



Department for the
Economy
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State aid: Guidance on the Covid-19 Temporary Framework for Public Authorities in Northern Ireland

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Summary

1. This document sets out the European Commission's (Commission) general approach on how State aid rules can support measures in Northern Ireland and within EU Member States to address the impacts of Covid-19. In particular, this document:
 - a. Advises that the Commission has designated Covid-19 as an exceptional occurrence.
 - b. Draws attention to the Temporary Framework¹ (TF) and Amendments to the TF² which set out measures that can be used to remedy a serious disturbance in the economy.
 - c. Explains that the UK Government submitted a UK-wide umbrella scheme which was approved under the TF, allowing UK public authorities to grant aid as quickly and as flexibly as possible.
 - d. Sets out compliance requirements for those granting aid under the Covid-19 TF (**Annex A**)
 - e. Provides a template for aid recipients to confirm they have not received aid in excess of €800,000³ or €3million for aid for uncovered fixed costs⁴ granted under section 3.12 of the Temporary Framework and a declaration they were not an undertaking in difficulty⁵ prior to 31 December 2019 (**Annex B**)⁶.

State aid rules during the Transition Period

2. The United Kingdom left the European Union on 31 January 2020. However, under the terms of the Withdrawal Agreement given effect to through the European Union (Withdrawal) Act 2018⁷, the UK has entered a Transition Period until 31 December 2020. During this Transition Period, the EU State aid rules continue to apply in the UK. Accordingly, any aid granted during the Transition Period must comply with those rules.

The Umbrella Measure after the Transition Period

3. All obligations, such as reporting and fulfilling any monitoring requirements, arising from aid awarded before the end of the Transition Period will remain after the end of the Transition Period.
4. For aid that is within scope of Article 10 of the Northern Ireland Protocol, the Temporary Framework UK umbrella measure will continue to apply until 30 June 2021 and all obligations for State aid, such as reporting and fulfilling any Monitoring requirements will continue to apply as set out in the Protocol.

¹ https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

² https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_1st_amendment_temporary_framework_en.pdf

³ Aid to agriculture and fisheries has lower rates of €120 000 per undertaking active in the fishery and aquaculture sector or €100 000 per undertaking active in the primary production of agricultural products

⁴ As defined in paragraph 87© of the Temporary Framework as amended by the fourth amendment

⁵ Test for undertakings in difficulty is set out in Annex C

⁶ Note that under the third amendment to the Temporary Framework, micro and small enterprises can receive support

even if they were an undertaking in difficulty on 31 December 2019 and providing they were not in insolvency

⁷ As amended by the European Union (Withdrawal Agreement) Act 2020

The European Commission's Approach to Covid-19 and State aid

4. The Commission has taken two specific steps to respond to the Covid-19 pandemic. These are explained below.

Exceptional Occurrence

5. Under Article 107(2)(b) of the TFEU, aid to make good the damage caused by natural disasters or exceptional occurrences must be approved by the Commission. On 13 March 2020, **the Commission announced that it recognised Covid-19 is an exceptional occurrence.**
6. The Commission has highlighted the possibility of compensating undertakings in sectors that have been particularly hit by the outbreak (e.g. transport, tourism, culture, hospitality and retail) and/or organisers of cancelled events, for damages suffered due to, and directly caused by, the outbreak. Countries can notify such damage compensation measures for the Commission to assess them directly under Article 107(2)(b). Countries can even give compensation for the damages directly caused by the Covid-19 outbreak to undertakings that have received aid under the Rescue and Restructuring Guidelines. Aid meeting all of three criteria will be approved:
 - a. Direct causal link between Covid-19 and the scheme
 - b. Aid strictly limited to compensating only for the damages caused
 - c. No cumulation with other aid for the same costs.

Remedying a serious disturbance in the economy (Temporary Framework)

7. Under Article 107(3)(b) of the TFEU, the Commission may approve aid to remedy a serious disturbance in the economy (i.e. the Commission has discretion). In order to assist countries in designing State aid compliant schemes to manage the impact of Covid-19, the Commission published a TF⁸ on 19 March 2020. The Commission has twice updated the TF to provide further flexibilities, and these were adopted on 3 April and 8 May 2020⁹. A third amendment was adopted in July 2020¹⁰ and a further amendment was announced on 13 October 2020¹¹.
8. The TF sets out the compatibility conditions that the Commission will apply in principle to aid granted under Article 107(3)(b). **For the relevant flexibilities in the TF that the UK is seeking to use, see details of the UK-wide umbrella approval in paragraph 12 below.** Granting authorities should be aware that the Commission will scrutinise schemes closely to ensure they meet all relevant criteria.
9. Aid granted under section 3.1 of the TF may be cumulated either with aid under section 3.2 or section 3.3, and with aid granted under section 3.5, section 3.6,

⁸ https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

⁹ https://ec.europa.eu/competition/state_aid/what_is_new/TF_consolidated_version_as_amended_3_april_and_8_may_2020_en.pdf

¹⁰ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.218.01.0003.01.ENG&toc=OJ:C:2020:218:TOC

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC1013%2803%29>

section 3.7, section 3.8. Aid granted under section 3.12 cannot be cumulated with other aid for the same eligible costs. Aid covered by the umbrella measure may be cumulated with aid under de minimis Regulations or with aid under the General Block Exemption regulations provided the provisions and cumulation rules of those Regulations are respected.

10. Article 50 of the General Block Exemption Regulation (GBER)¹², dealing with schemes to make good the damage caused by certain natural disasters, is not applicable to Covid-19. The types of natural disaster are specified, and an outbreak of disease is not included.
11. It should be noted that the adoption of the TF is not a signal that the Commission has suspended or relaxed the State aid rules due to the Covid-19 outbreak. Rather, the TF reflects the Commission's recognition of the urgency needed in supporting citizens, businesses and companies facing economic difficulties as a consequence of the Covid-19 outbreak and has stated it will work "*to ensure that possible national support measures to tackle the outbreak of the Covid-19 outbreak can be put in place in a timely manner*".¹³

Action by the UK Government

12. The UK Government has prepared a package of both aided measures such as the Coronavirus Business Interruption Loan Scheme (CBILS)¹⁴ to support SMEs, and general measures like the job retention scheme that do not constitute State aid as they are measures available to all businesses: Other support measures include¹⁵:
 - A 12-month business rates holiday for all retail, hospitality, leisure and nursery businesses in England
 - The Coronavirus Job Retention Scheme
 - Deferring VAT and Income Tax payments
 - Self-employment Income Support Scheme
 - Statutory Sick Pay relief package for small and medium sized businesses (SMEs).

UK-wide 'umbrella' measure: the Covid-19 Temporary Framework for UK Authorities

13. Additionally, the Commission has approved the Department for Business, Energy and Industrial Strategy's (BEIS) UK-wide State aid notification under the Temporary Framework to support businesses affected by the Coronavirus outbreak, named the 'Covid-19 Temporary Framework for UK Authorities'¹⁶. This 'umbrella' measure provides for:

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710>

¹³ https://ec.europa.eu/commission/presscorner/detail/ga/ip_20_459

¹⁴ <https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/>

¹⁵ <https://www.businesssupport.gov.uk/>

¹⁶ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_603

- a) Direct grants, repayable advances, and tax advantages of up to €800,000¹⁷ to individual companies¹⁸ (section 3.1)
- b) Aid in the form of guarantees on loans (3.2)
- c) Aid in the form of subsidised interest rates on loans (section 3.3)
- d) Aid in the form of guarantees and loans channelled through credit institutions or other financial institutions (section 3.4)
- e) Short-term export credit insurance (section 3.5)
- f) Aid for Covid-19 relevant research and development (section 3.6)
- g) Aid for testing and upgrading infrastructures (section 3.7)
- h) Investment aid for the production of Covid-19 relevant products¹⁹ (section 3.8)
- i) Aid of up to €3 million in the form of support for uncovered fixed costs²⁰

14. Under this umbrella, aid givers need to ensure that cumulation conditions are respected across all UK measures under the Temporary Framework and across all granting authorities, as follows:

- a) Aid under section 3.2 and section 3.3 of the Temporary Framework (the loan and guarantee provisions) must not be cumulated if the aid is granted for the same underlying loan.
- b) The overall aided loan amount per undertaking must not exceed the thresholds set out in point 25(d) (grants) or 27(d) (guarantees) of the Temporary Framework.
- c) Aid granted under section 3.6 can be combined with support from other sources for the same eligible costs provided the combined aid does not exceed the ceilings defined under points 3.6(d) and 3.6(e) of the Temporary Framework.
- d) Aid granted under sections 3.7 and 3.8 of the Temporary Framework must not be cumulated if the aid concerns the same eligible costs.
- e) Aid covered by the umbrella measure may be cumulated with aid under de minimis Regulations or with aid under the General Block Exemption Regulations provided the provisions and cumulation rules of those Regulations are respected.
- f) Aid under section 3.12 must not be cumulated with other aid for the same eligible cost.

15. As a granting authority **you are responsible** for:

- a) providing aid recipients with support to ensure they **do not exceed the €800,000²¹ support ceiling** under this measure, or the **€3 million ceiling under section 3.12** of the Temporary Framework, and
- b) ensuring aid recipients were **not an undertaking in difficulty** (within the definition of Article 2(18) of the General Block Exemption Regulation) on 31 December 2019 (**Annex C**) or Article 2(14) of Agriculture Block Exemption ²²

¹⁷ See footnote 3 for limits on aid to agriculture and fisheries

¹⁸ This Covid-19 grant allowance is in addition to the €200,000 de minimis aid awarded and subject to the requirements under the De Minimis Regulations. For agriculture, de minimis threshold is €20,000 and for fisheries the de minimis threshold is €30,000

¹⁹ Note the UK umbrella scheme does not provide for targeted wage subsidies

²⁰ Subject to the conditions set out in Section 3.12 introduced by the Fourth amendment to the Temporary Framework

²¹ See footnote 3 for limits on aid to agriculture and fisheries

²² See footnote 5

Regulation or Article 3(5) of Fishery and aquaculture Block Exemption Regulation) on 31 December 2019.

- c) Ensuring the conditions for subsidies in the form of loans and guarantees as set out in sections 3.2 (paragraph 25), 3.3 (paragraph 27), 3.4 (paragraph 28) and 3.5 (paragraph 35) are met.
16. **The template letter in Annex B** should be sent to the beneficiary and used to determine the value of any aid received by a beneficiary for measures that shelter under the UK Covid-19 TF, to determine whether there is scope to give aid/further aid.
17. **Granting authorities are strongly advised to use the scope within the UK Approval, allowing support measures to be implemented as quickly as possible, without the need for a further notification or approval.**
18. However, if granting authorities still consider there is a need for bespoke notification of a scheme going beyond the TF, then please get in touch with the DfE State aid unit by emailing stateaid@economy-ni.gov.uk as early as possible in order to discuss. This is so we can consider any State aid implications and the quickest, most efficient means of securing approval, including potentially how to package different support measures in a notification(s) to the Commission. Approval by the Commission will ensure we can grant aid, and firms can accept aid, without the risk of future challenge and potential clawback.
19. Any queries about the content of this note should also be directed to stateaid@economy-ni.gov.uk

ANNEX A: Compliance checklist for aid granted under the Covid-19 Temporary Framework for Authorities in Northern Ireland

1. All conditions for aid granted²³ under the above measure are set out in the TF and the decision letter from the Commission. A summary of those conditions are set out below. **As the aid administrator, you must ensure that all relevant conditions in the decision letter and TF are met.**
2. For aid awarded based on the TF, the underlying nature of the activities that are being subsidised **must address the sudden shortage or unavailability of finance arising from the Coronavirus outbreak.**
3. Aid may be granted to undertakings that were not in difficulty (within the meaning of Article 2(18) of the General Block Exemption Regulation in **Annex C** or Article 2(14) of Agriculture Block Exemption Regulation or Article 3(5) of Fishery and aquaculture Block Exemption Regulation) on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the Covid-19 outbreak.²⁴
4. Micro and small enterprises (undertakings with less than 50 employees and less than €10 million of annual turnover and/ or annual balance sheet turnover) that were already in difficulty on 31 December 2019 can receive support provided they are not in insolvency proceedings and that they have not received rescue or restructuring aid 25. Annex B must still be completed though the undertaking in difficulty assessment does not need to be carried out for micro and small enterprises that fit the above criteria.
5. The aid must be granted no later than 31 December 2020 except aid that is within Article 10 of the Northern Ireland Protocol where aid can be granted no later than 30 June 2021.
6. Aid under section 3.1 of the TF should not exceed €800,000 per undertaking in the form of direct grants, repayable advances, tax or payments advantages. All figures used must be gross, that is, before any deduction of tax or other charge.
7. For undertakings in the agriculture and fisheries sector, the aid limits are lower: €120,000 per undertaking active in the fishery and aquaculture sector or €100,000 per undertaking active in the primary production of agricultural products. See points 22 and 23 of the consolidated TF for more information on the limits and conditions for undertakings in the agricultural, fisheries and aquaculture sectors.
8. De minimis aid can be used in conjunction with the new category of aid. De minimis aid is €200,000 over a rolling three-year financial period²⁵ and the conditions must be adhered to in the usual way (see chapter 4 of the State aid

²³ The point at which recipients receive or are legally entitled to receive aid (whichever occurs first)

²⁴ If the undertaking was in difficulty prior to 31 December 2019 within the meaning of Article 2(18) of the General Block Exemption Regulation (or Article 2(14) of Agriculture Block Exemption Regulation or Article 3(5) of Fishery and aquaculture Block Exemption Regulation) they may still be entitled to de minimis aid if they have received less than €200,000 in de minimis aid in the last three years and other conditions for de minimis aid are met. See chapter 4 of the State aid manual.

²⁵ De minimis aid limits for the agricultural and fisheries section are lower. More information can be found here - <https://www.gov.uk/guidance/state-aid-for-agriculture-and-fisheries>

manual)²⁶. De minimis aid is limited, over a three year rolling financial period, to €30,000 for undertakings active in the fisheries and aquaculture sector and €20,000 for undertakings active in the primary production of agricultural product.

9. Beneficiaries must be notified of the amount of aid they are receiving and should complete a declaration (**template in Annex C**) to confirm that the aid they are receiving will not breach the aid limits set out in paragraphs 7 and 8 above, and that they were not an undertaking in difficulty on 31 December 2019.
10. For undertakings active in more than one sector to which different maximum amounts apply (for example in both agriculture and industrial activities), the beneficiary that they must keep separate accounts to avoid exceeding ceiling limits and cross-subsidisation of aid across different sectors. See **Annex B** and paragraphs 22 and 23 in the TF.
11. For undertakings active in more than one sector to which different maximum amounts apply (for example in both agriculture and industrial activities), you must set out to the aid recipient that they should keep separate accounts to avoid exceeding ceiling limits and cross-subsidisation of aid across different sectors.
12. Aid for uncovered fixed costs (3.12 of the Temporary Framework) the following conditions must be met:
 - a) The aid covers uncovered fixed costs incurred during the period between 1 March 2020 and 31 December 2020 except aid that is within scope of Article 10 of the Northern Ireland Protocol which can cover costs incurred during the period 1 March 2020 to 30 June 2021 ('eligible period');
 - b) The aid is granted based on a scheme to undertakings that suffer a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. The calculation of losses will be based on audited accounts or official statutory accounts filed at Companies House, or approved accounts submitted to HMRC which includes information on the businesses' profit and loss.
 - c) 'Uncovered fixed costs' must meet the definition set out in paragraph 87(c) of the Temporary Framework as amended by the fourth amendment;
 - d) The aid intensity shall not exceed 70% of the uncovered fixed costs, except for micro and small companies (within the meaning of Annex I of the General Block Exemption Regulation), where the aid intensity shall not exceed 90% of the uncovered fixed costs.
 - e) The overall aid shall not exceed €3 million per undertaking to be provided directly to the beneficiary from the aid awarding authority and not channelled through financial institutions. The aid may be granted in the form of direct grants, guarantees and loans provided the total nominal value of such measures remains below the overall cap of €3million per

²⁶ <https://www.gov.uk/government/publications/state-aid-manual>

undertaking; all figures used must be gross, that is, before any deduction of tax or other charge;

- f) Aid under this measure shall not be cumulated with other aid for the same eligible cost.
13. Clear and comprehensive records of aid awarded must be maintained by granting authorities to account for awards granted. This is in the event this measure is subject to a monitoring exercise. Retention of records will enable detailed questions from the Commission or UK authorities to be answered in a timely manner.
 14. Aid providers **must inform the DfE State aid Unit immediately when aid is first granted** under the UK umbrella approval, and then on the amount paid out on each month while the aid scheme is in operation. Emails should be sent to stateaid@economy-ni.gov.uk for each scheme, including the following details:
 - a) The date the aid scheme commenced
 - b) The estimated scheme budget
 - c) A brief description of the scheme (e.g. purpose, aid recipient etc.)
 15. When submitting monthly returns, granting authorities should confirm that the scheme is still in operation and that their use of the scheme has complied with the terms of the approval letter and the conditions set out in this Annex. This is a UK Government requirement.
 16. All individual aid awards granted under the umbrella measure must be reported to the EU on the Commission's Transparency Awards Module (TAM) using the scheme number SA.56841 within a year of the aid being granted. DfE State aid unit will work with granting authorities to complete this exercise and would recommend this is done as soon as possible after the aid has been granted.
 17. BEIS require granting authorities to provide total amounts granted up to 31 December 2020. For schemes within the scope of the Northern Ireland Protocol, a list of total amounts granted should be submitted to BEIS through DfE SAU by 30 June 2021.
 18. The sanction for beneficiaries who have misreported any aid received under the Framework could be the recovery of the unlawful aid with interest.
 19. Granting authorities and SROs are responsible for ensuring schemes comply with the State aid rules
 20. Granting authorities are advised to consult with the DfE State aid unit to ensure their schemes comply with the State aid rules. They should also consult with their legal advisors when drafting grant agreements to ensure that State aid requirements are reflected.

ANNEX B: Template to send to beneficiaries of aid awarded based on the UK Covid-19 Temporary Framework

Dear [Name of Aid Recipient]

Confirmation of State aid received under the Covid-19 Temporary Framework for UK Authorities measure and Undertaking in Difficulty Status

Following the outbreak of the Coronavirus, the European Commission has approved schemes to aid businesses affected by the Coronavirus outbreak on the basis of their Temporary Framework, including the Covid-19 Temporary Framework measure for the UK.

The maximum level of aid that a company may receive is €800,000 (€120,000 per undertaking active in the fishery and aquaculture sector or €100,000 per undertaking active in the primary production of agricultural products). This is across all UK measures under the terms of the European Commission's Temporary Framework. For aid for uncovered fixed costs under Section 3.12 of the Temporary Framework, the maximum level of aid is €3 million

The Euro equivalent of the Sterling aid amount is calculated using the Commission exchange rate²⁷ applicable on the date the aid is offered.

Any aid provided under this measure will be relevant if you wish to apply, or have applied, for any other aid granted based on the European Commission's Temporary Framework. You will need to declare this amount to any other aid awarding body who requests information from you on how much aid you have received. You must retain this letter for four years after the conclusion of the UK's transition from the EU and produce it on any request from the UK public authorities or the European Commission.

Aid may be granted to undertakings that were not in difficulty (within the meaning of Article 2(18) of the General Block Exemption Regulation²⁸ (or Article 2(14) of Agriculture Block Exemption Regulation or Article 3(5) of Fishery and aquaculture Block Exemption Regulation)) on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the Covid-19 outbreak.²⁹

This aid is in addition to any other aid you may have received under the De Minimis regulation allowing aid of up to €200,000 to any one organisation (€30,000 to those in the fishery and aquaculture sector or €20,000 to those in the primary production of Agriculture products) over a three year fiscal period (i.e. your current fiscal year and previous two fiscal years), and any other approved aid you have received under other State aid rules, such as aid granted under the General Block Exemption Regulation, Agriculture Block Exemption Regulation or Fishery and aquaculture Block Exemption Regulation. Aid for uncovered fixed costs under Section 3.12 of the Temporary Framework shall not be cumulated with other aid for the same eligible costs.

Please sign the attached statement confirming your eligibility for support.

[Yours sincerely/ faithfully]

²⁷ https://ec.europa.eu/info/funding-tenders/how-eu-funding-works/information-contractors-and-beneficiaries/exchange-rate-infoeuro_en

²⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014R0651-20170710>

²⁹ If you are an undertaking in difficulty within the meaning of Article 2(18) of the General Block Exemption Regulation you may still be entitled to de minimis aid if you have received less than €200,000 in de minimis aid in the last three years. You should contact us if you consider that you may qualify for de minimis aid on this basis.

Confirmation of State aid received under the Covid-19 Temporary Framework for Undertaking in Difficulty status

I confirm that I have received the following aid under measures approved within the European Commission's Temporary Framework between March 2020 and December 2020 [June 2021].

I confirm that my undertaking was not in difficulty (within the meaning of Article 2(18) of the General Block Exemption Regulation or Article 2(14) of Agriculture Block Exemption Regulation or Article 3(5) of Fishery and aquaculture Block Exemption Regulation) on 31 December 2019.

| Body provided the assistance/aid | Value of assistance (€) | Date of assistance |
|----------------------------------|-------------------------|--------------------|
| | | |

DECLARATION

Company

Company Representative Name

Signature

Date

Annex C: Undertakings in Difficulty Assessment

Source: Section 2(18) General Block Exemption Regulations³⁰ (or Article 2(14) of Agriculture Block Exemption Regulation or Article 3(5) of Fishery and aquaculture Block Exemption Regulation – please refer to ABER or FBER if relevant)

(18) ‘undertaking in difficulty’ means an undertaking in respect of which at least one of the following circumstances occurs:

(a) In the case of a limited liability company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, ‘limited liability company’ refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (1) and ‘share capital’ includes, where relevant, any share premium.

(b) In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, ‘a company where at least some members have unlimited liability for the debt of the company’ refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.

(c) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.

(d) Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee or has received restructuring aid and is still subject to a restructuring plan.

(e) In the case of an undertaking that is not an SME, where, for the past two years:

- (1) the undertaking's book debt to equity ratio has been greater than 7,5 and
- (2) the undertaking's EBITDA interest coverage ratio has been below 1,0.

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0651&from=EN>