



EUROPEAN COMMISSION

Brussels, 16.10.2002

C(2002)3731fin

**Subject: State aid No N 317/02 – United Kingdom  
Scottish Property Support – Bespoke Development Scheme**

Sir,

#### **I. PROCEDURE**

- (1) By letter dated 29 April 2002, registered on 7 May 2002, the British authorities notified the case mentioned above in accordance with Article 88(3) of the EC Treaty. This scheme is an amendment to the Property Support Scheme, registered under the number N 680/2001, which was found to fulfil the criteria to be compatible with the Community State aid rules by Commission decision of 3 April 2002.<sup>1</sup>
- (2) By letters N° D/ 52841 and N° D/ 54237 dated 5 June 2002 and 1 August 2002, the Commission requested further information, which the UK authorities supplied respectively by letter dated 27 June 2002, registered on 3 July 2002 and by letter dated 27 August 2002, registered on 2 September 2002.

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<sup>1</sup> See letter N° SG (2002) D/229227 of 5 April 2002.

The Right Hon Jack Straw MP  
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## **II. DETAILED DESCRIPTION:**

### **2.1 Description of the main characteristics of the initial case N 680/2001 Property Support Scheme**

- (3) This scheme is operated by Scottish Enterprise and the Highlands and Islands Enterprise, which are Scotland's main development agencies, and Scottish Local Authorities, on the basis of the Enterprise and New Towns (Scotland) Act 1990, as amended on 1 April 2001 by Scottish Statutory Instrument 2001 N° 126 and on the basis of the Local Government Act 1973 and Section 171 of the Local Government Act etc (Scotland) Act 1994.
- (4) The purpose of this scheme is to support the development of premises and buildings for commercial purposes by the private sector. Such development can involve the construction of new buildings and/or the renovation and conversion of existing ones. This support will be provided in situations where there is in the view of the granting authorities, a "market failure". A possible example is the situation where the estimated development costs of the property exceed its estimated end market value. The granting authorities will provide an amount of aid that is the minimum necessary for the selected property development projects to go ahead.
- (5) Projects subsidised under the Property Support Scheme can be classified into two categories:
  - They can support speculative developments, when they are not for occupation by an end-user that is known at the time of application for the aid.
  - They can also support bespoke developments. They correspond to the situation where the project is initiated by the end-user and/or where the end-user is known at the time of application for the aid.
- (6) This scheme is structured so that it is in conformity with the Community Guidelines on national regional aid and Commission regulation (EC) N°70/2001.
- (7) In the specific case of bespoke development projects, the Commission identified as beneficiary of the aid the end-user of the subsidised projects. The developer was also considered as a potential recipient of the aid. As a result, under the Property Support Scheme N° N 680/2001, only bespoke development projects in which both the developers and the end-users are SMEs can benefit from aid in non-assisted areas.
- (8) A more detailed description of this scheme is provided in the Commission original approval letter N° SG (2002) D/229227 of 5 April 2002

### **2.2 The proposed amendment as notified in case N 317/2002**

- (9) In their notification of 29 April 2002, the British authorities proposed to modify the application of the Property Support Scheme to bespoke development projects in non-assisted areas. On the basis of this amendment, the British authorities propose to give aid to bespoke development projects in non-assisted areas even when the developer is a large firm. For the purpose of implementing this amendment,

bespoke development projects are defined as projects involving property designed to fit the specific needs of an identified end-user.

- (10) In this type of projects, the British authorities argue that the market value of the building may be substantially affected by its specialised nature. As a result, there may be a gap between the cost of developing the property and its final market value, which is generally the main rationale for the application of the Property Support Scheme. It is further explained that this gap funding arises from the occupier's specialised requirements rather than the general property market conditions. When assessing a bespoke development project, the granting authority will ask an independent Chartered Surveyor to ensure that the grant, which is directly paid out to the developer carrying out the project, does not exceed this difference between the cost of the building and its market value arising from its specialised nature.
- (11) If the proposed amount of aid does exceed the cost attributable to the specialised nature of the property, both the end-user and the developer will have to fulfil the requirements for the compatibility of aid under EC rules. In such situations, in non-assisted areas, only projects in which both the developer and the end-user are SMEs will receive aid under this scheme.

### **2.3 Nature and form of the aid**

- (12) The British authorities ensured that with the exception concerning the nature of the developer, aid granted under this scheme would be provided under the same conditions as in the Property Support Scheme N 680/2001.
- (13) In particular, aid will only be provided to initial investment projects, as defined in Commission regulation (EC) N°70/2001 and will be given on condition that this investment be maintained for a period of five years.
- (14) Aid to property development projects will take the form of either development grants, subsidised loans and interest rebates, loan guarantees, joint venture finance, or development services.

### **2.4 Scope of the scheme**

- (15) This scheme will be operated in Scotland, outside its assisted areas within the meaning of Article 87(3)(c).

### **2.5 Intensity of the aid**

- (16) Since this scheme is operated outside assisted areas, grants will be limited to 15 % when the end-user of the subsidised building is a small enterprise and to 7.5 % when the end-user is a medium sized enterprise. The definition of small and medium-sized enterprises is in conformity with annex I of regulation (CE) N° 70/2001.
- (17) Aid intensity will be expressed as a percentage of the eligible initial investment costs, as described below in 2.6. In all cases, the recipient's contribution to the financing of the investment aided will be at least 25%.

### **2.6 Eligible costs**

- (18) The eligible costs under this scheme will be the price of the land, the cost of construction and infrastructure, the finance charges, the development fee and professional fees (legal fees, design fees...).

## **2.7 Duration of scheme**

- (19) The scheme will be applied until 31 December 2006, in line with the review of the Regional aid map.

## **2.8 Budget of scheme**

- (20) The budget of the whole property support scheme will be adopted annually. The estimated budget for the aid given to the companies under the whole scheme will be:
- for 2001/2002: £20.00 million
  - for 2002/2003: £22.50 million
  - for 2003/2004: £23.00 million

## **2.9 Commitments**

- (21) The UK authorities undertake:
- to notify the Commission of all individual cases where the end-user is active in the following sensitive sectors: synthetic fibres, steel, coal, shipbuilding and the motor vehicle industry,
  - not to grant any aid under this scheme to enterprises involved in the production, processing or marketing of products listed in Annex I of the EC Treaty,
  - that cumulation of aid from the different public sources authorised under this scheme will not be authorised.
  - to ensure in any case that the rules of cumulation of aid in regulation (EC) N°70/2001 will be respected.
  - to comply with all the requirement of Regulation (EC) N°70/2001,
  - and to provide the Commission with an annual report on the implementation of this scheme, prepared in accordance with the Commission's standard reporting format for State aid. All aid will be described in brief in the annual report to ensure that it complies with the definition of initial investment.

# **III. ASSESSMENT OF AID**

## **3.1 Legality of the aid measure**

- (22) The British authorities have complied with the procedural requirement of Article 88(3) of the EC Treaty by notifying the above-mentioned aid scheme before putting it into effect.

### **3.2 Identification of the beneficiaries of the aid**

- (23) In its decision of 03 April 2002 on case N° N 680/2001, the Commission concluded that, “in the case of bespoke development projects, the subsidised project is designed to fit the needs of an identified end-user, who therefore must be considered as a beneficiary of the aid. However, since, under this scheme, the aid is initially paid out to the developer undertaking the works, it is possible that part of the aid will remain with the developer.” The Commission added that it was not necessary to precisely identify which of the parties, end-user or property developer, was the aid beneficiary if, in either case, the rules on regional aid or aid to SMEs are respected.
- (24) Under the present notified amendment, bespoke development projects in non-assisted areas and where the developer is a large firm would be eligible for aid. It is therefore important to determine whether the property developer is an actual beneficiary of the aid, since, if he is, the amended scheme will not be in conformity with the provisions of regulation (CE) N°70/2001 nor the Community guidelines on regional aid.
- (25) On this issue, the Commission notes that:
- According to the British authorities, in bespoke development projects, The “gap funding”, i.e. the fact that the estimated development costs of the property and its estimated end market value, can essentially be attributed to the fact that the premises have been specifically designed for a particular occupier.
  - For each proposals involving bespoke development, this gap-funding is assessed by an independent Chartered Surveyor. In previous decisions concerning property development schemes,<sup>2</sup> the Commission already acknowledged that Chartered Surveyors can determine the market value of a building. The same assumption can also apply to their ability to evaluate the market value of the development costs of a building. The Commission can therefore admit that the valuation of this gap-funding made by a Chartered Surveyor is in line with market levels.
  - The aid provided under this scheme will not normally exceed this gap funding.
  - The British authorities admit that the subsidy is directly paid to the developer, but argue that this payment procedure is adopted in the interests of financial prudence and due diligence.
  - The British government offers further guarantees. Where the proposed amount of aid exceeds the gap funding amount established by the Chartered Surveyor, they accept that both the developer and end-user could be considered as

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<sup>2</sup> See for instance Commission decision of 25.10.2000 on case N 657/1999 and Commission decision of 03.04.2002 on case N 680/2001.

possible beneficiaries of the aid and therefore that both of them will have to be SMEs when the bespoke development project takes place in non-assisted areas. Furthermore, in all situations, the developer will not received any aid outside this scheme with respect to the same eligible costs.

- (26) On the basis of these various elements, the Commission concludes that this system guarantees that the exact amount of the subsidy corresponding to the gap funding is passed on to the occupier. Therefore, the Commission accepts that the beneficiary of the aid in bespoke development projects is the occupier of the subsidised building. The payments of the gap funding to the developer can be considered as a way of channelling the aid to the occupier. The mechanism of gap funding guarantees that all aid goes to the occupier. Only when the aid amount awarded by the authorities exceeds the gap funding established by the independent Chartered Surveyor, can a part of it remain with the developer. In such cases, the developer must also be considered as a potential beneficiary of the aid.

### **3.3 Existence of aid within the meaning of Article 87(1) of the EC Treaty**

- (27) The Commission has assessed the notified scheme on the basis of Article 87(1) of the EC Treaty. Article 87(1) of the EC Treaty states that “any aid by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings [...] in so far as it affects trade between Member States” is incompatible with the common market.
- (28) The aid is provided by Scottish public authorities and can therefore be considered as given through State resources within the meaning of Article 87(1) EC. Furthermore, under this scheme, aid in the form of grants for property development is provided to certain enterprises only after a selection process and extensive examination carried out by the granting authorities. Therefore, the Commission concludes that the scheme meets the selectivity criteria of Article 87(1) EC. Finally, the recipients may potentially participate in trade between the Member States. The forecast annual budgets of £20-23 million adds to the significance of the scheme’s potential impact on trade between Member States.
- (29) For these reasons, this scheme must be regarded as distorting competition and affecting trade between Member States. Article 87(1) of the EC Treaty is therefore applicable.

### **3.4 Compatibility under Article 87(3) of the EC Treaty**

- (30) Having established that the notified scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether this scheme can be found to be compatible with the common market under Article 87(3) EC.
- (31) The Commission finds that the aid provided under this scheme is in conformity with regulation (EC) N°70/2001 for the following reasons:

- Under this scheme, the identified beneficiaries of the aid (i.e. the occupier of the subsidised buildings, and, in the specific situations where the grant exceeds the gap funding amount established by a Chartered Surveyor, the developer) will be SMEs, as defined in Annex I of regulation (EC) N°70/2001.
  - Aid will be limited to initial investment in Article 2(c) of Regulation (EC) N°70/2001 and will be conditional on the initial investment being maintained for a minimum period of five years.
  - This scheme applies in non assisted areas and the intensity of the aid will be limited to 15% for small firms and 7.5% for medium-sized firms
  - Aid is calculated on the basis of expenditure that can be considered eligible under the applicable EC rules, since it is directly and exclusively related to the initial investment in business premises.
  - Aid will be determined in such a way as to limit it to what is necessary for the investment to go ahead.
  - Rules on the cumulation of aid in the regulation will be respected.
  - Aid to firms operating in the sensitive sectors will be individually notified. No aid will be granted to firms involved in the production, processing or marketing of products listed in Annex I of the EC Treaty.
- (32) For these reasons, this aid scheme can be considered to be compatible with Article 87(3).

#### **IV DECISION**

- (33) The Commission has accordingly decided to consider the aid to be compatible with the EC Treaty

- (34) 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/](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/). Your request should be sent by registered letter or fax to:

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Yours faithfully,

For the Commission

Mario MONTI

Member of the Commission