

SCOTTISH ENTERPRISE REGIONAL AIRPORTS, MARITIME PORTS AND INLAND PORTS SCHEME 2022 – 2025 – SC10673

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1. OBJECTIVES

- 1.1 The objective of the Scottish Enterprise Regional Airports, Maritime Ports and Inland Ports Scheme 2022 – 2025 (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.

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 2025. 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 £20 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 2.
- 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 regional airports

4.1 Any subsidy for regional airports shall be provided in accordance with the conditions set out in this section.

4.2 The conditions set out in sub-paragraphs a) to k) below apply to **investment subsidy**:

- a) 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.
- b) the subsidy 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.
- c) the investment concerned shall not exceed what is necessary to accommodate the medium-term expected traffic on the basis of reasonable traffic forecasts.
- d) the investment subsidy 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.
- e) sub-paragraphs c) and d) 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 subsidy is actually granted if the investment subsidy 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 subsidy. Investment subsidy granted to such airports shall comply either with sub-paragraph j) or with sub-paragraphs k) and l).
- f) sub-paragraph d) shall not apply where the investment subsidy 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 subsidy necessarily involves either a total travelling time by maritime transportation of at least 90 minutes or air transportation.
- g) the investment subsidy 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 subsidy is actually granted. The investment subsidy 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 subsidy.
- h) the subsidy 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 subsidy is actually granted. The subsidy 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 subsidy.

- i) The investment 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.
- j) The eligible costs shall be the costs relating to the investments in airport infrastructure, including planning costs.
- k) The investment subsidy amount shall not exceed:
 - (i) 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 subsidy is actually granted
 - (ii) 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 subsidy is actually granted.

4.3 The conditions set out in sub-paragraphs a) to g) below apply to **operating subsidy**:

- a) 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.
- b) The subsidy 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.
- c) The subsidy 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 subsidy is actually granted. The subsidy 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 subsidy.
- d) Operating subsidy 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 subsidy is actually granted.
- e) The amount of operating subsidy shall not exceed what is necessary to cover the operating losses and a reasonable profit over the relevant period. The subsidy shall be granted either in the form of periodic instalments fixed *ex ante*, which shall not be increased during the period for which the subsidy is granted, or in the form of amounts defined *ex post* based on the observed operating losses.
- f) Operating subsidy shall not be paid out in respect of any calendar year during which the annual passenger traffic of the airport exceeds 200 000 passengers.
- g) The granting of the operating subsidy 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.

Section B: Subsidy for maritime ports

- 4.4 Any subsidy for maritime ports shall be provided in accordance with the conditions set out in this section.
- 4.5 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; and
 - dredging.
- 4.6 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.
- 4.7 The subsidised port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.
- 4.8 Any concession or other entrustment to a third party to construct, upgrade, operate or rent subsidised port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
- 4.9 For subsidy not exceeding £4.5 million, the maximum amount of subsidy may be set at 80% of eligible costs, as an alternative to the approach to calculating maximum subsidy intensity set out below. In all other cases:
- the subsidy 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 subsidy intensity is:
 - 100% where total eligible costs are up to £18 million;
 - 80% where total eligible costs are above £18 million and up to £45 million (85% for investments in assisted areas as set out in Appendix 1);
 - 60% where total eligible costs are above £45 million and up to £117 million (65% for investments in assisted areas as set out in Appendix 1).
 - in the case of eligible costs associated with investments for the construction, replacement or upgrade of **access infrastructure and/or dredging**, the maximum subsidy intensity is 100% of eligible costs up to £117 million. As regards dredging a project is defined as all dredging carried out within one calendar year.

Section C: Subsidy for inland ports

- 4.10 Any subsidy for inland ports shall be provided in accordance with the conditions set out in this section.
- 4.11 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; and
 - dredging.
- 4.12 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.
- 4.13 The subsidised port infrastructure shall be made available to interested users on an equal and non-discriminatory basis on market terms.
- 4.14 Any concession or other entrustment to a third party to construct, upgrade, operate or rent subsidised port infrastructure shall be assigned on a competitive, transparent, non-discriminatory and unconditional basis.
- 4.15 For subsidy not exceeding £1.8 million, the maximum amount of subsidy may be set at 80% of eligible costs, as an alternative to the approach to calculating maximum subsidy intensity set out below. In all other cases:
- the subsidy 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 subsidy intensity is 100% of eligible costs up to £36 million. As regards dredging a project is defined as all dredging carried out within one calendar 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 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, 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

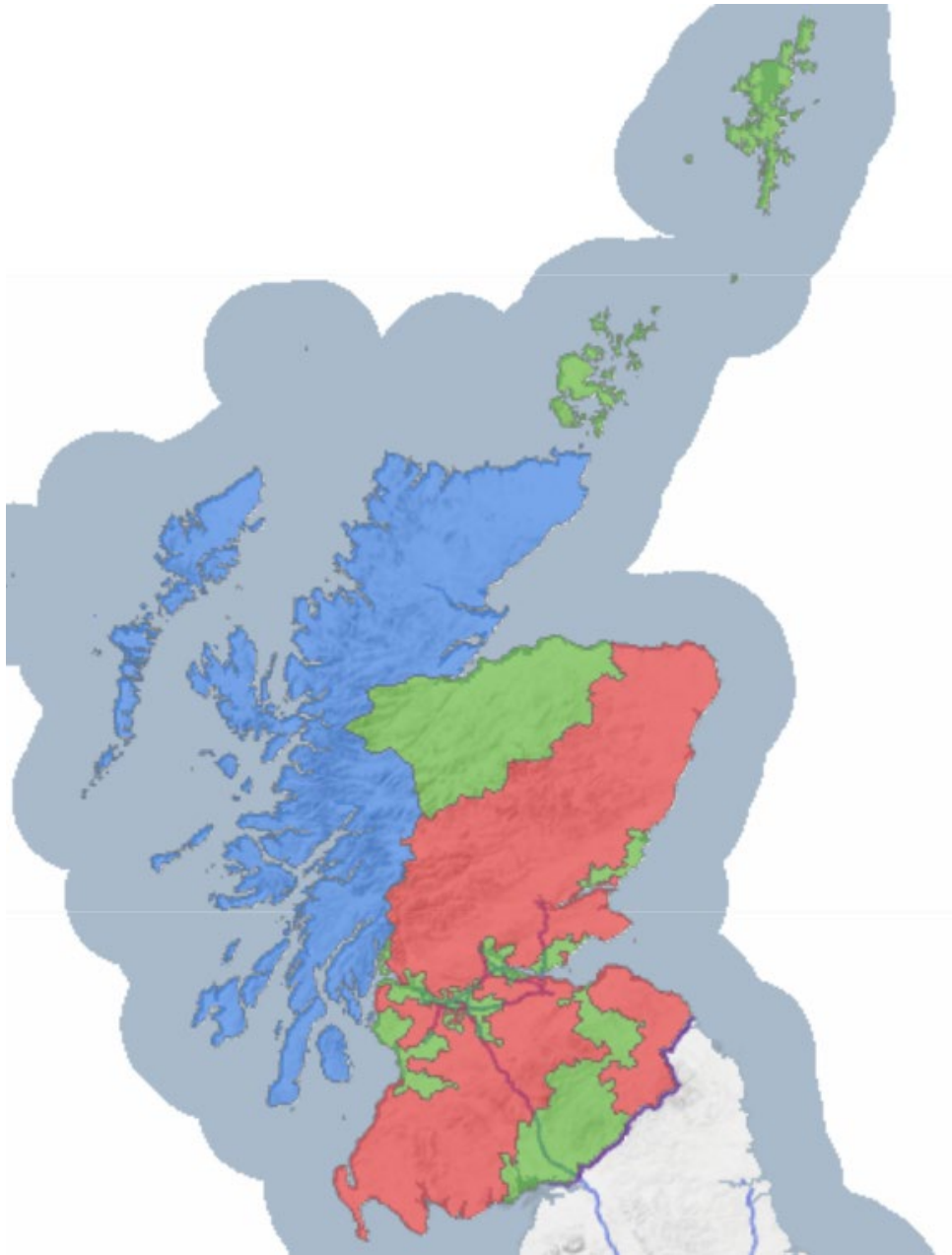
6.1 Subsidy provided under the Scheme may be cumulated with other forms of permitted subsidy provided through this or another SE scheme (or another registered scheme) as long as those subsidy measures concern different identifiable eligible costs.

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

ASSISTED AREAS MAP



The map above shows in green and blue the areas of Scotland which are assisted areas. An interactive version of the map can be accessed at [Regional Selective Assistance 2022-2025 Map \(arcgis.com\)](https://arcgis.com).

Red areas are not eligible for increases.

APPENDIX 2

DEFINITIONS

‘access infrastructure’ means any type of infrastructure necessary to ensure access and entry from land or sea and river by users to a port, or in a port, such as roads, rail tracks, channels and locks;

‘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;

‘airport infrastructure’ means infrastructure and equipment for the provision of airport services by the airport to airlines and the various service providers, including runways, terminals, aprons, taxiways, centralised ground handling infrastructure and any other facilities that directly support the airport services, excluding infrastructure and equipment which is primarily necessary for pursuing non-aeronautical activities;

‘airline’ means any airline with a valid operating licence issued by the UK, a Member State or a Member of the Common European Aviation Area pursuant to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;

‘airport’ means an entity or group of entities performing the economic activity of providing airport services to airlines;

‘airport services’ means services provided to airlines by an airport or any of its subsidiaries, to ensure the handling of aircraft, from landing to take-off, and of passengers and freight, so as to enable airlines to provide air transport services, including the provision of ground handling services and the provision of centralised ground handling infrastructure;

‘alternative fuel infrastructure’ means a fixed, mobile or offshore port infrastructure allowing a port to supply vessels with energy sources such as electricity, hydrogen, biofuels as defined in point (i) of Article 2 of Directive 2009/28/EC, synthetic and paraffinic fuels, natural gas, including biomethane, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), and liquefied petroleum gas (LPG) which serve, at least partly, as a substitute for fossil oil sources in the energy supply to transport and which have the potential to contribute to its decarbonisation and enhance the environmental performance of the transport sector;

‘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)

‘assisted areas’ means areas identified as green areas and blue areas in Appendix 1;

‘average annual passenger traffic’ means a figure determined on the basis of the inbound and outbound passenger traffic during the two financial years preceding that in which the subsidy is granted;

‘centralised ground handling infrastructure’ means infrastructure which is normally operated by the airport manager and put at the disposal of the various providers of ground handling services active at the airport in exchange for remuneration, excluding equipment owned or operated by the providers of ground handling services;

‘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;

‘dredging’ means the removal of sediments from the bottom of the waterway access to a port, or in a port;

‘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’;

‘ground handling services’ means services provided to airport users at airports as described in the Annex to Council Directive 96/67/EC;

‘high-speed train’ means a train capable of reaching speeds of over 200 km/h;

‘infrastructure for the collection of ship-generated waste and cargo residues’ means fixed, floating or mobile port facilities capable of receiving ship-generated waste or cargo residues as defined in Directive 2000/59/EC of the European Parliament and of the Council.

‘inland port’ means a port other than a maritime port, for the reception of inland waterway vessels;

‘inland waterway vessels’ mean vessels intended solely or mainly for navigation on inland waterways or in waters within, or closely adjacent to, sheltered waters;

‘maritime port’ means a port for, principally, the reception of sea-going vessels;

‘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);

'non-aeronautical activities' means commercial services to airlines or other users of the airport, including ancillary services to passengers, freight forwarders or other service providers, renting out of offices and shops, car parking and hotels;

'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.

'port' means an area of land and water made up of such infrastructure and equipment, so as to permit the reception of waterborne vessels, their loading and unloading, the storage of goods, the receipt and delivery of those goods and the embarkation and disembarkation of passengers, crew and other persons and any other infrastructure necessary for transport operators in the port;

'port infrastructure' means infrastructure and facilities for the provision of transport related port services, for example berths used for the mooring of ships, quay walls, jetties and floating pontoon ramps in tidal areas, internal basins, backfills and land reclamation, alternative fuel infrastructure and infrastructure for the collection of ship-generated waste and cargo residues;

'port superstructure' means surface arrangements (such as for storage), fixed equipment (such as warehouses and terminal buildings) as well as mobile equipment (such as cranes) located in a port for the provision of transport related port services;

'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;

‘regional airport’ means an airport with average annual passenger traffic of up to 3 million passengers;

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

‘sea-going vessels’ mean vessels other than those which navigate solely or mainly in inland waterways or in waters within, or closely adjacent to, sheltered waters;

‘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;

‘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);

‘the map’ means the map identifying assisted areas set out in Appendix 1 to this Scheme;

‘Treaty’ means the Treaty on the Functioning of the European Union; and

‘vessels’ mean floating structures, whether self-propelled or not, with one or more surface displacement hulls.