

SCOTTISH ENTERPRISE REGIONAL AND SME INVESTMENT AID SCHEME 2014 - 2023 - SC10439

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 Regional and SME Investment Aid 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.39217 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.

OBJECTIVES

The objectives of the Scheme are:

- (a) to encourage companies to invest in projects which create or safeguard jobs in Scotland;
- (b) to support the development of premises and buildings for commercial purposes by the private sector 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); and
- (c) to promote the development of assisted areas in Scotland, as set out in the UK Regional Aid Map 2014 – 2020 (SA.38113 2014/N).

GENERAL PROVISIONS

There is no automatic entitlement to support from SE and any funding will be provided on a discretionary basis. Assistance may be offered through a range of instruments, products and services, based on the merits of the proposed project, and an assessment of need for assistance subject to rigorous due diligence appraisal and internal approval by SE. Any business interested in assistance from SE under 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.

Regional investment aid

Any regional investment aid shall be provided in accordance with the conditions set out in Article 14.

In Article 107(3)(c) areas in Scotland, aid may be granted:

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

Eligible costs are:

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

Maximum aid intensities are set out in the table below:

	Large	Medium	Small
Non-predefined article 107(3)(c) areas	10%	20%	30%
Sparsely populated Article 107(3)(c) areas (Caithness & Sutherland, Ross & Cromarty, Lochaber, Skye and Lochalsh, Arran & Cumbrae and Argyll & Bute)	15%	25%	35%
Article 107(3)(c) areas which are former Article 107(3)(a) areas (until 31 December 2017)	15%	25%	35%

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

- in the case of large companies, 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.

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.

The aid 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.

For awards made from 9 January 2018, the aid beneficiary must confirm that it has not carried out a relocation to the establishment in which the initial investment for which aid is requested is to take place, in the two years preceding the application for aid and give a commitment that it will not do so up to a period of two years after the initial investment for which aid is requested is completed.

The maximum aid amount per undertaking per project is:

- EUR 7.5m in 10% areas
- EUR 11.25m in 15% areas

Regional operating aid

Any regional operating aid shall be provided in accordance with the conditions set out in Article 15.

The regional operating aid schemes shall compensate for:

- the additional transport costs of good which have been produced in areas eligible for operating aid, as well as additional transport costs of goods that are further processed in these areas, under the following conditions:
 - the beneficiaries have their production activity in those areas.
 - the aid is objectively quantifiable in advance on the basis of a fixed sum or per tonne/kilometre ratio or any other relevant unit.
 - these additional transport costs are calculated on the basis of the journey of the goods inside the UK using the means of transport which results in the lowest costs for the beneficiary.

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

Regional urban development aid

Any regional urban development aid shall be provided in accordance with the conditions set out in Article 16.

Urban development projects shall:

- be implemented via urban development funds in assisted areas;
- be co-financed by the European Structural and Investment Funds;
- support the implementation of an ‘integrated sustainable urban development strategy.’

The total investment in an urban development project under any urban development aid measure shall not exceed EUR 20 million.

The eligible costs shall be the overall costs of the urban development project to the extent that they comply with Articles 65 and 37 of Regulation (EU) No 1303/2013 of the European Parliament and of the Council.

The urban development aid shall leverage additional investment from private investors at the level of the urban development funds or the urban development projects, so as to achieve an aggregate amount reaching minimum 30% of the total financing provided to an urban development project.

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.

Investment aid for local infrastructures

Any investment aid for local infrastructures shall be provided in accordance with Article 56.

This provision does not apply to aid for infrastructures that is covered by other sections of Chapter III of the Regulation with the exception of Section 1 — Regional aid. It also does not apply to airport infrastructure and port infrastructure.

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.

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.

The eligible costs shall be the investment costs in tangible and intangible assets.

The aid 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.

Dedicated infrastructure shall not be exempted under this provision.

The maximum aid amount shall not exceed EUR 10 million of 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 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.

Regional investment aid, regional operating aid and regional urban development aid shall not be granted for activities in the following sectors:

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

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

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.