi-equity investments, loans, guarantees or a mix thereof.

Eligible undertakings shall be undertakings which at the time of the initial risk finance investment are unlisted SMEs and fulfil at least one of the following conditions:

- they have not been operating in any market;
- they have been operating in any market for less than 7 years following their first commercial sale;
- they require an initial risk finance investment which, based on a business plan prepared in view of entering a new product or geographical market, is higher than 50 % of their average annual turnover in the preceding 5 years.

The maximum aid amount is EUR 15 million per eligible undertaking as laid down in Article 21(9).

Aid for start ups

Any aid for start-ups shall be provided in accordance with Article 22.

The aid shall take the form of:

- loans with interest rates which are not conform with market conditions, with a duration of 10 years and up to a maximum nominal amount of EUR 1 million, or EUR 1.5 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty. For loans with a duration comprised between 5 and 10 years the maximum amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the loan. For loans with a duration of less than 5 years, the maximum amount shall be the same as for loans with a duration of 5 years;
- guarantees with premiums which are not conform with market conditions, with a duration of 10 years and up to maximum EUR 1.5 million of amount guaranteed, or EUR 2.25 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty. For guarantees with a duration comprised between 5 and 10 years the maximum amount guaranteed amounts may be adjusted by multiplying the amounts above by the ratio between 10 years and the actual duration of the guarantee. For guarantees with a duration of less than 5 years, the maximum amount guaranteed shall be the same as for guarantees with a duration of 5 years. The guarantee shall not exceed 80 % of the underlying loan.
- grants, including equity or quasi equity investment, interests rate and guarantee premium reductions up to EUR 0,4 million gross grant equivalent or EUR 0,6 million for undertakings established in assisted areas fulfilling the conditions of Article 107(3)(c) of the Treaty.

A beneficiary can receive support through a mix of the aid instruments listed above, provided that the proportion of the amount granted through one aid instrument, calculated on the basis of the maximum aid amount allowed for that instrument, is taken into account in order to determine the residual proportion of the maximum aid amount allowed for the other instruments forming part of such a mixed instrument.

For small and innovative enterprises, the maximum amounts set out above may be doubled.

Aid to alternative trading platforms specialised in SMEs

Any aid for alternative trading platforms specialised in SMEs shall be provided in accordance with Article 23.

Aid for scouting costs

Any aid for scouting costs shall be provided in accordance with Article 24.

Eligible costs are the costs of initial screening and formal due diligence undertaken by managers of financial intermediaries or investors to identify eligible undertakings for risk finance aid or aid for start ups within the meaning of the Scheme.

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

Aid for environmental studies

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.

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 generally applies to all sectors of the economy, however application of Scheme provisions is restricted in the case 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 (*however note this restriction does not apply to aid for SMEs' access to finance provisions of the Scheme*)
- activities in the primary agricultural production sector (*however note this restriction does not apply to aid for consultancy in favour of SMEs, risk finance aid or aid for environmental studies*)
- 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.