

SCOTTISH ENTERPRISE CULTURE, HERITAGE AND SPORT INFRASTRUCTURE SCHEME 2022 – 2031 – SC10671

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Appendix 1 – Definitions

1. OBJECTIVES

- 1.1 The Scottish Enterprise Culture, Heritage and Sport Infrastructure Scheme 2022 - 2031 (the “**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; and
 - development and operation of sport and multifunctional recreational infrastructures.
- 1.2 The principal objective of the Scheme is to encourage investment in the above areas of activity in Scotland and secure the consequent economic benefits to 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 2031. 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 £12.5 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 1.

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 or contact us on 0300 013 3385 or by e-mail to 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 subsidy provided under the Scheme. Such records must contain all information necessary to establish that the conditions of the Scheme subsidy 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 particular 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: Subsidy for culture and heritage conservation

- 4.1 Subsidy to support costs associated with culture and heritage conservation may be provided in line with the conditions set out in this section. Subsidy to press and magazines, whether in print or electronic form, is not eligible under this section.
- 4.2 Subsidy may be provided for the following cultural purposes and activities:
- a) museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
 - b) tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities;
 - c) intangible heritage in any form, including folklorist customs and crafts;
 - d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
 - e) cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
 - f) writing, editing, production, distribution, digitisation and publishing of music and literature, including translations.
- 4.3 The maximum amount of subsidy that can be granted under this provision is:
- For investment subsidy: £90 million per project; and
 - For operating subsidy: £45 million per economic actor per year
- 4.4 For investment subsidy, the eligible costs shall be the investment costs in tangible and intangible assets, including:

- a) costs for the construction, upgrade, acquisition, conservation or improvement of infrastructure, if at least 80% of either the time or the space capacity per year is used for cultural purposes;
- b) costs for the acquisition, including leasing, transfer of possession or physical relocation of cultural heritage;
- c) costs for safeguarding, preservation, restoration and rehabilitation of tangible and intangible cultural heritage, including extra costs for storage under appropriate conditions, special tools, materials and costs for documentation, research, digitalisation and publication;
- d) costs for improving the accessibility of cultural heritage to the public, including costs for digitisation and other new technologies, costs to improve accessibility for persons with special needs (in particular, ramps and lifts for disabled persons, braille indications and hands-on exhibits in museums) and for promoting cultural diversity with respect to presentations, programmes and visitors;
- e) costs for cultural projects and activities, cooperation and exchange programmes and grants including costs for selection procedures, costs for promotion and costs incurred directly as a result of the project.

4.5 For operating subsidy, the eligible costs shall be the following:

- a) the cultural institution's or heritage site's costs linked to continuous or periodic activities including exhibitions, performances and events and similar cultural activities that occur in the ordinary course of business;
- b) costs of cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies;
- c) costs of the improvement of public access to the cultural institution or heritage sites and activities including costs of digitisation and of use of new technologies as well as costs of improving accessibility for persons with disabilities;
- d) operating costs directly relating to the cultural project or activity, such as rent or lease of real estate and cultural venues, travel expenses, materials and supplies directly related to the cultural project or activity, architectural structures for exhibitions and stage sets, loan, lease and depreciation of tools, software and equipment, costs for access rights to copyright works and other related intellectual property rights protected contents, costs for promotion and costs incurred directly as a result of the project or activity; depreciation charges and the costs of financing are only eligible if they have not been covered by investment subsidy;
- e) costs for personnel working for the cultural institution or heritage site or for a project;
- f) costs for advisory and support services provided by outside consultants and service providers, incurred directly as a result of the project.

4.6 For investment subsidy, the subsidy amount shall not exceed the difference between 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. The operator of the infrastructure is allowed to keep a reasonable profit over the relevant period.

- 4.7 For operating subsidy, the subsidy amount shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a clawback mechanism.
- 4.8 Subject to paragraph 4.9 below, where the subsidy amount does not exceed £1.8 million, the maximum subsidy amount may instead be set at 80% of eligible costs.
- 4.9 The exception to the limit outlined at paragraph 4.8 above is where subsidy is being granted for the writing, editing, production, distribution, digitisation and publishing of music and literature, including translations. In such cases, the maximum subsidy amount shall not exceed either the difference between the eligible costs and the project's discounted revenues or 70% of the eligible costs. The revenues shall be deducted from the eligible costs *ex ante* or through a clawback mechanism. The eligible costs shall be the costs for publishing of music and literature, including the authors' fees (copyright costs), translators' fees, editors' fees, other editorial costs (proofreading, correcting, reviewing), layout and pre-press costs and printing or e-publication costs.

Section B: Subsidy scheme for audio-visual work

- 4.10 Any subsidy 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 this section.
- 4.11 Subsidy may take the form of:
- subsidy to the production of audio-visual works;
 - pre-production subsidy; and
 - distribution subsidy.
- 4.12 The eligible costs shall be the following:
- a) for production subsidy: the overall costs of production of audiovisual works including costs to improve accessibility for persons with disabilities.
 - b) for pre-production subsidy: the costs of script-writing and the development of audiovisual works.
 - c) for distribution subsidy: the costs of distribution and promotion of audiovisual works.
- 4.13 The subsidy intensity for the production of audiovisual works shall not exceed 50% of the eligible costs.

- 4.14 The subsidy intensity for pre-production shall not exceed 100% of the eligible costs. If the resulting script or project is made into an audiovisual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the subsidy intensity.
- 4.15 The subsidy intensity for distribution shall be the same as the subsidy intensity for production.
- 4.16 Subsidy shall not be reserved for specific production activities or individual parts of the production value chain. Subsidy for film studio infrastructures shall not be eligible under this section.
- 4.17 The maximum amount of subsidy that can be granted under this provision is £45 million per scheme per year.

Section C: Subsidy for sport and multifunctional recreational infrastructures

- 4.18 Subsidy for sport and multifunctional recreational infrastructures may be provided in line with the conditions set out in this section.
- 4.19 Sport infrastructure shall not be used exclusively by a single professional sport user. Use of the sport infrastructure by other professional or non-professional sport users shall annually account for at least 20% of time capacity. If the infrastructure is used by several users simultaneously, corresponding fractions of time capacity usage shall be calculated.
- 4.20 Multifunctional recreational infrastructure shall consist of recreational facilities with a multi-functional character offering, in particular, cultural and recreational services with the exception of leisure parks and hotel facilities.
- 4.21 Access to the sport or multifunctional recreational infrastructures shall be open to several users and be granted on a transparent and non-discriminatory basis. Enterprises which have financed at least 30% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions, provided those conditions are made publicly available.
- 4.22 If sport infrastructure is used by professional sport clubs, the pricing conditions must be made publicly available.
- 4.23 Any concession or other entrustment to a third party to construct, upgrade and/or operate the sport or multifunctional recreational infrastructure shall be assigned on a open, transparent and non-discriminatory basis, having due regard to the applicable procurement rules.

- 4.24 Subsidy may take the form of:
- a) investment subsidy, including subsidy for the construction or upgrade of sport and multifunctional recreational infrastructure;
 - b) operating subsidy for sport infrastructure;
- 4.25 For investment subsidy for sport and multifunctional recreational infrastructure the eligible costs shall be the investment costs in tangible and intangible assets.
- 4.26 For operating subsidy for sport infrastructure the eligible costs shall be the operating costs of the provision of services by the infrastructure. Those operating costs include costs such as personnel costs, materials, contracted services, communications, energy, maintenance, rent, administration, etc., but exclude depreciation charges and the costs of financing if these have been covered by investment subsidy.
- 4.27 For investment subsidy for sport and multifunctional recreational infrastructure, 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.
- 4.28 For operating subsidy for sport infrastructure, the subsidy amount shall not exceed the operating losses over the relevant period. This shall be ensured *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
- 4.29 For subsidy not exceeding £1.8 million, the maximum amount of subsidy may be set, alternatively to the method referred to in paragraphs 4.27 and 4.28, at 80% of eligible costs.
- 4.30 The maximum amount of subsidy that can be granted under this section is:
- For investment subsidy: £13.5 million or the total costs exceeding £45 million per project
 - For operating subsidy: £1.8 million per infrastructure per year.

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 exceptions 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 production 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); and
- subsidy to facilitate the closure of uncompetitive coal mines.

Recovery of illegal subsidy / Ailing or insolvent economic actors

5.3 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 forms of 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

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);

‘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;

‘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;

‘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;

‘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;

‘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;

‘primary agricultural production’ means production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products;

‘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;

‘reasonable profit’ shall be determined with respect to the typical profit for the sector concerned. In any event, a rate of return on capital that does not exceed the relevant swap rate plus a premium of 100 basis points will be considered to be reasonable;

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

‘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;

‘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); and

‘Treaty’ means the Treaty on the Functioning of the European Union.