



The English Property Development State Aid Scheme

1. Member State

United Kingdom

2. Regions

East Midlands;
Eastern;
London;
North East;
North West;
South East;
South West;
West Midlands; and
Yorkshire and the Humber

3. Title of Aid Scheme

The English Property Development State Aid Scheme

4. Government or statutory bodies authorised to implement the Scheme

The implementing body is the Department for Communities and Local Government.

The implementing body has a range of statutory functions which include funding projects in England which incentivise property development, encourage employment and/ or attract business investment.

The implementing body is the Managing Authority for European Regional Development Fund projects in England.

5. Legal Authority

The implementing body is authorised to award aid under domestic law. The legal authority for the implementing body to award aid is contained within:

- The European Communities Act 1972;
- The Local Government, Planning and Land Act 1980;
- The Leasehold Reform, Housing and Urban Development Act 1993;
- The Local Government Act 2000;
- The Public Contracts Regulations SI 2006 No 5;

- The Local Government Act 2007;
- The Housing and Regeneration Act 2008; and
- The European Communities (Finance) Act 2008

6. Duration

The English Property Development State Aid Scheme allows the implementing body to award aid in England from 1 July 2011 until the end date set out in the General Block Exemption Regulation ([Commission Regulation No 800/2008](#)) of 6 August 2008, as may be amended and prolonged from time to time by the European Commission (“GBER”).

7. Scheme Objectives

The object of the English Property Development State Aid Scheme is to lawfully provide State Aid cover for awards of aid which incentivise capital investment, encourage employment and improve the competitiveness of businesses.

The English Property Development State Aid Scheme is exempt from the notification requirements of Article 108(3) of the TFEU where aid is awarded in accordance with the GBER.

The scheme utilises the following instruments of GBER:

- Article 13: Regional Investment and Employment Aid; and
- Article 15: SME Investment and Employment Aid.

8. Discretion of the Implementing Body

All awards made under the English Property Development State Aid Scheme are made at the discretion of the implementing body, taking into account considerations such as whether the award of aid will help unlock the commercial potential of the area and whether State Aid is the appropriate instrument to achieve the objective.

Notwithstanding the above, the discretion of the implementing body set out above shall not extend to awarding aid which exceeds what may be lawfully provided under the GBER.

The implementing body reserves the right to withdraw use the scheme from any project which is regarded to be in default.

9. Obligations upon the Aid Recipient

All awards are conditional upon the aid recipient having undertaken their own assessment of the compatibility of their project with the English Property Development State Aid Scheme (if necessary taking independent legal advice).

The aid recipient acknowledges that the implementing body has relied upon representations about the project made by the aid recipient. The aid recipient confirms, prior to accepting the award of aid, that they are not aware of any information which suggests that the information provided to the implementing body is inaccurate (including but not limited to information which suggests that the award is not the minimum sum necessary for the project to proceed).

10. Aid Intensity

The English Property Development State Aid Scheme allows the implementing bodies to award aid up to the maximum aid intensity allowable under Articles 13 and 15 of GBER.

Under Article 13 the maximum aid intensity is calculated taking account of the location and status of the aid recipient. Article 15 does not depend on the location of the aid recipient.

[Commission Recommendation C20031422/361/EC](#) (Official Journal L124, 20.5.2003) provides guidance on identifying the appropriate size of enterprise.

Aid Measure	Maximum % aid intensity levels for:			Notification thresholds (€)
	Large Enterprises	Medium Enterprises	Small Enterprises	
REGIONAL AID: GBER SECTION 1				
<u>Article 13:</u> Regional Investment and Employment	Article 107(3)(c) areas 10-15% Article 107(3)(a) areas may receive up to a maximum of 35% (subject to the State Aid N673/2006 UK Corrigendum Regional Aid Map 2007-13)	+10%	+20%	Large investment projects where there is an initial single investment in capital assets at or above €50m. Sums greater than 75% of maximum allowable grant sum in respect of eligible costs of €100m in area in question (e.g. in area with 10% regional aid cap; €7.5m)
AID FOR SME INVESTMENT AND EMPLOYMENT: GBER SECTION 2				
<u>Article 15:</u> SME Investment and Employment	N/A	10%	20%	€7.5m per undertaking per investment project

Where the total funding from all public sources exceeds the above thresholds, no aid may be granted or otherwise committed until approval has been obtained from the European Commission.

11. Forms of aid

Aid for property development projects funded under this scheme may take the form of the following aid instruments:

- Grant;

- Loan; or
- Any other instrument consistent with either Article 13 or 15 of GBER.

All awards shall be transparent (as defined in Article 5 of GBER).

12. Investment Aid

The requirements of Article 12 of GBER (Specific Conditions applicable to Investment Aid) apply to the English Property Development State Aid Scheme.

13. Procurement of Suppliers

All goods, works and services supplied to projects using the English Property Development State Aid Scheme must be selected through an evaluation process which:

- is consistent with the Public Contracts Regulations 2006 (as amended); and
- demonstrates compliance with the principles set out in Article 2 of the Procurement Directive 2004/18/EC.

Where an open and competitive process is not possible, the aid recipient shall take all reasonable steps to demonstrate that the value attributed to all goods, works and services is equal or lower than would have been established by going out to the market.

Appropriate records shall be maintained, which shall be provided to the implementing body upon reasonable request.

14. Incentive Effect

The implementing body will take all necessary steps to ensure the Incentive Effect requirements in Article 8 of GBER are satisfied before aid is awarded.

In accordance with European Commission notice “Incentive effect in relation to large enterprises” Comp/H4/CS/dg-D*2011/097439, dated 20 September 2011, to ensure compliance with Article 8 (3) of GBER, aid recipients using this scheme involving large enterprises shall:

- Produce an internal document analysing the viability of the aided project activity with the proposed aid and without the proposed aid;
- Ensure the document contains credible analysis and demonstrates the incentive effect; and
- Shall submit that document to the implementing body, prior to the aid being legally committed.

15. Eligible Costs

Only the actual costs of investment in the following shall be considered eligible under Article 13:

- Tangible Assets, which under Article 1(10) is limited to the land, buildings, plant and equipment directly required to:

- (i) set up a new establishment, extend an existing establishment, diversify the output of an establishment into new additional products or fundamentally change the overall production process of an existing establishment; or
- (ii) acquire the capital assets directly linked to an establishment, where such establishment has closed or would have closed had it not been purchased, and the assets are bought by an independent investor; in the case of a business succession of a small enterprise in favour of family of the original owner(s) or in favour of former employees, the condition that the assets shall be brought by an independent investor shall be waived.
- Intangible Assets, which under Article 1(11) means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge which satisfies the following criteria:
 - (i) shall be used exclusively by the undertaking receiving the aid and exclusively in the establishment using the aid (for a period of not less than 3 years for an SME and 5 years for a large enterprise);
 - (ii) have the qualities required to be treated as an amortizable assets; and
 - (iii) have been purchased from a third party under market conditions (without the acquirer being in a position to exercise control).
- Employment costs where:
 - (i) the employment is created within 3 years of the investment;
 - (ii) the investment project directly leads to a net increase in the number of employees in the establishment (compared to the average number in the previous 12 months); and
 - (iii) the employment created is maintained for not less than 3 years for an SME and 5 years for a large enterprise.

The following shall be considered eligible under Article 15:

- the actual cost of investment in Tangible Assets, which under Article 1(10) is limited to the land, buildings, plant and equipment;
- the actual cost of investment in Intangible Assets, which under Article 1(11) means assets entailed by the transfer of technology through the acquisition of patent rights, licences, know-how or unpatented technical knowledge; and
- Wage costs of employment directly created by the investment project over a period of up to 2 years (this may be provided on the basis of an estimate subject to any overcompensation being recovered after 2 years).

The aid recipient is responsible for establishing that all costs put forward for the state aid calculation meet the criteria listed above. Any aid provided under this scheme by the implementing body shall be conditional upon the aid recipient being able to demonstrate to the satisfaction of the implementing body that no ineligible costs have been included in the state aid calculation.

16. Estimated Costs

Where actual costs shall be incurred but at the date of the award it is not possible to determine the exact sum, the implementing body has the discretion to accept estimated costs.

The aid recipient acknowledges that they are responsible for taking reasonable measures to avoid over-compensation where estimated costs are accepted. This shall include updating the implementing body when actual costs have been incurred (if necessary reducing the award of aid) or engaging an independent expert (at the aid recipient's cost) to provide a written opinion on whether the estimates are consistent with the market rate for the goods, works and / or services.

17. Adjusted threshold for large Investment projects

Investment aid awarded to companies in assisted areas for large projects is subject to an adjusted aid ceiling on the basis of the scale set out below:

Eligible Expenditure	Adjusted aid ceiling
Up to €50m	No reduction – 100% of aid ceiling
For the part between €50m and €100m	50% of aid ceiling
For the part exceeding €100m	34% of aid ceiling

18. Artificial division of projects

The English Property Development State Aid Scheme shall not provide State Aid cover for projects that have been artificially sub-divided to obtain a higher aid intensity than would otherwise be applied.

A large investment project will be considered to be a single investment project when the investment is undertaken in a period of 3 years by the same undertaking and consists of fixed assets combined in an economically indivisible way.

Likewise, this project shall not provide cover where the aid recipient has artificially included ineligible costs or those outside the immediate project investment to increase the maximum sum that can be awarded.

19. Excluded aid

The English Property Development State Aid Scheme allows aid to all sectors other than those listed below:

- Fisheries and aquaculture;
- Shipbuilding;
- Coal industry;
- Steel industry;
- Synthetic fibres; and
- Primary production of agricultural products (listed in Annex 1 of the Treaty; cork products under CN codes 4502, 4503, 4504; products used to substitute for milk/milk products).

This scheme shall not allow aid:

- which constitutes export aid or favours domestic over imported products;

- that has the objective of establishing and /or financing of distribution networks in other countries;
- where implementing body has reasonable grounds to believe the recipient of funds will be within the definition of undertaking in difficulty (as set out in 2.1 of the Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty (2004/C244/02)¹; and
- where the recipient of the aid is the subject of an outstanding recovery order relating to a previous European Commission decision in which aid has been declared illegal and / or incompatible with the Common Market.

20. Cumulation

Aid awarded under the English Property Development State Aid Scheme may be cumulated with any other aid under the GBER as long as those aid measures are for different identifiable eligible costs.

However aid under the English Property Development State Aid Scheme may not be cumulated with any State Aid exemption (for example another measure under GBER or the De Minimis Regulations 1998/2006) where the funding covers the same eligible costs and the effect is to exceed the applicable maximum aid intensity or aid amount allowable.

21. Notice of Scheme

Where aid is provided under the English Property Development State Aid Scheme, the implementing body shall inform the recipient in writing of the name of the scheme and that it is notified under GBER.

22. Conditions of Funding

To protect the public funding, the implementing body shall ensure that the aid recipient agrees to conditions of funding that are materially similar to the following:

- That for property investment projects, the agreed use provisions set out in GBER are followed for the required time period²;
- The aid recipient agrees to promptly provide any documents or information to the implementing body which are reasonably required to assist a European Commission investigation;
- Where any of the State Aid conditions are breached by the aid recipient and as a result the aid is found to be non-compliant, this shall be a breach of the award and the implementing body shall have the right to require the value of the aid to be returned with appropriate interest.

23. Reporting

The implementing body shall report the annual spend under this scheme to the European Commission.

¹ other than SMEs that have been incorporated for less than 3 years unless they are insolvent under UK legislation

² although during this period, plant and equipment that has become out of date may be replaced, provided that the economic activity is retained in the region for the minimum period

The aid recipient shall collect and submit details of their spend under this scheme to the implementing body upon reasonable request.

The Commission is entitled to investigate awards of aid. To assist the implementing body to respond to these the aid recipient agrees to collect appropriate information to verify compliance with the scheme during the term of the project.

24. Budget

The maximum sum allowable in each calendar year under the English Property Development State Aid Scheme shall be £1.5bn. This sum is provided for State Aid purposes only and does not reflect a committed government budget.

25. Sources of Funding

The awards of aid provided under this scheme may come from structured funds or otherwise provided or controlled by the implementing body.

26. Primacy

In the event that any part of this scheme is inconsistent with the GBER, the provisions of GBER shall take priority.

27. Contact

Questions about this scheme should be directed to The State Aid Policy Network, c/o ERDF Policy Unit, The Department for Communities and Local Government, Eland House, Brssenden Place, London, SW1E 5DU.