

Department for Communities and Local Government

Commission Regulation (EC) No1628/2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid

REGIONAL INVESTMENT AID SCHEME FOR SPECULATIVE AND BESPOKE DEVELOPMENTS

1. Member State

United Kingdom

2. Title of Aid Scheme

Regional Investment Aid Scheme for Speculative and Bespoke Developments

3. Basis of Scheme

3.1. This Scheme is a transparent regional investment aid scheme fulfilling all the conditions of Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (*OJ L302/29, 1.11.2006*) ("Regulation 1628/2006"). As such, the Scheme is exempt from the notification requirement of Article 88(3), provided that any aid awarded under the Scheme also fulfils the conditions of Regulation 1628/2006.

3.2. The aim of the Scheme is to promote regional development by taking forward the policy, with modifications, enshrined in the aid scheme approvals for Support for Speculative Developments (N747/A/99) and Support for Bespoke Developments (N747/B/99). The Scheme is simpler and more focussed in line with the guiding principles of the Commission's State Aid Action Plan, which aim to achieve less and better targeted State aid and a shared responsibility between the Commission and the Member States.

3.3. A summary of the Scheme¹ has been sent to the Commission for publication. In addition, full details of the Scheme are published and can be viewed on the DCLG Web Site at www.stateaid.communities.gov.uk.

4. Government or statutory bodies authorised to implement the Scheme

The Secretary of State
The Government Offices
The Regional Development Agencies²
The Urban Regeneration Agency³

¹ In the form prescribed by Annex I to Regulation 1628/2006

² The development agencies established by section 1 of the Regional Development Agencies Act 1998 include the London Development Agency

³ The Urban Regeneration Agency was established by section 158 of the Leasehold Reform, Housing and Urban Development Act 1993

The Urban Development Corporations⁴
The National Assembly for Wales
Local authorities in England and Wales

5. Legal basis

5.1. For England: Sections 126-128 of the Housing Grants, Construction and Regeneration Act 1996; the Regional Development Agencies Act 1998; the Greater London Authority Act 1999; the Leasehold Reform, Housing and Urban Development Act 1993; the Local Government, Planning and Land Act 1980; the Local Government Acts.

5.2. For Wales: Sections 126-128 of the Housing Grants, Construction and Regeneration Act 1996, the functions concerned being exercisable by the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999; the Local Government Acts.

6. Definitions

6.1. In this Scheme, the following expressions have the meanings assigned below:

“aid intensity in present gross grant equivalent” has the same meaning as in Article 2(1)(h) of Regulation 1628/2006;

“Assisted Area” means any of the regions in England or Wales eligible for regional investment aid as identified in the Regional Aid Map;

“establishments” means business establishments and includes a single business;

“initial investment” means investment in material assets which are to be made available for the purpose of setting up new establishments or extending existing establishments;

“large investment project” has the same meaning as in Article 2(1)(g) of Regulation 1628/2006;

“material assets” means assets relating to land, buildings and plant/machinery⁵;

“Regeneration Body” means the relevant public body which is responsible for implementing aid under the Scheme;

⁴ There are currently three Urban Development Corporations established by order under section 135 of the Local Government, Planning and Land Act 1980: the Thurrock Urban Development Corporation; the Thames Gateway Urban Development Corporation; and the West Northamptonshire Urban Development Corporation.

⁵ This is the meaning of “material assets” in Article 2(1)(e) of Regulation 1628/2006.

“the Regional Aid Map” means the map approved by the Commission for the UK and published in accordance with paragraph 101 of the Guidelines on National Regional Aid for 2007-2013 (2006/C 54/08);

“relevant public body” means any one of the bodies specified in paragraph 4 of the Scheme (Government or statutory bodies authorised to implement the Scheme);

“SME” means an enterprise that falls within the criteria and parameters of the definition of micro, small and medium-sized enterprises contained in the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC), which took effect on 1 January 2005.

7. Date and period of Scheme

7.1. The date of publication of the Scheme is 29 December 2006 and the date on which the Scheme has effect is 1 January 2007. The Scheme will remain in force until the date on which the Regional Aid Map expires (which will follow the end of the period of validity of Regulation 1628/2006 on 31 December 2013) or the date before this on which a notice terminating the Scheme takes effect.

8. Scope and criteria of Scheme

8.1. The eligibility of a project for aid under the Scheme and the amount of aid that may be given will be determined according to the following criteria and rules.

General description of the Scheme

8.2. Initial investment eligible for aid under the Scheme will be for the purpose of bringing back into productive use land or buildings which are derelict, contaminated, under-used or vacant and are suitable for use or conversion for business purposes.

8.3. The Scheme will support business property development which is not economically viable without assistance from public funds. Aid will be calculated in a transparent manner according to stated gap-funding principles (*see paragraph 11 of the Scheme*). It will be limited to the amount needed to enable the initial investment to proceed, and will be calculated by reference to the funding gap between the estimated development cost and estimated end value of the development.

8.4. The initial investment may be speculative development for new or extended establishments which have not yet been identified, or bespoke development for the developer’s own establishment or other identified establishments.

8.5. The amount of aid for gap funding under the Scheme will be subject to the relevant regional aid ceiling (*see below under Aid intensities*).

Situation of projects

8.6. In order to be eligible for aid under the Scheme, initial investment must be on land which meets the following criteria:

8.6.1. the land must be situated within an Assisted Area;

8.6.2. the land must be owned by the prospective developer or by a relevant public body or must consist of a plot owned by the prospective developer and an adjoining plot owned by a relevant public body;

8.6.3. the land must be owned by the developer before the aid is granted;

8.6.4. if the land (but not just an adjoining plot) is owned by a relevant public body, it must be disposed of to the developer following an invitation for bids for development proposals involving aid under the Scheme, which precludes the existence of State aid in the disposal by observing Commission Communication on State aid elements in sale of land and buildings by public authorities (*OJ C 209, 10.7.1997, p.3*).

Eligibility of aid recipients

8.7. The beneficiary of aid will be the developer, that is the company, body or other person who proposes to procure the works and services required for the initial investment and has a freehold, long leasehold or other suitable interest in the land upon which the initial investment is to be made. The developer may be the existing owner of the land or may have acquired their interest in order to make the initial investment from a relevant public body.

8.8. Aid may not be given where the proposed recipient of the aid is:

8.8.1. subject to an outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the common market; or

8.8.2. "a firm in difficulty" within the meaning of Chapter 2 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (*OJ C 244, 1.10.2004, p.2*).

8.9. Aid given for initial investment must not confer or result in any aid for an establishment which is in any of the sectors or is linked to any of the activities specified in Article 1(2) of Regulation 1628/2006.

Form of aid & eligible costs

8.10. In order to fall within the scope of Regulation 1628/2006, which applies to transparent regional investment aid schemes as defined in Article 2(1)(i) of Regulation 1628/2006, aid must take the form of grant towards the eligible

costs of initial investment and must be calculated according to the gap-funding principles set out in paragraph 11 of the Scheme.

8.11. Costs of initial investment are eligible for aid under the Scheme if:

8.11.1. they are eligible for aid under paragraph 50 of the Guidelines on National Regional Aid for 2007-2013 (2006/C 54/08)⁶; and

8.11.2. they fall within the categories of costs more particularly described in paragraph 12 of the Scheme.

8.12. Aid may not be given for initial investment for which expenditure has been incurred before 1 January 2007 or before an application for aid has been approved.

Aid intensities

8.13. From the amount of aid proposed to be given for the initial investment the Regeneration Body must calculate the aid intensity in present gross grant equivalent in accordance with Article 4(4) of Regulation 1628/2006, and must express this as a percentage of the eligible costs of the initial investment. Subject to paragraph 8.14 and the limits for large investment projects (see *paragraphs 8.17 to 8.20*), the aid intensity in present gross grant equivalent must not exceed the relevant regional aid ceiling, which is:

8.13.1. where the Assisted Area within which the project is situated is a region eligible for aid under Article 87(3)(a) of the EC Treaty, 30 per cent.;

8.13.2. where the Assisted Area within which the project is situated is a region eligible for aid under Article 87(3)(c) of the EC Treaty, the percentage specified for the region concerned in section 3 of the Annex to Commission Decision on case N673/2006⁷.

8.14. Where the grant recipient is a small enterprise within the definition of SME, the relevant regional aid ceiling for the purposes of paragraph 8.13 is increased by 20 per cent., and where the grant recipient is a medium-sized enterprise within the definition of SME, the relevant regional aid ceiling for the purposes of paragraph 8.13 is increased by 10 per cent..

8.15. However, paragraph 8.14 does not apply if the project is a large investment project.

8.16. Aid under the Scheme may be combined with aid towards the eligible costs of the initial investment which is available:

⁶ Paragraph 50 is in section 4.2 of the Guidelines, which sets out eligible expenses of aid calculated on the basis of investment costs

⁷ The percentage will be 10 per cent., 15 per cent. or 25 per cent. depending on the location of the project and whether the aid is granted on or before 31 December 2010 or on or after 1 January 2010 and before 31 December 2013.

from other Community or national funding sources; or

by way of support under the block exemption for de minimis aid⁸;

provided that the rules on aid intensities in paragraphs 8.13, 8.14 and 8.15 are applied by reference to the figure for the total amount of all such aid.

Large investment projects

8.17. Where the eligible costs of the initial investment to be made by a large investment project are less than EUR 100 million, aid may not be awarded under the Scheme in favour of the project if the total amount of aid from all sources exceeds the amount determined according to the regional aid ceiling for the project under paragraph 8.13 as adjusted in accordance with paragraph 67 of the Guidelines on National Regional Aid for 2007-2013 (2006/C 54/08).

8.18. Where the eligible costs of the initial investment to be made by a large investment project are equal to or exceed EUR 100 million, aid may not be awarded under the Scheme in favour of the project if the total amount of aid from all sources exceeds whichever is applicable of the following amounts:

8.18.1. where the Assisted Area within which the project is situated is a region eligible for aid under Article 87(3)(a) of the EC Treaty, EUR 22.5 million;

8.18.2. where the Assisted Area within which the project is situated is a region eligible for aid under Article 87(3)(c) of the EC Treaty:

8.18.2.1. EUR 7.5 million if the regional aid ceiling for the project is 10 per cent.;

8.18.2.2. EUR 11.25 million if the regional aid ceiling for the project is 15 per cent.;

8.18.2.3. EUR 18.75 million if the regional aid ceiling for the project is 25 per cent..

8.19. In order to prevent large investment projects being artificially divided into sub-projects for the purposes of the Scheme, a series of projects will be treated as a single large investment project where:

8.19.1. the projects are undertaken within a period of three years by the same undertaking or undertakings; and

8.19.2. the initial investment consists of fixed assets combined in an economically indivisible way.

⁸ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid, which comes into force on 1 January 2007

8.20. In order to establish whether an initial investment is combined in an economically indivisible way, the Regeneration Body will have regard to the criteria set out in recital (15) of Regulation 1628/2006.

8.21. Where the Regeneration Body awards aid in favour of a large investment project, it must notify the Department for Communities and Local Government immediately, so that the Department can within 20 working days from the date on which the aid is granted provide the Commission with the information prescribed by Annex II to Regulation 1628/2006.

Contribution by grant recipient

8.22. The grant recipient must provide a financial contribution of at least 25 per cent. of the eligible costs of the initial investment, either through its own resources or external financing, in a form which is free of any public support.

9. On-going conditions for the award of aid

9.1. The material assets made available as a result of the initial investment for which aid is awarded must remain available for use by establishments for a minimum period of five years starting on the date of practical completion of the works associated with the initial investment.

9.2. A grant recipient will be required to demonstrate that wherever practicable works and services procured for the initial investment have been procured following a properly conducted competitive tendering procedure. Where the Regeneration Body is satisfied that open competition has not been practicable, it must assess the costs concerned to check that they are at or below prevailing market rates.

9.3. A disposal of an interest in the completed development to an establishment wishing to take occupation must be made at open market prices.

9.4. The Regeneration Body must maintain records of all aid given for initial investment, including all data showing that the project meets the conditions of eligibility laid down by the Scheme, including information on the status of any undertaking whose entitlement to aid depends on its status as a SME. All records must be made available on request for inspection by a Government Department or the Commission.

9.5. Records must be adequate to ensure that the UK is able to meet the reporting obligations placed on the Member State by Article 8(3) (*individual aid awarded under the Scheme*) and Article 8(4) (*reports on the application of Regulation 1628/2006*) of Regulation 1628/2006.

9.6. The Regeneration Body must ensure that suitable terms, which may include taking security by way of legal charge, are inserted in its agreement to provide aid for initial investment with the aim of ensuring that it is able to

enforce all requirements and restrictions set out in the Scheme relating to the grant and recovery of aid.

10. Procedure

10.1. Awards of aid are discretionary. The Regeneration Body will assess projects and grant applications to determine their contribution to the aims of the Scheme.

10.2. Where the land upon which the initial investment is to be made is the subject of an invitation for bids for development proposals involving aid under the Scheme, the bids will be assessed on the basis of what is most economically viable.

10.3. Work on a project for which aid is sought must not be started before the Regeneration Body has:

10.3.1. received an application for aid under the Scheme;

10.3.2. satisfied itself that the project meets the conditions of eligibility laid down by the Scheme;

10.3.3. confirmed in writing to the grant applicant that, subject to the final outcome of a detailed verification, the project meets such conditions; and

10.3.4. completed its detailed verification and made a commitment to provide grant aid for the project.

10.4. A decision to provide aid for a project will be communicated by an offer of funding which will constitute a binding funding agreement between the Regeneration Body and the developer as grant recipient. The funding offer will specify the terms on which grant is payable for the initial investment, which must include provision for:

10.4.1. payment at the agreed rate of award against the production of receipted invoices for expenditure;

10.4.2. suspension, reduction and recovery of grant at the discretion of the Regeneration Body under specified circumstances, including breach of contract, lack of progress and insolvency;

10.4.3. full recovery of grant under specified circumstances, including fraud; incompatibility with the State aid rules (where the project does not, in fact, meet the conditions of eligibility laid down by the Scheme); and failure to maintain the material assets made available as a result of the initial investment for use by establishments for a minimum period of five years;

10.4.4. payment in a single lump sum on completion of the project or in stage payments; in the case of stage payments, the rate of payment must be in

line with the rate of progress of works on the land, so that the proportion of the grant paid at any time corresponds with the stage reached towards the completion of the works;

10.4.5.withholding grant with a view to reducing the grant if actual costs are less than costs assessed for calculating the aid; and

10.4.6.recovery of grant if actual disposal proceeds or market values are greater than the estimates assessed for the purpose of calculating the aid, so that aid under the Scheme would not have been given at all or would have been given at a reduced amount had it been calculated according to the actual proceeds or values.

11. Principles for the calculation of aid

11.1.In line with the focus of the Scheme, which is support for business property development not economically viable without assistance from public funds, the amount of aid awarded:

11.1.1.must be the minimum amount needed to enable the initial investment to be carried out;

11.1.2.may not exceed the gap between the projected eligible costs of the initial investment and the projected market value of the material assets concerned; and

11.1.3.must be recovered if actual eligible costs are lower than projected or actual market value is higher than projected.

11.2.The total amount of aid given for a project expressed as a percentage of actual eligible costs must not exceed the aid intensity in present gross grant equivalent expressed as a percentage under paragraph 8.13.

11.3.The assessment of all projected and actual costs and market values and the calculation of aid according to gap-funding principles must be undertaken by an independent chartered surveyor. A surveyor is independent if undue influence by any person in the carrying out of the surveyor's tasks is effectively excluded.

11.4.Where actual market value is not determined by an open market disposal of assets, it must be assessed within a specified period, normally less than six years, for the purpose of determining whether grant should be recovered.

12. Categories of eligible costs

12.1. The categories of actual or projected costs that may be taken into account in calculating the amount of aid that may be awarded for initial investment are:

12.1.1. the market value of the land upon which the initial investment is to be made, assessed when the application for aid is appraised;

12.1.2. the cost of preparing the land for development, including the cost of site investigation, remediation, reclamation, decontamination and demolition; provided that the cost of dealing with pollution must be assessed in accordance with the polluter pays principle cited in Community Guidelines on State aid for environmental protection (*OJ C 37, 3.2.2001, p.3*);

12.1.3. the cost of providing services and infrastructure which are directly related to the initial investment;

12.1.4. the costs of constructing or refurbishing buildings to provide suitable accommodation for a wide range of establishments;

12.1.5. in the case of bespoke development only, the costs of improving or adapting buildings and of fixtures and fittings to meet the special needs of the establishments that will take occupation;

12.1.6. interest or other finance charges directly related to the initial investment, subject to verification that they are in line with prevailing market conditions.

12.1.7. a development fee fixed in accordance with paragraph 12.2;

12.1.8. professional fees incurred in the course of the development, subject to verification that they are in line with prevailing market conditions;

12.1.9. reasonable costs of marketing, letting and disposing of units made available for occupation by establishments, subject to verification that they are in line with prevailing market conditions.

12.2. A development fee is eligible if it would be appropriate for a development of the same type, scale and level of risk. Where the developer is not the existing owner of the land, the invitation for bids for aid under the Scheme will ask bidders to specify a development fee. Where the developer is the existing owner, so that the Regeneration Body is unable to select the developer through a competitive process, a development fee must be fixed according to market conditions, risk and an appropriate economic return on capital, as if the developer were being selected through open competition.

13. Budget for aid under the Scheme

13.1.No defined budget is fixed for aid under the Scheme. Grant awards will be funded from the annual budget of the Regeneration Body responsible for the award under its programme for meeting expenditure on sustainable regeneration (physical and environmental) or equivalent programme.

DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT