

SCOTTISH ENTERPRISE CULTURE, HERITAGE AND SPORT INFRASTRUCTURE 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 Culture, Heritage and Sport Infrastructure 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.39214 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:

- culture and heritage conservation;
- pre-production, production and distribution of audio-visual works;

- development and operation of sport and multifunctional recreational infrastructures; and
- investment aid for local infrastructures.

The principal objective of the Scheme is to encourage investment in these areas of activity in Scotland and secure the consequent economic benefits to Scotland.

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 this 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.

Aid for culture and heritage conservation

Aid to support costs associated with culture and heritage conservation may be provided in line with the conditions set out in Article 53. This does not cover aid to press and magazines, whether in print or electronic form.

The maximum amount of aid that can be granted under this provision is:

- For investment aid: EUR 100 million per project; and
- For operating aid: EUR 50 million per undertaking per year

The eligible costs for investment aid and operating aid are as set out at paragraphs 4 and 5 of Article 53.

For investment aid, the aid amount shall not exceed the difference between eligible costs and the operating profit of the investment, as further described in the Regulation.

For operating aid the aid amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period.

Where the aid amount does not exceed EUR 1 million, the maximum aid amount may instead be set at 80% of eligible costs. The exception to this is where aid is being granted for publishing of music and literature, where the conditions set out in paragraph 9 of Article 53 apply.

Aid scheme for audio-visual work

Any aid awarded to support the script-writing, development, production, distribution and promotion of audio-visual works shall be provided in accordance with the terms set out in Article 54.

Aid may take the form of:

- Aid to the production of audio-visual works;
- Pre-production aid; and
- Distribution aid.

The specific terms around eligible costs and level of aid in each case are set out in detail in Article 54.

The maximum amount of aid that can be granted under this provision is EUR 50 million per scheme per year.

Aid for sport and multifunctional recreational infrastructures

Aid for sport and multifunctional recreational infrastructures may be provided in line with the conditions set out in Article 55.

The aid may take the form of investment aid and/or operating aid.

The maximum amount of aid that can be granted under this provision is:

- For investment aid: EUR 15 million or the total costs exceeding EUR 50 million per project
- For operating aid: EUR 2 million per infrastructure per year.

Investment aid for local infrastructures

Aid for the construction or upgrade of local infrastructures (meaning infrastructure that contributes at a local level to improving the business and consumer environment) may be provided under the Scheme, subject to the conditions set out in Article 56.

The maximum amount of aid that can be granted under this provision is EUR 10 million or the total costs exceeding EUR 20 million for the same infrastructure.

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 primary agricultural production sector.
- 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.