

SCOTTISH ENTERPRISE AID FOR ENVIRONMENTAL PROTECTION SCHEME 2012 – 2013

This scheme operates under Commission regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) as published in the Official Journal of the European Union (9 August 2008 - L 214/3). The legal basis for the scheme is 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.

This scheme covers discretionary funding awarded to enterprises to assist them with environmental protection measures covered by the areas of activity outlined below. There is no automatic entitlement to support from Scottish Enterprise. Assistance will be offered through a range of products and services delivered by Scottish Enterprise, based on the merits of the proposed project, and an assessment of need for assistance subject to rigorous due diligence appraisal and internal approval by Scottish Enterprise. Any business interested in assistance from Scottish Enterprise 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; enquiries@scotent.co.uk.

GENERAL PROVISIONS

Aid can be awarded to enterprises of all sizes.

Applicants must submit an application for assistance to Scottish Enterprise 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 one or more of the following: a material increase in the size or scope of the project / activity, the total amount spent by the beneficiary on the project / activity or the speed of completion, as a result of the aid. This documentation will be verified by Scottish Enterprise before the application is approved.

Scottish Enterprise is required to provide annual returns to the Scottish and UK Governments and European Commission 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, in this case until at least 31 December 2023. The information which must be provided to Scottish Enterprise / retained by the aid recipient will be set out in the Offer of Grant.

DEFINITIONS

For the purposes of this scheme:

- Any reference to an "Article" shall mean an Article of the General Block Exemption Regulation;
- the definitions set out in Article 17 of the General Block Exemption Regulation shall apply to the descriptions of the types of aid outlined below.

TYPES OF AID

1. Investment aid enabling undertakings to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards (Article 18)

The aided investment shall fulfil one of the following conditions:

- (a) enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable Community standards, irrespective of the presence of mandatory national standards that are more stringent than the Community standards; or
- (b) enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of Community standards.

Aid may not be granted where improvements are to ensure that companies comply with Community standards already adopted and not yet in force.

The aid intensity shall not exceed 35% of the eligible costs. However, the aid intensity may be increased by 20% for aid awarded to small enterprises and by 10% for aid awarded to medium-sized enterprises.

The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards concerned, without taking account of operating benefits and operating costs.

The cost of the investment directly related to environmental protection shall be established by reference to the counterfactual situation:

- (a) where the cost of investing in environmental protection can be easily identified in the total investment cost, this precise environmental protection-related cost shall constitute the eligible costs;
- (b) in all other cases, the extra investment costs shall be established by comparing the investment with the counterfactual situation in the absence of State aid; the correct counterfactual shall be the cost of a technically comparable investment that provides a lower degree of environmental protection (corresponding to mandatory Community standards, if they exist) and that would credibly be realised without aid ("reference investment"); technically comparable investment means an investment with the same production capacity and all other technical characteristics (except those directly related to the extra investment for environmental protection); in addition, such a reference investment must, from a business point of view, be a credible alternative to the investment under assessment.

The eligible investment shall take the form of investment in tangible assets and/or in intangible assets.

In the case of investments aiming at obtaining a level of environmental protection higher than Community standards, the counterfactual shall be chosen as follows:

(a) where the undertaking is adapting to national standards adopted in the absence of Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve the level of environmental protection required by the national standards;

(b) where the undertaking adapts to or goes beyond national standards which are more stringent than the relevant Community standards or goes beyond Community standards, the eligible costs shall consist of the additional investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The cost of investments needed to reach the level of protection required by the Community standards shall not be eligible;

(c) where no standards exist, the eligible costs shall consist of the investment costs necessary to achieve a higher level of environmental protection than that which the undertaking or undertakings in question would achieve in the absence of any environmental aid.

Aid for investments relating to the management of waste of other undertakings shall not be exempted under Article 18.

2. Aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards (Article 19)

Investment aid may be granted for the acquisition of new electric or hydrogen transport vehicles enabling undertakings active in the transport sector to go beyond Community standards for environmental protection or increase the level of environmental protection in the absence of Community standards.

The aided investment shall fulfil the condition laid down in Article 18(2).

Aid for the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted Community standards shall be exempted, when such acquisition occurs before these Community standards enter into force and where, once mandatory, they do not apply retroactively to vehicles already purchased.

Aid for retrofitting operations of existing transport vehicles with an environmental protection objective shall be exempted if the existing means of transport are upgraded to environmental standards that were not yet in force at the date of entry into operation of those means of transport or if the means of transport are not subject to any environmental standards.

The aid intensity shall not exceed 35% of the eligible costs. However, the aid intensity may be increased by 20% for aid awarded to small enterprises and by 10% for aid awarded to medium-sized enterprises.

The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the Community standards. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

3. Aid for early adaptation to future Community standards for SMEs (Article 20)

Aid may be granted to allow SMEs to comply with new Community standards which increase the level of environmental protection and are not yet in force.

The Community standards shall have been adopted and the investment shall be implemented and finalised at least one year before the date of entry into force of the standard concerned.

The aid intensity shall not exceed 15 % of the eligible costs for small enterprises and 10 % of the eligible costs for medium-sized enterprises if the implementation and finalisation take place more than three years before the date of entry into force of the standard and 10 % for small enterprises if the implementation and finalisation take place between one and three years before the date of entry into force of the standard.

The eligible costs shall be the extra investment costs necessary to achieve the level of environmental protection required by the Community standard compared to the existing level of environmental protection required prior to the entry into force of this standard.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

4. Environmental investment aid for energy saving measures (Article 21)

Environmental investment aid enabling undertakings to achieve energy savings may be granted where the conditions set out at either (a) or (b) are met:

- (a) The aid intensity shall not exceed 60% of the eligible costs. However, the aid intensity may be increased by 20% for aid awarded to small enterprises and by 10% for aid awarded to medium-sized enterprises.

The eligible costs shall be the extra investment costs necessary to achieve energy savings beyond the level required by the Community standards and calculated as set out in Article 18(6) and (7).

The eligible costs shall be calculated net of any operating benefits and costs related to the extra investment for energy saving and arising during the first three years of the life of this investment in the case of SMEs, the first four years in the case of large undertakings that are not part of the EU CO₂ Emission Trading System and the first five years in the case of large undertakings that are part of the EU CO₂ Emission Trading System. For large undertakings this period may be reduced to the first three years of the life of this investment where the depreciation time of the investment can be demonstrated not to exceed three years.

The eligible cost calculations shall be certified by an external auditor.

- (b) The aid intensity shall not exceed 20% of the eligible costs. However, the aid intensity may be increased by 20% for aid awarded to small enterprises and by 10% for aid awarded to medium-sized enterprises.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

5. Environmental investment aid for high-efficiency cogeneration (Article 22)

The aid intensity shall not exceed 45% of the eligible costs. However, the aid intensity may be increased by 20% for aid awarded to small enterprises and by 10% for aid awarded to medium-sized enterprises.

The eligible costs shall be the extra investment costs necessary to realise a high efficiency cogeneration plant as compared to the reference investment. The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

A new cogeneration unit shall overall make primary energy savings compared to separate production as provided for by Directive 2004/8/EC and Decision 2007/74/EC. The improvement of an existing cogeneration unit or conversion of an existing power generation unit into a cogeneration unit shall result in primary energy savings compared to the original situation.

6. Environmental investment aid for the promotion of energy from renewable energy sources (Article 23)

The aid intensity shall not exceed 45% of the eligible costs. However, the aid intensity may be increased by 20% for aid awarded to small enterprises and by 10% for aid awarded to medium-sized enterprises.

The eligible costs shall be the extra costs borne by the beneficiary compared with a conventional power plant or with a conventional heating system with the same capacity in terms of the effective production of energy.

The eligible costs shall be calculated as set out in Article 18(6) and (7) and without taking account of operating benefits and operating costs.

Environmental investment aid for the production of biofuels shall be exempted only to the extent the aided investments are used exclusively for the production of sustainable biofuels.

EXCLUSIONS

1. Export Aid

The General Block Exemption Regulation and accordingly this scheme do not apply to the following:

- Aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to export activity;
- Aid contingent upon the use of domestic over imported goods.

These types of aid are not allowed under any European regulations.

2. Sectoral

This scheme applies to all sectors of the economy, with the exception of the following:

- Aid favouring activities in the fishery and aquaculture sectors, as covered by Council Regulation (EC) No 104/2000

Aid favouring activities in the processing and marketing of agricultural products is allowable, unless the aid is aimed at directly influencing the price or quantity of primary production i.e.

- 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.

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 illegal and incompatible with the common market; and
- Aid to undertakings in difficulty, defined as follows:
 - a) In the case of a limited liability company, where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; or
 - b) In the case of a company where at least some members have unlimited liability for the debt of the company, where more than half its capital as shown in the company accounts has disappeared and more than one quarter of that capital has been lost over the preceding 12 months; or
 - c) Whatever the type of company concerned, when it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.
 - d) An SME which has been incorporated for less than 3 years shall not be considered, for the purposes of this scheme, to be in difficulty unless point (c) applies.

CUMULATION OF AID

Aid provided under the scheme may be cumulated with other forms of aid in relation to the same eligible costs only within the aid intensity limits for this scheme. Therefore, if the maximum aid intensity is determined to be 45%, then the total of Scottish Enterprise, ERDF / ESF and other public funding made available to the project cannot exceed this level. De minimis aid cannot be used to “top up” the aid awarded under this or any other scheme, in respect of the same eligible project costs.