

SCOTTISH ENTERPRISE RESEARCH AND DEVELOPMENT AND INNOVATION SCHEME 2014 – 2023 - SC10440

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 Research and Development and Innovation 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.39215 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 research and development and innovation as set out below. The principal objective of the Scheme is to encourage enterprises in Scotland to undertake innovative research and technological development with commercial

potential in order to stimulate growth, strengthen competitiveness and boost employment in 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 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.

Aid for research and development projects

Any aid for research and development projects shall be provided in accordance with the conditions set out in Article 25.

Support can be provided for:

- fundamental research;
- industrial research;
- experimental development; and
- feasibility studies.

The eligible costs of research and development projects shall be allocated to a specific category of research and development and are as set out in paragraph 3 of Article 25.

The eligible costs for feasibility studies are the costs of the study.

Aid intensities for research and development projects are set out in the table below:

	Large company	Medium company	Small company	Bonus if effective collaboration or wide dissemination of results (up to a maximum of 80%)
Fundamental research	100%	100%	100%	-
Industrial research	50%	60%	70%	15%
Experimental development	25%	35%	45%	15%
Feasibility studies	50%	60%	70%	-

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

- where the project is predominantly fundamental research: EUR 40 million per undertaking per project
- where the project is fundamentally industrial research: EUR 20 million per undertaking per project
- where the project is fundamentally experimental development: EUR 15 million per undertaking per project
- EUR 7.5 million per study in the case of aid for feasibility studies.

The maximum amounts above for fundamental research, industrial research and experimental development may be:

- doubled if the project is a EUREKA project or implemented by a Joint Undertaking established on the basis of Article 185 or 187 of the Treaty
- increased by 50% if aid is granted in the form of a repayable advance.

Investment Aid for research infrastructures

Any aid for the construction of upgrade of research infrastructures that perform economic activities shall be provided in accordance with the provisions of Article 26.

Access to infrastructure shall be open to several users and be granted on a transparent and non-discriminatory basis. The price charge for operation or use of the infrastructure shall correspond to a market price. Undertakings which have financed at least 10% of the investment costs of the infrastructure may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

Eligible costs are investment costs in tangible and intangible assets.

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

The maximum amount of aid that can be granted under this provision is EUR 20 million per infrastructure.

Where a research infrastructure receives public funding for both economic and non-economic activities, a monitoring and claw-back mechanism shall be put in place in order to ensure that the applicable aid intensity is not exceeded as a result of an increase in the share of economic activities compared to the situation at the time of awarding the aid.

Aid for innovation clusters

Any aid for innovation clusters shall be granted exclusively to the legal entity operating the innovation cluster (cluster organisation) in accordance with the conditions set out in Article 27.

Access to the cluster will be open to several users and granted on a transparent and non-discriminatory basis. Undertakings which have financed at least 10% of the investment costs of the innovation cluster may be granted preferential access under more favourable conditions. In order to avoid overcompensation, such access shall be proportional to the undertaking's contribution to the investment costs and these conditions shall be made publicly available.

Fees charged for using cluster facilities and participating in activities shall correspond to market price or reflect their costs.

The aid intensity of investment aid for innovation clusters shall not exceed 50% unless the cluster is located in an assisted area (as defined in the SE Regional and SME Investment Subsidy Scheme 2022-2023), where it may be increased by 5%.

Operating aid may be granted for the operation of innovation clusters for a maximum period of ten years to cover the costs set out in paragraph 8 of Article 27.

The aid intensity of operating aid shall not exceed 50% of the total eligible costs during the period over which the aid is granted.

The maximum amount of aid that can be granted under this provision is EUR 7.5 million per cluster.

Innovation aid for SMEs

Any innovation aid for SMEs will be provided in accordance with the conditions set out in Article 28.

Eligible costs are:

- costs for obtaining, validating and defending patents and other intangible assets;
- costs for secondment of highly qualified personnel from a research and knowledge-dissemination organisation or a large enterprise, working on research, development and innovation activities in a newly created function within the beneficiary and not replacing other personnel;
- costs for innovation advisory and support services.

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

The maximum amount of aid that can be granted under this provision is EUR 5 million per undertaking per project.

In the particular case of aid for innovation advisory and support services the aid intensity can be increased up to 100% of the eligible costs provided that the total amount of aid for innovation advisory and support services does not exceed EUR 200,000 per undertaking within any three year period.

Aid for process and organisational innovation

Any aid for process and organisational innovation shall be provided in accordance with the conditions set out in Article 29.

Aid to large undertakings shall only be compatible if they effectively collaborate with SMEs in the aided activity and the collaborating SMEs incur at least 30% of the total eligible costs.

Eligible costs are set out in paragraph 3 of Article 29.

The aid intensity shall not exceed 15% of eligible costs for large undertakings and 50% of eligible costs for SMEs.

The maximum amount of aid that can be granted under this provision is EUR 7.5 million per undertaking per project.

Aid for research and development in the fishery and aquaculture sector

Aid for research and development in the fishery and aquaculture sector provided under Article 30 will comply with the conditions set out there.

Aided projects shall be of interest to all undertakings in the sector or sub-sector involved.

Information on the project shall be published on the internet before it starts, as detailed in Article 30. Results shall also be made available following completion of the project and remain available for a period of at least 5 years from completion.

Aid will be granted directly to the research and knowledge dissemination organisation involved in the project.

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

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.

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 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.