



EUROPEAN COMMISSION

Brussels,

C(2016) final

Embargo VISTA illimité(*)

Subject: **State aid / United Kingdom (Scotland)**
 SA.43178 (2016/N)
 Scottish Environmental Protection Agency River Restoration
 Compensation Scheme

Sir,

The European Commission (hereinafter: "the Commission") wishes to inform the United Kingdom (hereinafter: "UK") that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to that scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 25 September 2015, registered by the Commission on 28 September 2015, the United Kingdom pre-notified, according to the Code of Best Practice for the conduct of State aid control procedures¹, the above mentioned aid scheme. The Commission sent a request for additional information to the UK authorities on 13 January 2016 which the UK authorities answered by email of 20 April 2016, registered by the Commission on the same day.
- (2) By letter of 30 May 2016, registered by the Commission on the same day, the United Kingdom notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Commission sent a request for additional information to the UK authorities on 20 July 2016 which the UK authorities answered by email of 23 September 2016, registered by the Commission on the same day.

¹ OJ C 136, 16.6.2009, p. 13

The Rt Hon Boris JOHNSON
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UNITED KINGDOM

() Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

2. DESCRIPTION

2.1. Title

- (3) Scottish Environmental Protection Agency River Restoration Compensation.

2.2. Objective

- (4) With the present notification the UK authorities wish to enhance the uptake of measures within the Scottish River Basin Programme by providing farmers with compensation for loss of income and extra costs when agricultural land is taken out of use at a temporary or permanent basis during river restoration work.

2.3. Legal basis

- (5) The legal basis is the Environment Act 1995, Section 37 as read with section 47.

2.4. Duration

- (6) From the date of the approval by the Commission until 31 March 2021.

2.5. Budget

- (7) The overall budget is GBP 900 000 and the annual budget is GBP 180 000. The maximum aid intensity is 100% of the eligible costs.

2.6. Beneficiaries

- (8) Primary agricultural producers. Scheme is not limited to SMEs and the number of beneficiaries is estimated to 501-1000.

- (9) Aid is not granted to:

- a) Undertakings in difficulty as defined in point 35(15) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020² (hereinafter "the Guidelines").
- b) Undertakings, which are subject to an outstanding recovery order following a previous Commission Decision declaring aid illegal and incompatible with the internal market.
- c) Cover value added tax (VAT), except where it is non-recoverable under UK national legislation.

2.7. Aid instrument

- (10) Direct grant.

2.8. Description of the aid scheme

- (11) The EU Water Framework Directive³ requires Member States to establish a framework for the management of Europe's water resources by producing River

² OJ C 204, 1.7.2014, p. 1, amended by the Notice published in OJ C 390, 24.11.2015, p. 4.

Basin Management Plans, which Scotland has done. The Scottish plans contain objectives to achieve good ecological quality. A recent review of progress with the first plan shows that changes to the physical condition of the water environment are a major issue that require restoration.

- (12) In order to develop a suite of restoration measures, the Scottish Government are setting up a delivery framework including: legislative tools (for pressures such as culverts that have a current use); funding for restoration of the physical condition where there is no current use; and proposed provisions for compensating farmers for income foregone.
- (13) The scheme will be funded under the Water Environment Fund, which only supports improvements required to the physical condition of Scotland's water environment.
- (14) The proposed compensation under the notified scheme would apply where (a) there is temporary loss or damage to land that is unavoidably caused during works (e.g., an excavator working from a field on the river bank) and (b) where a restoration project changes the shape of a river channel or loch such that there is reduced land availability or productivity.
- (15) Example 1: *Pow Burn*

Activity: Re-profiling the river corridor. Area: approx. 0.6Ha of arable land removed from production to allow river banks to be set back by 6m giving the river room to adjust and recover. Location: NO 64358 56534.

Photo:



³ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

Example 2: *Rottal Burn*

Activity: Re-meandering. Area: approx. 5Ha of rough grazing taken out of production to allow the previously straightened river to be re-meandered. Location: NO 36649 68835

Image:



Example 3: *Eddleston*

Activity: Re-meandering

Area: approx. 2Ha of rough grazing taken out of production to allow the previously straightened river to be re-meandered. Location: NT23749 45317

Image:



2.8.1. Environmental impact

- (16) The UK authorities take the view that the support is targeted on clearly defined objectives (as described in recital (4) above) reflecting identified structural needs in the field of water environment protection in Scotland. The supporting aid scheme is, in their view, in line with the overall European strategy for the management of water resources, the main principles of which are stipulated in the Water Framework Directive.
- (17) The UK authorities have provided an analysis of the potential impact of the present State aid scheme on the environment. It follows from their analysis that the present aid scheme does not support any extension of the production nor will any environmentally unfriendly activities be supported.
- (18) The UK authorities conclude, therefore, that the present aid scheme will have no negative impact on the environment and that it is in line with the EU common agricultural policy.

2.8.2. Management of the aid scheme

- (19) The proposed compensation scheme would be administered by the Scottish Environmental Protection Agency (SEPA).
- (20) The aid applications have to be submitted to SEPA before the start of the relevant project or activity and must contain the applicant's name, the size of the undertaking, a description of the project or activity including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs.
- (21) The compensatory payments will only be paid after the competent authority has performed the necessary checks and measurements concerning the soil in the given agricultural holding. The application data is subject to a variety of professional examinations. In particular, the potential applicants must demonstrate a compliance with the Good Agricultural and Environmental Condition Standards (GAECs). Mirroring the Agri-Environment-Climate Change (AEC) management options payment scheme as outlined in the Scottish Rural Development Programme 2014 – 2020 (SRDP), this aid scheme will only consider payments on areas that can be actively farmed. GAEC rule 1 and 7 restrict land managers from cultivating or applying fertilisers or pesticides to land within 2 metres of the centre line of a hedgerow or the top of the bank of surface water. Therefore payment under this scheme will be based on width of buffer minus the GAEC restricted area multiplied by the linear length; this is ensuring payment is only based on productive agricultural land. Thus, any risk of payments for not eligible plots of land is, in the view of the Scottish authorities, excluded.

2.8.3. Eligible costs

- (22) Aid is granted to compensate farmers for costs incurred and income foregone resulting from disadvantages due to the implementation of the Water Framework Directive. The incurred costs and foregone incomes to be compensated under the notified scheme are a direct result of the measures introduced in order to achieve the objectives of the River Basin Management Plans which have been set up in order to comply with Article 3 of the Water Framework Directive.

- (23) The UK authorities have confirmed that aid will only be granted in relation to specific requirements that: (a) were introduced by the Water Framework Directive, are in accordance with the programmes of measures of the river basin management plans for the purpose of achieving the environmental objectives of that Directive and go beyond the measures required to implement other Union legislation for the protection of water; (b) go beyond the statutory management requirements and the good agricultural and environmental condition provided for in Chapter I of Title VI of Regulation (EU) No 1306/2013⁴ and the relevant criteria and minimum activities as established pursuant to points (c)(ii) and (iii) of Article 4(1) of Regulation (EU) No 1307/2013⁵; (c) go beyond the level of protection of the Union law existing at the time the Water Framework Directive was adopted as laid down in Article 4(9) of that Directive; and (d) impose major changes in the type of land use, and/or major restrictions in farming practice resulting in a significant loss of income.

2.8.4. Aid rates

- (24) The UK authorities have confirmed that payments will only be made to compensate for the restrictions of the agricultural activities going beyond the GAECs. The scheme mirrors the RDP that has been approved on the basis of the need to go beyond the GAECs.
- (25) The maximum aid is 495.62 GBP/ha (around 550 EUR) per year for a maximum of 5 years for arable land and 123.42 GBP/ha (around 137 EUR) per year for a maximum of 5 years for grassland. Point 250 of the Guidelines states: “*The maximum amounts of EUR 500 and EUR 200 may be increased in exceptional cases taking into account specific circumstances to be justified.*” In this context, the UK authorities explained that in order to achieve a reasonable participation rate and engage particular farmers in the objectives of the River Restoration Scheme, it will be necessary to match the existing rates of compensation provided in the SRDP. In addition, the SEPA River Restoration Compensation Scheme is payable for the first 5 years only to encourage more sustainable management approaches, however the period of time for which the land will be used for restoration purposes is likely to be longer than 5 years and therefore the slightly higher rates than those in the Guidelines is further warranted, in the view of the UK authorities.
- (26) According to the UK authorities the SRDP management option ‘water margins on arable land’ is the closest to the restoration option and therefore using the SRDP rates affords the restoration scheme with a tested approach that is both consistent and avoids reputational risk. The Scottish Government has ensured that payment rate calculations reflect practical Scottish farming situations.

⁴ Regulation (EU) 1306/2013 of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

⁵ Regulation (EU) 1307/2013 of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

- (27) In the interests of consistency the aid will reflect that which is set out in the SRDP published AEC rates for management options relating to for water margins in arable (<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/agri-environment-climate-scheme/management-options-and-capital-items/water-margins-in-grassland-fields/>) and grassland (<https://www.ruralpayments.org/publicsite/futures/topics/all-schemes/agri-environment-climate-scheme/management-options-and-capital-items/water-margins-in-arable-fields/>) fields. These rates were externally validated and the programme has been approved by the European Commission. The rates are consistent with costs incurred and will not cause competition with the rural development programme. These rates also reflect the limits of the 5-year payment term.
- (28) The AEC management payment rate calculations for arable and grassland are detailed in Annex I. The UK authorities have confirmed that the methods for the evaluation of additional costs and income losses resulting from the described restrictions of agricultural activities are compliant with the European Commission (EC) implementing regulation (EC) No 808/2014⁶. The methodology used to determine the payment rates ensures that there is no commercial benefit to land manager and the payments simply compensate for lost production and the extra costs of undertaking the management.
- (29) The payment rates for all Agri-Environment schemes must be set to reflect income foregone and/or additional costs to land managers for undertaking these activities. The Scottish Government has ensured that payment rate calculations reflect practical Scottish farming situations. For example, loss of silage production due to restricted cutting dates. In previous Rural Development Programmes, Scotland had rates that included an element of compensation for habitat creation. This element is now a separate capital item. This allows the land manager to receive the compensation for the cost immediately rather than proportionately over the five years of their agreement, and the annual payment rate reflects solely the loss of income and additional costs of management.

2.8.5. *Aid intensity*

- (30) With regard to the potential distortion of competition, the UK authorities declared that the aid intensity rate was set within the range of the maximal allowed aid intensity which ensures that no distortion of competition will occur. According to this analysis, the present aid scheme does not support any production processes or their extension. The support is given to compensate for economic disadvantages of farmers which result from the restrictions of the ordinary agricultural activity in the water protection areas (cf. recital (13)). This structure excludes, therefore, according to the UK authorities, any potential distortion of competition and trade.

2.8.6. *Risk of overcompensation*

- (31) To avoid any possible forms of overcompensation, the UK authorities explained that that Scotland's Rural College (SRUC) has independently and externally

⁶ Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 227, 31.7.2014, p. 18).

verified the payment rate calculations and assumptions. The calculation of the payment rates and assumptions has been a robust process carried out by Scottish Government Agriculturalists and Government agency experts. This ensures that the calculation of the premium accurately reflect loss of income from specific agricultural practices and additional costs that will be necessary to meet the option requirements. To ensure the accuracy of the financial data used to calculate income foregone and additional costs, data was averaged over the three most recent farm accounts.

2.8.7. Consistency with the Rural Development Program 2014-2020

- (32) The aid will be consistent with the SRDP published AEC rates for management options relating to for water margins in arable and grassland fields (cf. recital. (28)).
- (33) The UK authorities confirmed that no other scheme financed by public resources providing compensation for income foregone relating to river restoration measures exists under the Scottish national law. The UK authorities committed that there will be no overlap with measures implemented under the SRDP. The consistency of the notified aid scheme with that program will be ensured as the aid scheme will contribute to the same objectives as provided for in the SRDP while respecting the conditions of the applicable EU rural development legislation.

2.9. Cumulation

- (34) The UK authorities have confirmed that aid cannot be cumulated.

2.10. Transparency

- (35) The UK authorities confirmed that the full text of this aid scheme will be published on the UK government's State aid website (<https://www.gov.uk/guidance/state-aid>). They also undertake to publish the identity of the beneficiary if individual aid award exceeds the threshold of EUR 500 000. This information will remain available for the public for a period of at least 10 years.

2.11. Other commitments

- (36) The UK authorities have committed to adapt the aid scheme at hand, after the expiry of the currently applicable State aid rules, to the future State aid rules once these rules start to apply.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

- (37) According to Article 107(1) TFEU, "[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

- (38) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (39) The scheme in question confers an advantage on its recipients (cf. recital (10)). This advantage is granted through State resources (cf. recital (10)) and it favours primary agricultural producers (cf. recital (8)) economically active in Scotland. According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.⁷
- (40) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade⁸. The beneficiaries of aid operate in the market of agricultural products where intra-EU trade takes place⁹. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.
- (41) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

- (42) The aid scheme was notified to the Commission on 30 May 2016. It has not been implemented yet. Therefore, the UK has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

- (43) Under Article 107(3)(c) TFEU, an aid may be considered compatible with the internal market, if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

⁷ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁸ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* ECLI:EU:C:1988:391.

⁹ In 2015, UK intra-EU exports of all agricultural products amounted to EUR 14 297 million, and imports to EUR 37 639.4 million. Source: European Commission, Statistical factsheet United Kingdom, April 2016. Available at: http://ec.europa.eu/agriculture/statistics/factsheets/pdf/uk_en.pdf.

- (44) For this derogation to be applicable, the aid must fulfil the requirements of the relevant Union State aid rules.

3.3.2. *Application of the Guidelines*

- (45) The notified scheme concerns aid to compensate farmers for additional costs and income forgone as a result of disadvantages in the areas related to the implementation of the Water Framework Directive.
- (46) The Commission has therefore examined the proposed aid scheme in the light of the Guidelines, under Part I, Chapter 3 Common assessment principles and under Part II, Chapter 1, Section 1.1.6 *Aid for disadvantages related to Natura 2000 areas and to the Water Framework Directive*.

3.3.2.1. Common Assessment Principles

Contribution to a common objective

- (47) According to point 38 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.
- (48) As described in recital (4) above, the objective of the present notified scheme is to enhance the uptake of measures within the Scottish River Basin Programme, which constitutes a common objective in the sense of point 43 of the Guidelines.
- (49) The UK authorities demonstrated (by providing the relevant documentation) that the notified aid scheme does not form part of the regional framework for rural development and that overall, it fits into and is consistent with the rural development framework (cf. recitals (32) and (33)).
- (50) As demonstrated by the UK authorities, the aid scheme does not support any extension of the production. By compensation for the resulting costs, it aims exclusively at river basin restoration measures. The UK authorities have demonstrated the achievements reached so far (cf. recital (11)) and the importance for continuing this restoration policy. The restoration of the physical condition of the water environment has significant positive impacts on the environment (cf. recital (16)). Therefore, no negative impact on the environment within the meaning of point 52 of the Guidelines has been identified.
- (51) Therefore the requirement for contribution to a common objective is complied with.

Need for State intervention

- (52) It can be overall concluded that the UK authorities have proved the necessity of a State intervention within the meaning of points 53 and 54 of the Guidelines. The aid scheme aims at compensating the economic disadvantages of farmers the agricultural activity of which is restricted beyond the standard agricultural restrictions (cf. recitals (21)-(24)). The analysis demonstrates that the notified aid scheme can be considered necessary to achieve the objectives of common interest, in particular the restoration of the physical condition of the water environment in Scotland as a part of the overall European strategy for the management of water resources. Thus it can be concluded that the conditions of point 55 of the Guidelines have been met.

- (53) Since the present scheme fulfils the specific conditions laid down in the relevant sections of Part II of the Guidelines, as analysed below under section 3.3.2.3, the Commission considers, in line with point 55 of the Guidelines, that the aid is necessary to address the objective of common interest.

Appropriateness of aid

- (54) Pursuant to point 56 of the Guidelines, an aid is appropriate if no other less distortive policy instrument or other less distortive type of aid make it possible to achieve the same contribution to the objectives of CAP.
- (55) Since the present scheme fulfils the specific conditions laid down in the relevant sections of Part II of the Guidelines, as analysed below under section 3.3.2.3, in line with point 57 of the Guidelines the Commission considers the policy instrument appropriate.
- (56) In line with points 59 et seq. of the Guidelines, the UK authorities demonstrated that the selected form of aid – direct grant – appears to be the most suitable one as the aid is compensatory in nature. According to point 244 of the Guidelines, compensation is envisaged as an aid instrument for this type of aid scheme. It can therefore be concluded that the presumption under point 60 of the Guidelines applies.
- (57) Therefore the Commission considers the aid to be appropriate.

Incentive effect and need for aid

- (58) The UK authorities have analysed and demonstrated the need for the restoration of the physical condition of the water environment in Scotland. Aid paid to compensate the disadvantaged farmers is compensatory in its nature. According to point 75(b) of the AGRI Guidelines, such aid is not required to have an incentive effect. The condition under point 68 of the Guidelines has therefore been met.

Proportionality of the aid

- (59) According to point 82 of the Guidelines, in order for the aid to be proportionate, the Commission considers that the aid amount should not exceed the eligible costs. As provided for in the notification, the maximum aid intensity was set at 100% of eligible costs (cf. recital (7)). Moreover, the risk of overcompensation appears to be eliminated as the UK authorities confirmed (cf. recital (31)) that all reference values and price developments for the relevant supported activities are constantly monitored and adjusted to avoid any possible overcompensation. It can therefore be concluded that the requirement of proportionality has been met (see point 84 of the Guidelines). The maximum aid intensity and aid amount will be calculated by the granting authority when granting the aid. The eligible costs will be supported by documentary evidence (cf. recitals (22) and (23)). The conditions under point 85 of the Guidelines are, therefore, complied with. Pursuant to point 86 of the Guidelines, the value added tax (VAT) is not eligible for aid under the scheme, except where it is not-recoverable under the national legislation (cf. recital (9)c)). Moreover, under point 93 of the AGRI Guidelines, the Member States can fix the aid amount for this type of scheme on the basis of standard assumptions of additional costs and income foregone under certain conditions

provided therein. As demonstrated in recitals (25) et seq. and in the Annex I, these specific conditions are complied with.

- (60) On the basis of the foregoing, the Commission considers that the requirement of proportionality is complied with.

Avoidance of undue negative effects on competition and trade

- (61) The UK authorities have analysed the risk of distortion of competition when implementing the notified aid scheme. As they demonstrated (cf. recital (30)), the aid scheme aims at granting compensation for the economic disadvantages which result from mandatory restrictions on ordinary agricultural activity. The aid scheme does not have any direct link to any production processes or their extension. Therefore, the Commission could not identify any significant distortion of competition and trade, in line with point 113 of the Guidelines.
- (62) Moreover, according to point 113 of the Guidelines, the Commission considers that where an aid fulfils the conditions and does not exceed the relevant maximum aid intensities, laid down in the applicable Sections of Part II of those Guidelines, the negative effect on competition and trade is limited to the minimum. The notified aid scheme fulfils the conditions laid down in Section 1.1.6. of Part II of the Guidelines, as shown under section 3.3.2.3 below.

Transparency

- (63) The United Kingdom committed to respect the transparency requirements set out in point 128 of the Guidelines and to keep the information available in accordance with point 131 thereof (cf. recital (34)).

3.3.2.2. Specific assessment according to the category of aid

- (64) Point 241 of the Guidelines stipulates that the Commission will consider aid for disadvantages related to Natura 2000 areas and to the Water Framework Directive compatible with the internal market under Article 107(3)(c) TFEU if it complies with the common assessment principles of the Guidelines, and with the applicable conditions set out in paragraphs 242-250 thereof.
- (65) In line with point 242 of the Guidelines, the UK authorities confirmed that the State aid scheme will apply to undertakings active in primary agricultural production (cf. recital (8)).
- (66) They have furthermore confirmed that the notified aid Scheme aims at compensating for additional costs and income foregone resulting from disadvantages in the areas concerned which relate to the implementation of the Water Framework Directive (cf. recital (4)). The condition under point 244 of the Guidelines is, therefore, complied with.
- (67) Point 246 of the Guidelines provides that "*aid linked to the Water Framework Directive may only be granted in relation to specific requirements that:*

(a) were introduced by the Water Framework Directive, are in accordance with the programmes of measures of the river basin management plans for the purpose of achieving the environmental objectives of that Directive and go

beyond the measures required to implement other Union legislation for the protection of water;

(b) go beyond the statutory management requirements and the good agricultural and environmental condition provided for in Chapter I of Title VI of Regulation (EU) No 1306/2013 and the relevant criteria and minimum activities as established pursuant to points (c)(ii) and (iii) of Article 4(1) of Regulation (EU) No 1307/2013 ;

(c) go beyond the level of protection of the Union law existing at the time the Water Framework Directive was adopted as laid down in Article 4(9) of the that Directive; and

(d) impose major changes in the type of land use, and/or major restrictions in farming practice resulting in a significant loss of income."

- (68) The Commission has assessed the compliance of the notified aid scheme with these conditions:
- (69) In compliance with point 246 a) of the Guidelines, the UK authorities demonstrated that support shall be provided for the additional costs and income foregone that results from disadvantages related to specific requirements that were introduced by the Water Framework Directive, in accordance with the programmes of measures of the river management plans for the purpose of achieving the environmental objectives of that Directive and go beyond the measures required to implement other Union legislation for the protection of water (cf. recitals (22) - (23)).
- (70) In compliance with point 246 b) of the Guidelines, the UK authorities demonstrated and provided sufficient details that support will only be provided for obligations (restrictions of the ordinary agricultural activity) going beyond cross-compliance rules as defined in Regulation (EU) 1306/2013 and transposed national rules as well as those relating to GAECs (cf. recitals (21)-(24)). The Commission has assessed the description of the respective restrictions of the ordinary agricultural activities as presented above and came to the conclusion that only obligations going beyond the statutory management requirements and the good agricultural and environmental conditions will be supported.
- (71) The UK authorities committed that the defined methodology for the calculation of compensation would be adapted in order not to result in overlaps with obligations under the Scottish standards for GAECs in case these would be changed.
- (72) In line with point 246 c) of the Guidelines, the UK authorities have demonstrated that the mandatory obligations and restrictions imposed through the application of the River Basin Management Plans go beyond the level of protection under Union law existing at the time the Water Framework Directive was adopted as laid down in Article 4(9) of that Directive (cf. recital (22)).
- (73) The UK authorities have provided information showing that the mandatory obligations and restrictions on the ordinary agricultural activities impose major changes in type of land use and major restrictions in farming practice in the water protection areas which result in a significant loss of income (cf. recitals (14) and (15)). They furthermore provided for a sufficiently detailed description of the methodology of calculating the additional costs of these restrictions as well as compensatory payments (cf. recitals (28) et seq. and Annex I to this decision). It can therefore be concluded that the condition of point 246 d) is complied with.

- (74) Overall, it can be concluded that the UK authorities have provided sufficiently detailed explanatory information and descriptions in their notification of the requirements as stipulated in point 246 of the Guidelines. The condition of point 247 is, therefore, complied with.
- (75) The UK authorities committed that only agricultural areas included in river basin management plans according to the Water Framework Directive will be eligible for the support under the notified aid scheme (cf. recital (21)). The condition of point 248 c) is, therefore, complied with.
- (76) The aid will be granted annually and per hectare of utilised agricultural area (for arable land and grassland) to farmers in order to compensate for costs incurred and income foregone resulting from disadvantages in the areas related to the implementation of the Water Framework Directive (cf. recital (25)). The support payments will be limited to the maximum amount of up to 495.62 GBP/ha (around 550 EUR) per year for a maximum of 5 years for arable land and 123.42 GBP/ha (around 137 EUR) per year for a maximum of 5 years for grassland. Point 250 of the Guidelines states that “*the maximum amounts of EUR 500 and EUR 200 may be increased in exceptional cases taking into account specific circumstances to be justified.*” Given the explanation provided by the UK authorities (cf. recital (25) and their commitments as to the avoidance of the risk of overcompensation, it can be concluded that point 250 of the Guidelines is complied with.
- (77) On the basis of the above, the Commission concludes that the specific conditions set out in Section 1.1.6. of Part II of the Guidelines are complied with.

3.4. Other conditions

- (78) Furthermore, the UK authorities committed (and provided necessary information to ensure) that the aid under the present scheme will not be cumulated with aid received from other local, regional, national or European Union sources to cover the same eligible costs (cf. recitals (33) and (34)). Thus, the risk of cumulation will be avoided.
- (79) Furthermore, the UK authorities have committed to adapt the aid scheme at hand, after the expiry of the currently applicable State aid rules, to the future State aid rules once these rules start to apply (cf. recital 36).
- (80) The Commission takes note that that under the notified scheme the UK will not grant aid to undertakings in difficulty or to undertakings which are subject to an outstanding recovery order following a previous Commission Decision declaring aid illegal and incompatible with the internal market (recital (9)). This is in line with points 26 and 27 of the Guidelines.
- (81) The Commission therefore concludes that the notified aid scheme complies with the relevant provisions of the Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified scheme on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy in State aid decisions¹⁰ and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline the United Kingdom will be deemed to agree to the publication of the full text of this letter. If the United Kingdom wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004¹¹, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission

¹⁰ Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

¹¹ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

Annex I: AEC management payment rate calculations for arable land and grassland

ANNUAL RECURRENT OPTIONS	AEC 2014 / 2020 RATE	UNIT
ORGANIC FARMING - CONVERSION ARABLE LAND (YEARS 1 & 2)	£ 280.00	/HECTARE
ORGANIC FARMING - CONVERSION IMPROVED GRASSLAND (YEARS 1 & 2)	£ 140.00	/HECTARE
ORGANIC FARMING - CONVERSION UNIMPROVED GRASSLAND / ROUGH GRAZING	£ 12.50	/HECTARE
ORGANIC FARMING - CONVERSION FRUIT & VEGETABLES (YEARS 1 & 2)	£ 400.00	/HECTARE
ORGANIC FARMING - CONVERSION ARABLE LAND (YEARS 3 -5)	£ 65.00	/HECTARE
ORGANIC FARMING - CONVERSION IMPROVED GRASSLAND (YEARS 3 -5)	£ 55.00	/HECTARE
ORGANIC FARMING - CONVERSION UNIMPROVED GRASSLAND / ROUGH GRAZING (YEARS 3 -5)	8.50£	/HECTARE
ORGANIC FARMING - CONVERSION FRUIT & VEGETABLES (YEARS 3 -5)	£ 200.00	/HECTARE
ORGANIC FARMING - MAINTENANCE ARABLE LAND	£ 65.00	/HECTARE
ORGANIC FARMING - MAINTENANCE IMPROVED GRASSLAND	£ 55.00	/HECTARE
ORGANIC FARMING - MAINTENANCE UNIMPROVED GRASSLAND / ROUGH GRAZING	8.50£	/HECTARE
ORGANIC FARMING - MAINTENANCE FRUIT & VEGETABLES	£ 200.00	/HECTARE
WILD BIRD SEED FOR FARMLAND BIRDS	£ 322.63	/HECTARE
FORAGE BRASSICA CROPS FOR FARMLAND BIRDS	£ 463.36	/HECTARE
UNHARVESTED CONSERVATION HEADLANDS FOR WILDLIFE	£ 657.57	/HECTARE
RETENTION OF WINTER STUBBLES FOR WILDLIFE AND WATER QUALITY	£ 299.44	/HECTARE
STUBBLES FOLLOWED BY GREEN MANURE IN AN ARABLE ROTATION	£ 498.49	/HECTARE
BEETLEBANKS	£ 495.64	/HECTARE
GRASS STRIPS IN ARABLE FIELDS	£ 495.62	/HECTARE
WATER MARGINS IN ARABLE FIELDS	£ 495.62	/HECTARE
WATER MARGINS IN GRASSLAND FIELDS	£ 123.42	/HECTARE
CONVERTING ARABLE LAND AT RISK OF EROSION OR FLOODING TO LOW-INPUT	£ 284.80	/HECTARE
MANAGEMENT OF FLOODPLAINS	£ 57.43	/HECTARE
WETLAND MANAGEMENT	£ 90.03	/HECTARE
WETLAND MANAGEMENT (CREATED)	£ 284.80	/HECTARE
HABITAT MOSAIC MANAGEMENT	£ 104.63	/HECTARE
SPECIES RICH GRASSLAND MANAGEMENT	£ 109.56	/HECTARE
SPECIES RICH GRASSLAND MANAGEMENT (CREATED)	£ 284.80	/HECTARE
LOWLAND BOG MANAGEMENT	£ 37.41	/HECTARE
LOWLAND BOG MANAGEMENT WITH GRAZING	£ 89.75	/HECTARE
MANAGEMENT OF BUFFER AREAS FOR FENS AND LOWLAND RAISED BOGS	£ 313.36	/HECTARE
MOORLAND MANAGEMENT (LIVESTOCK GRAZING)	£ 3.60	/HECTARE
MOORLAND MANAGEMENT (LIVESTOCK AND DEER MANAGEMENT)	£ 4.84	/HECTARE
MOORLAND MANAGEMENT - DEER MANAGEMENT	£ 1.24	/HECTARE
HEATH MANAGEMENT (COASTAL, SERPENTINE & SPECIAL INTEREST) - First 30ha	£ 88.79	/HECTARE
HEATH MANAGEMENT (COASTAL, SERPENTINE & SPECIAL INTEREST) - Next 40 ha	£ 54.43	/HECTARE
HEATH MANAGEMENT (COASTAL, SERPENTINE & SPECIAL INTEREST) - Over 70 ha	£ 3.60	/HECTARE
HEATH MANAGEMENT (LOWLAND HEATH)	£ 138.37	/HECTARE
STOCK DISPOSAL	£ 24.83	/HECTARE
AWAY WINTERING OF SHEEP	£ 25.83	/HECTARE
SUMMER HILL GRAZING OF CATTLE	£ 3.19	/HECTARE
TALL HERB VEGETATION MANAGEMENT	£ 53.34	/HECTARE
MANAGING SCRUB OF CONSERVATION VALUE	£ 74.16	/HECTARE
ANCIENT WOOD PASTURE	£ 48.99	/HECTARE

MANAGEMENT OR RESTORATION OF HEDGEROWS	£ 0.11	/LINEAR METRE
MANAGEMENT OF NEWLY CREATED HEDGEROWS	£ 1.20	/LINEAR METRE
PREDATOR CONTROL (MAMMAL & CROW CONTROL PROGRAMME)	£ 2.18	/HECTARE
PREDATOR CONTROL (CROW CONTROL ONLY)	£ 259.60	/TRAP
WILDCAT FRIENDLY PREDATOR CONTROL	£ 140.00	/TRAP
CORN BUNTINGS MOWN GRASSLAND	£ 237.09	/HECTARE
WADER & WILDLIFE MOWN GRASSLAND	£ 149.75	/HECTARE
WADER GRAZED GRASSLAND	£ 114.29	/HECTARE
CHOUGH MOWN GRASSLAND	£ 224.75	/HECTARE
CHOUGH GRAZING MANAGEMENT	£ 87.93	/HECTARE
CORNCRAKE MOWN GRASSLAND (MOW AFTER 1 AUGUST)	£ 209.37	/HECTARE
CORNCRAKE MOWN GRASSLAND (MOW AFTER 15 AUGUST)	£ 224.75	/HECTARE
CORNCRAKE MOWN GRASSLAND (MOW AFTER 1 SEPTEMBER)	£ 268.25	/HECTARE
CORNCRAKE GRAZING MANAGEMENT	£ 241.50	/HECTARE
MANAGEMENT OF COVER FOR CORNCRAKE	£ 148.85	/HECTARE
HEN HARRIER GRASSLAND MANAGEMENT (on improved)	£ 270.13	/HECTARE
HEN HARRIER GRASSLAND MANAGEMENT (on unimproved land)	£ 90.64	/HECTARE
CROPPED MACHAIR	£ 239.76	/HECTARE
CONSERVATION MANAGEMENT OF SMALL UNITS	£ 77.78	/HECTARE
CATTLE MANAGEMENT ON SMALL UNITS (INTRODUCTION)	£ 162.63	/HECTARE
CATTLE MANAGEMENT ON SMALL UNITS (RETENTION)	£ 107.38	/HECTARE