



EUROPEAN COMMISSION

Brussels, 27-05-2003
C(2003)1661fin

**Subject: State aid NN 11/2002 – United Kingdom
Individual cases of application based on the National Heritage Memorial Fund**

Sir,

1. PROCEDURE

1. With letter dated 7 February 2002 the UK notified the a.m. scheme. The Commission registered it as non notified aid scheme and asked for further clarifications with letter dated 2 September 2002 to which the UK responded with letter dated 13 November 2002. A meeting was held on 23 April 2003.
2. The United Kingdom informed the Commission about this national scheme in the light of the decision on English Partnerships' gap funding scheme and seeks legal security in respect to the a.m. scheme in relation to Article 87(3)(d) of the EC Treaty.

2. DESCRIPTION OF THE MEASURE/AID

Title of the scheme, national legal basis and duration

3. The National Heritage Act 1980 (1) set up a Fund called the National Heritage Memorial Fund (NHMF). The scheme is unlimited in time.

¹ The Act has been amended several times, principally by the National Heritage Act 1997 and the National Lottery Act 1993 and 1998.

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Administrating authority and budget

4. The NHMF is a national, statutory organisation responsible for administering financial assistance in England, Wales, Scotland and Northern Ireland. It is managed by a Board of Trustees and responsible to the Secretary of State.
5. The Fund has a budget of approximately £ 330 million p.a. The money comes on the one hand from the Secretary of State and on the other hand from the National Lottery. The latter is based on the National Lottery Act 1993 and 1998 which requires the Lottery company, a private company with a special licence from the state to run the Lottery, to make a certain proportion of the Lottery Fund available to the state.

Beneficiaries

6. There are no restrictions on who could be the recipient. 500 beneficiaries p.a. are expected.

Object and purpose of the NHMF

7. The purpose of NHMF is to provide financial assistance towards projects of importance to the National Heritage. The National Heritage Act 1980 describes that as "... things of any kind which are of scenic, historic, archaeological, aesthetic, architectural, engineering, artistic or scientific interest including animals and plants which are of zoological or botanical interest."
8. Any type of project is eligible as long as it is important for the national heritage and there is a benefit for the public. The overall objective is to "... improve the quality of life by safeguarding and enhancing the heritage of buildings, objects and the environment, whether man-made or natural, which has been important in the formation of the character and identity of the United Kingdom, in a way which will encourage more sections of society to appreciate and enjoy the heritage and enable them to hand it on in good heart to future generations."

Eligible projects

9. The scheme covers a variety of eligible projects. Examples are: buildings, historic townscapes, historic parks, monuments, churches and other places of worship, locally valued structures and wildlife sites, helping local groups to investigate, explain and care for their local landmarks, traditions and culture, projects based on language heritage, oral history and traditions, exhibitions and archives. For the purpose of this notification eligible projects do not include cinema films or films for television.

Relevant costs, form of financial support and intensity

10. Relevant costs vary depending on the projects. Examples in this respect are: construction of buildings, conservation, repair and restoration to any kind of physical heritage asset, improving housing and storing of collections, provide education, set up and maintain a public exhibition, compile and maintain archives, publish archive material, digitalise data, compile and publish works of reference. Funding may be up to 100% of the relevant costs.

11. NHMF gives financial assistance by way of grant, loan (2) or other ways such as a voucher system (3). Usually the Fund provides grants. If a loan is made it is for NHMF to determine an appropriate rate of interest. Of the few loans made by NHMF, most are interest-free unless the grantee is in default.
12. NHMF also has the power to provide financial assistance by other means, e.g. through a voucher scheme that might enable participants to exchange vouchers for heritage-related goods or services under the National Lottery etc. Act 1993.

Cumulation

13. The grant under this scheme may be cumulated with other forms of public financing.

3. ASSESSMENT OF THE MEASURE/AID

14. The analysis of Article 87(1) EC Treaty for the NHMF is difficult because the scheme does not distinguish between the various situations relevant for state aid rules. In fact, the scheme has merely been drafted as a basis for the national decision to provide grants for historic objects without taking into account the rules on state aid.
15. For many of the selective awards of funds under the NHMF, the Commission would agree with the UK that not all conditions of Article 87(1) EC Treaty are fulfilled and that there would hence not be State aid. For some cases of application under the scheme, however, the Commission cannot exclude that these funds may advantage undertakings active in sectors in which there is trade between Member States and competition.
16. Where the NHMF provides aid within the meaning of Article 87(1) EC Treaty, the Commission examined whether the aid may be considered to be compatible with the common market. To this end the Commission focuses on Article 87(3)(d) EC Treaty.
17. The Commission sees two types of eligible projects relevant for the exception as mentioned in Article 87(3)(d) of the EC Treaty. On the one hand the Fund assists the renovation of buildings or other physically built heritage objects. The Commission is aware that taking into account the needs of historic conservation in case of retention (i.e. if a building is incapable of economic repair and the alternative is either collapse or total/partial demolition) or appropriate repair (such as additional costs associated with respecting or enhancing the historic significance, for example by using traditional materials or restoring features that are purely decorative) of heritage assets entails additional cost. In so far as the aid awarded by the NHMF is limited to covering these additional heritage related costs, the Commission finds that such aid promotes heritage conservation without affecting trading conditions and competition in the Community to an extent contrary to the common interest in the meaning of Article 87(3)d EC Treaty.

² Section 3 (5) of the NHA 1980 as amended

³ Section 25 (1A) National Lottery Act 1993

18. The second category of projects relates to the conservation of intangible heritage assets, intangible conservation for heritage assets, and certain tangible objects. Such projects are also selected by the national authorities using criteria which ensure that they promote culture and the conservation of the heritage.
19. The Commission is aware that for some of these projects the presumed commercial return would not be high enough in order to make them interesting for the market. However, in all of these projects there is a strong beneficial aspect for various areas of life and these benefits for the public cannot be measured in financial terms. Moreover, the conservation of cultural heritage is a recognised area of mutual benefit for all European citizens under the EC Treaty (cp. Article 151 EC Treaty).
20. Therefore, the Commission thinks that in order to secure the achievement of the intended cultural or heritage objective (including the sustainability of the heritage purpose or asset) or the achievement of appropriate or sympathetic participation in the project the projects costs may be covered up to 100% if the projects provides free access for the public. If the project leads to a cost for the public (i.e. admission or participation fees), funding may be given in order to cover those projects cost that it is not reasonable to expect to be covered by other incoming finances for the project in question. Project costs are to be understood in a wider sense, therefore taking into account inter alia the need for sustainability and a reasonable rate of return.
21. The Commission finds that aid for such projects promotes culture and preserves heritage without affecting trading conditions and competition in the Community to an extent contrary to the common interest in the meaning of Article 87(3)d EC Treaty.
22. If the situation should arise that the UK would wish to provide aid under the NHMF to cover costs other than the ones mentioned above (points 9, 17 and 20) such aid would not be covered by the present decision and should be notified in advance pursuant to Article 88(3) EC Treaty.
23. The Commission wishes to obtain a detailed annual report starting in 2004, covering 2003.

4. DECISION

The Commission regrets that the United Kingdom put aid measures into effect in breach of Article 88(3) of the Treaty.

However, it has decided, on the basis of the foregoing assessment, that the aid covering heritage related costs as mentioned above can be considered compatible with the common market pursuant to Article 87(3)d) of the EC Treaty.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/

Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: 0032.2.296.12.42

Yours faithfully,

For the Commission

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Member of the Commission