

SCOTTISH ENTERPRISE REGIONAL AIRPORTS, MARITIME PORTS AND INLAND PORTS SCHEME 2017 - 2023 - SC10438

1. LEGAL BASIS

- 1.1 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.
- 1.2 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).
- 1.3 From 1 January 2021, the Scottish Enterprise Research Airports, Maritime Ports and Inland Ports Scheme 2017 - 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.
- 1.4 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.49484 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.
- 1.5 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.

2. OBJECTIVE

The objective of the Scheme is to support the development of regional airports, maritime ports and inland ports in Scotland, in order to deliver economic benefits to Scotland.

3. GENERAL PROVISIONS

- 3.1 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 and is subject to 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 by phone on **0300 013 3385** or by e-mail to enquiries@scotent.co.uk.
- 3.2 The information set out in this document 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.
- 3.3 Aid can be awarded to enterprises of all sizes.
- 3.4 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.
- 3.5 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.

4. DEFINITIONS

For the purposes of the Scheme:

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

5. TYPES OF AID UNDER THE SCHEME

5.1 Aid for regional airports

- 5.1.1 Any aid for regional airports shall be provided in accordance with the conditions set out in Article 56a and Chapter I of the Regulation. Article 56a

sets out the conditions which apply to both investment aid and operating aid to regional airports.

5.1.2 The conditions set out in paragraphs 3 to 14 of Art 56a apply to **investment aid**:

“3. The airport shall be open to all potential users. In the case of physical limitation of capacity, the allocation shall take place on the basis of pertinent, objective, transparent and non-discriminatory criteria.

4. The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport, including the conversion of an existing airfield into a passenger airport.

5. The investment concerned shall not exceed what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts.

6. The investment aid shall not be granted to an airport located within 100 kilometres or 60 minutes travelling time by car, bus, train or high-speed train from an existing airport from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated.

7. Paragraphs 5 and 6 shall not apply to airports with average annual passenger traffic of up to 200 000 passengers during the two financial years preceding the year in which aid is actually granted if the investment aid is not expected to result in the airport increasing its average annual passenger traffic to above 200 000 passengers within two financial years following the granting of the aid. Investment aid granted to such airports shall comply either with paragraph 11 or with paragraphs 13 and 14.

8. Paragraph 6 shall not apply where the investment aid is granted to an airport situated within 100 kilometres from existing airports from which scheduled air services, within the meaning of Article 2(16) of Regulation (EC) No 1008/2008, are operated, provided the route between each of these other existing airports and the airport receiving the aid necessarily involves either a total travelling time by maritime transportation of at least 90 minutes or air transportation.

9. The investment aid shall not be granted to airports with average annual passenger traffic of more than three million passengers during the two financial years preceding the year in which aid is actually granted. The investment aid shall not be expected to result in the airport increasing its average annual traffic to above three million passengers within two financial years following the granting of the aid.

10. The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid.

11. The investment 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.

12. The eligible costs shall be the costs relating to the investments in airport infrastructure, including planning costs.

13. The investment aid amount shall not exceed:

(a) 50% of eligible costs for airports with an average annual passenger traffic of one to three million passengers during the two financial years preceding the year in which aid is actually granted

(b) 75% of the eligible costs for airports with average annual passenger traffic of up to one million passengers during the two financial years preceding the year in which aid is actually granted.

14. The maximum aid intensities set out in paragraph 13 may be increased by 20 percentage points for airports located in remote regions."

5.1.3 The conditions set out in paragraphs 3, 4, 10 and 15 to 18 of Article 56a apply to **operating aid**:

"3. The airport shall be open to all potential users. In the case of physical limitation of capacity, the allocation shall take place on the basis of pertinent, objective, transparent and non-discriminatory criteria.

4. The aid shall not be granted for the relocation of existing airports or for the creation of a new passenger airport, including the conversion of an existing airfield into a passenger airport.

10. The aid shall not be granted to airports with average annual freight traffic of more than 200 000 tonnes during the two financial years preceding the year in which aid is actually granted. The aid shall not be expected to result in the airport increasing its average annual freight traffic to above 200 000 tonnes within two financial years following the granting of the aid.

15. Operating aid shall not be granted to airports with average annual passenger traffic of more than 200 000 passengers during the two financial years preceding the year in which aid is actually granted.

16. The amount of operating aid shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The aid shall be granted either in the form of periodic instalments fixed *ex ante*, which shall not be increased during the period for which the aid is granted, or in the form of amounts defined *ex post* based on the observed operating losses.

17. Operating aid shall not be paid out in respect of any calendar year during which the annual passenger traffic of the airport exceeds 200 000 passengers.

18. The granting of the operating aid shall not be made conditional upon the conclusion of arrangements with specific airlines relating to airport charges, marketing payments or other financial aspects of the airlines' operations at the airport concerned."

5.2 **Aid for maritime ports**

5.2.1 Any aid for maritime ports shall be provided in accordance with the conditions set out in Article 56b and Chapter I of the Regulation.

5.2.2 The eligible costs are the costs, including planning costs, of:

- investments for the construction, replacement or upgrade of port infrastructures;
- investments for the construction, replacement or upgrade of access infrastructure;
- dredging.

5.2.3 Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.

5.2.4 The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.

5.2.5 Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.

5.2.6 For aid not exceeding EUR 5 million, the maximum amount of aid may be set at 80% of eligible costs, as an alternative to the approach to calculating maximum aid intensity set out below. In all other cases:

- The aid amount shall not exceed the difference between eligible costs and operating profit of investment or dredging. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism.
- For eligible costs associated with investments for the construction, replacement or upgrade of **port infrastructure**, the maximum aid intensity is:
 - 100% where total eligible costs are up to EUR 20 million;
 - 80% where total eligible costs are above EUR 20 million and up to EUR 50 million (85% for investments in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023);
 - 60% where total eligible costs are above EUR 50 million and up to the relevant amount of aid laid down in point (ee) of Article 4(1) (65% for investments in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023).
- In the case of eligible costs associated with investments for the construction, replacement or upgrade of **access infrastructure and/or dredging**, the maximum aid intensity is 100%, up to the relevant amount laid down in point (ee) of Article 4(1).

5.3 Aid for inland ports

5.3.1 Any aid for inland ports shall be provided in accordance with the conditions set out in Article 56c and Chapter I of the Regulation.

- 5.3.2 The eligible costs are the costs, including planning costs, of:
- investments for the construction, replacement or upgrade of port infrastructures;
 - investments for the construction, replacement or upgrade of access infrastructure;
 - dredging.
- 5.3.3 Costs relating to non-transport related activities, including industrial production facilities active in a port, offices or shops, as well as for port superstructures shall not be eligible costs.
- 5.3.4 The aided port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.
- 5.3.5 Any concession or other entrustment to a third party to construct, upgrade, operate or rent aided port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
- 5.3.6 For aid not exceeding EUR 2 million, the maximum amount of aid may be set at 80% of eligible costs, as an alternative to the approach to calculating maximum aid intensity set out below. In all other cases:
- The aid amount shall not exceed the difference between eligible costs and operating profit of investment or dredging. The operating profit shall be deducted from the eligible costs *ex ante*, on the basis of reasonable projections, or through a claw-back mechanism; and
 - The maximum aid intensity is 100% of eligible costs up to the amount laid down in point (ff) of Article 4(1)

6. EXCLUSIONS

6.1 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; and/or
- aid contingent upon the use of domestic over imported goods.

6.2 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); and
- aid to facilitate the closure of uncompetitive coal mines.

6.3 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 granted by the UK illegal and incompatible with the common market; and
- aid to undertakings in difficulty.

7. CUMULATION OF AID

- 7.1 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.
- 7.2 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.
- 7.3 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.