



EUROPEAN COMMISSION

Brussels, 11-06-2003
C(2003)1741fin

**Subject: State Aid N 385/2002 – United Kingdom
Support for Land Remediation**

Sir,

1. PROCEDURE

By letter dated 7 June 2002, registered at the Commission on 10 June 2002, the UK authorities notified, pursuant to Article 88(3) EC, the “*Support for Land Remediation*” scheme.

By letters D/54211 and D/56476, dated 31 July 2002 and 15 November 2002, the Commission requested additional information concerning the above-mentioned measure. The UK authorities submitted the information requested by letters dated 27 August 2002 and 19 January 2003, registered at the Commission on 20 September 2002 and 23 January 2003.

On 4 February 2003, a meeting between representatives from the UK authorities and the Commission took place. Following this meeting, the UK authorities submitted supplementary information on the above-mentioned scheme by letters dated 20 March 2003 and 14 April 2003, registered at the Commission on 20 March 2003 and 23 April 2003.

The Right Hon Jack Straw MP
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The scheme has the following characteristics:

2. OBJECTIVE OF THE SCHEME

The objective of the “*Support for Land Remediation*” scheme is to bring *contaminated land, brownfield land and derelict land* back into productive use by addressing the detrimental effects of previous usage. The *remediation* of such land would enable the UK authorities to increase the supply of land suitable for subsequent development while simultaneously reducing the pressure for development on *greenfield land*. By protecting *scarce natural resources* and by *removing contamination, pollution and dereliction*, the scheme promotes important *Community objectives* such as *environmental protection* and *sustainable economic development*.

3. DESCRIPTION OF THE SCHEME

3.1. Rationale for the scheme

3.1.1. Terms and definitions¹

Contaminated land is any land which appears to be in such a condition - by reasons of substances in, on or under the land - that

- significant harm is being caused or there is a significant possibility of such harm being caused; or
- pollution of controlled waters is being, or is likely to be caused.

Brownfield land – more recently referred to as ‘previously developed land’ - is land which is or was occupied by a permanent structure and associated fixed surface infrastructure. Previously developed land may occur in both built-up and rural settings. The definition includes defence buildings and land used for mineral extraction and waste disposal where provision for restoration has not been made through development control procedures.

Derelict land is land that is so damaged by industrial or other development such that it is incapable of beneficial use without treatment.

Greenfield land is land that has not previously been developed.

The terms outlined above are *fundamentally different*, but *not mutually exclusive*, and are often used to describe the same piece of land. For example, land can be *derelict, brownfield and contaminated at the same time*. On the other hand, *not all brownfield or derelict land is contaminated*, although it is *frequently* the case that some *contamination* is present.

¹ “*Dealing with contaminated land in England. Progress in 2002 with implementing the Part IIA regime.*” United Kingdom Environment Agency, September 2002, p. 5 f.

3.1.2. *Contaminated, brownfield and derelict land: More than just a hazard to the environment*

The harmful effects of *contaminated land, brownfield land and derelict land* go significantly beyond their obvious impact on the physical environment. In *urban areas* in particular, these sites have often been left as unsightly wasteland or derelict buildings that have an *environmental, economic and social detrimental effect* on the surrounding area. *Surrounding communities* often suffer from a decline in business activity, lost employment opportunities, reduced tax revenues, as well as a tarnished community image.

3.1.3. *Remediating contaminated, brownfield and derelict land*

Remediating contaminated land, brownfield land and derelict land regularly involves *transforming* land in order to make it *suitable for new uses* like housing.²

Research has demonstrated that a large proportion of *contaminated land, brownfield land and derelict land* in the UK justifies *remediation*. Nevertheless, such land is particularly difficult to develop compared with *greenfield land* that has not been used previously, which places it at a *competitive disadvantage*.

3.1.4. *Encouraging the reuse of contaminated, brownfield and derelict land: Protecting greenfield land*

As part of the UK Government's *urban renewal process*, the reuse of *contaminated land, brownfield land and derelict land* is strongly favoured to using *greenfield land*. Recently released figures indicate that around 66,000 hectares of *contaminated, brownfield and derelict land* are still available for redevelopment in England. The UK Government has set a *national target* to increase the proportion of new homes built on such land to 60 per cent by 2008.

3.1.5. *The UK approach to remediation: Involving market participants*

The UK Government's approach to the *remediation of contaminated land, brownfield land and derelict land* builds upon close cooperation with *market participants*.

Direct remediation and redevelopment of such land *by the public* would tie up a significant amount of public capital and human resources. At the same time,

² Due to inadequate access or harmful neighbour uses such as heavy industry, not all sites are suitable for sensitive uses like housing. They will then be *remediated* for a wide range of industrial and commercial purposes.

the public sector often lacks the commercial skills to effectively engage in *remediation* and *redevelopment* activities on a significant scale.

The *partnership approach with the private sector* advocates the *time-limited use of public funding* in order to *lever resources from the private sector* to address *remediation*. By *leveraging private sector money*, a relatively small amount of public money can bring in significant amounts of private money and private sector knowledge which might be lost were the process to be led exclusively by the public.

3.1.6. *Overcoming private risk-aversion*

The *remediation of contaminated land, brownfield land and derelict land* is severely complicated by the *increased risks* associated with *real or perceived contamination*. And *contamination* is only one of many *physical characteristics* that may prove to be an obstacle to the reuse of *contaminated, brownfield and derelict land*.³

The *perceived costs of treatment* act as a *significant barrier* to successful *remediation and redevelopment*. The *risk profile* for private sector participants - caused by *contamination*, the need to *remove old and derelict structures* before developing the sites and the difficulties in determining the full extent of potential liabilities - becomes unacceptable.

The UK Government intends to introduce public money to overcome these barriers and to attract market participants to the *remediation and redevelopment of contaminated, brownfield and derelict land*. *Public funds will only be made available for the cleaning up of such land prior to any further redevelopment and any potential increases in the value of the land after remediation will be clawed-back*.

3.1.7. *The outcome desired: A regenerated physical and socio-economic environment*

The *public-private partnership approach to remediation* delivers a *stimulus* to private sector participants to engage in the redevelopment of *contaminated land, brownfield land and derelict land*. The redevelopment goes hand in hand with the *cleaning up of the land*, thereby reducing pressure on the development of *greenfield land*.

At the same time, the *redevelopment and remediation of contaminated, brownfield and derelict land* fosters the physical transformation of surrounding areas, the reconstruction of their economic base and the improvement of social conditions for local communities. As a result, land and

³ Such sites may also include structures requiring demolition, old foundations causing obstructions, redundant or current services, or presence of rubble or infill of unacceptable quality in terms of stability or structural properties.

property values will increase and a lasting momentum for private sector led development - without further need for public assistance - will be built. The consequent change of the image and perception of the areas will create a level of confidence in their future, which will in turn secure future private sector investment. *Public money* is used to *kick-start this process*.

3.2. *Administration of the scheme*

The scheme will be implemented at national, regional and local government level by the following administrative bodies (hereafter referred to as “*regeneration bodies*”) as well as by the *Scottish local authorities*:

Regional Development Agencies:	One North East Development Agency
	North West Development Agency
	Yorkshire Forward Development Agency
	East Midlands Development Agency
	Advantage West Midlands Development Agency
	South East of England Development Agency
	South West of England Development Agency
	East of England Development Agency
	London Development Agency
	Highlands and Islands Enterprise
Urban Regeneration Agency:	English Partnerships
Councils:	County Councils
	District Councils
	London Borough Council
	Common Council of the City of London
	Council of the Isles of Scilly

3.3. *Legal basis of the scheme*

The legal basis of the scheme is the ‘*Regional Development Agencies Act 1998*’, the ‘*Greater London Authority Act 1999 (Chapter 29)*’, the ‘*Enterprise and New Towns (Scotland) Act 1990*’, the ‘*Leasehold Reform, Housing and Urban*

Development Act 1993, the *Local Government Act 2000*, and the *Local Government in Scotland Act 2003*.

3.4. Duration of the scheme

Aid under this scheme may be granted until 31 December 2006.

3.5. Budget of the scheme

The budget of the scheme is estimated at £94 million (EUR 147 million) per year.

3.6. Aid instruments under the scheme

The scheme provides for *two types of aid instruments*: “Dereliction Aid Grants” and “Relocation Aid Grants”.

3.6.1. Dereliction Aid Grant

The “*Dereliction Aid Grant*” will be available for the *remediation of contaminated land, brownfield land and derelict land*. The “*Dereliction Aid Grant*” will be *directed towards* an identified and approved *remediation programme* in order to make the land *suitable for new use*.

In general, those who undertake such *remediation* will be *commercial, property and land development companies*, but the scheme is *open to anyone* carrying out the activities it covers.

Contaminated land, brownfield land and derelict land will include:

- (a) *Polluted industrial sites*
- (b) Land on which there are *buildings, structures or works that are derelict or otherwise unsuitable for any new use* and where the costs of adapting them are such that it is more cost-effective for them to be demolished so that the land can be re-used
- (c) *Land damaged from or suffering risk of subsidence*.

3.6.2. Relocation Aid Grant

The “*Relocation Aid Grant*” is complementary to the “*Dereliction Aid Grant*” as described under point 3.6.1 above. It will support the relocation of businesses established in an *urban area* or in a *Natura 2000* designated area which lawfully carry out an activity that creates major pollution and must move from their actual place of establishment to a more suitable area. The “*Relocation Aid Grant*” will *free up the vacated land for new uses* better suited to environmental, economic and social regeneration aims.

The following criteria must be met at the same time:

- The change of location must be dictated on environmental protection grounds and must have been ordered by a judicial or administrative decision

- The business must comply with the strictest environmental standards applicable in the region where it is relocated.

3.7. Eligible costs and aid intensities under the scheme

The definition of eligible costs and the aid intensities to be applied will be presented for the *two types of aid instruments*: “Dereliction Aid Grants” and “Relocation Aid Grants”.

3.7.1. Dereliction Aid Grant

The eligible costs will be equal to the *cost of the work less the increase in the value of the land*. In the case of *submeasure (b)* for land on which there are *buildings, structures or works that are derelict or otherwise unsuitable for any new use* and *submeasure (c)* for *land damaged from or suffering risk of subsidence*, eligible costs will be deemed to *include a reasonable level of profit*.

Independent Chartered Surveyors will verify the cost of all work undertaken towards the *remediation*. All expenditure incurred in the remediation, whether or not such expenditure can be shown as a fixed asset on the balance sheet of the company concerned, will be considered eligible costs.

The applicable aid intensity will be *up to 100% of the eligible costs*. In the case of *submeasure (a)* for *polluted industrial sites*, a bonus of 15% of the cost of the work may be added. The total amount of aid will in no case exceed the actual expenditure incurred in the remediation.

3.7.2. Relocation Aid Grant

In calculating the eligible costs, the following will be *included*:

- The market or actual value of the new site
- The construction or purchase of a new plant which has the same capacity as the abandoned plant
- Any penalties imposed on the undertaking as a result of early termination of a contract for the renting of land or buildings.

The following will be *deducted* when calculating the eligible costs:

- The yield from the sale or renting of the plant or land abandoned
- The compensation paid in the event of expropriation

- Any other gains which result from the transfer of the plant such as an improvement of the technology used or accounting gains associated with better use of the land.

Where the cost of investment in environmental protection cannot be easily identified in the total cost, the *regeneration body* will take account of objective and transparent methods of calculation. In all cases, eligible costs must be calculated net of any benefits accruing from any increase in capacity, cost savings engendered during the first five years of the life of the investment and additional ancillary production during that five-year period.

All valuations of land or property will be undertaken by an independent Chartered Surveyor and in accordance with the standards of the Royal Institution of Chartered Surveyors.

The applicable aid intensity will be *up to 30% gross of the eligible costs*. Where the relocation is carried out by small or medium-sized enterprises⁴, an *increase of 10 percentage points* may be authorised.

3.8. Complementary provisions of the scheme

3.8.1. Dereliction Aid Grant

3.8.1.1. Limitation of aid to the minimum amount necessary

“*Dereliction Aid Grants*” will be *limited to the minimum amount necessary* to bring the *contaminated land, brownfield land or derelict land* up to a condition where it is suitable for any new use.

All applicants must demonstrate that their application will deliver *value for money* outcomes and must explain how the application fits into the physical, social and economic regeneration context.

The *regeneration body* will have a rigorous project appraisal process in place to ensure that the *public sector support* is the *minimum necessary* to enable the *remediation* to proceed.

3.8.1.2. Open and transparent competition

To obtain *value for money* from the public investment, potential *remediation* projects are subject to *open competition between prospective applicants* and applications must demonstrate - wherever practicable - all works have been competitively procured at all levels. The UK authorities have confirmed that the EU procurement rules will be respected at all levels.

⁴ The definition of small and medium-sized enterprises applied by the UK authorities for the purposes of the scheme is always in line with the definition given in Annex I to the ‘Commission Regulation No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33)’.

3.8.1.3. *The applicant as owner of the land*

Where the owner of *contaminated, brownfield or derelict land* does not wish to sell it, but uses a contractor to do the work, that work will be competitively procured and contracted on normal commercial terms.

In the case of *contaminated, brownfield or derelict land* identified for specific regeneration reasons by the *regeneration bodies* and already in the ownership of applicants who do not wish to sell it and who wish to undertake the *remediation* themselves without engaging a sub-contractor, competitive tendering is not possible. In such cases, the *regeneration bodies* will conduct verification with advice from independent members of the Royal Institution of Chartered Surveyors to certify that:

- The works proposed for remediation are reasonable to remove the costs of former occupation of the site, and
- The market would not deliver *remediation* of the site in a manner compatible with the local or regional regeneration strategy without the offer of public funds to overcome the specific costs associated with former usage of the site, and
- The costs of such works are at, or below, the prevailing market rate.

In all cases where open and transparent competition to carry out the *remediation* work has not been possible, a member of the Royal Institution of Chartered Surveyors will independently assess the cost of *remediation* to a state where the land is ready for a wide range of *new uses*.

3.8.1.4. *The polluter pays principle*

Where the person responsible for causing the *pollution* is clearly identified, that person must finance the *rehabilitation* in accordance with the *polluter pays principle* and there will be *no public support*. Where the person responsible for the *pollution* is not identified or cannot be made to bear the cost, the person undertaking the *rehabilitation* work may receive public support. By ‘*person responsible for pollution*’ is meant the person liable under the law applicable in each Member State.

According to the *polluter pays principle* in the UK, those responsible for causing the *pollution* are obliged to make the land safe for its *current use*. Public support will not be available under the scheme in such cases unless the polluter cannot be identified or made to bear the cost.

The scheme foresees public support to *further work* to the land in order to make it *safe for any new use*, for example to bring land up to the *higher environmental standards* required for the

construction of new housing. In such cases, independent surveyors will calculate *the additional cost of making the land safe for any new use*. They will ensure that there is a *clear distinction* between *works that are necessary to make the land safe for its current use* and *works that are required to make it safe for any new use*. Public money will *only* be available for *the additional cost of making the land suitable for any new use*.

Where land is both *polluted* and *derelict*, the *polluter pays principle* will apply to the polluted element of the land.

3.8.1.5. *Cumulation of aid*

Remediation projects covered by this scheme will be treated as separate, discrete projects from any subsequent development of the land in question. Grants under the scheme cannot be cumulated with any other form of aid towards the same eligible costs.

3.8.2. *General provisions applicable to “Dereliction Aid Grants” and “Relocation Aid Grants”*

3.8.2.1. *Exclusion of companies in difficulties*

Applicants must be of proven financial standing. Public support will not be granted to companies in difficulties. *Remediation* projects, which have started before an application for grant is submitted, are not eligible for support.

3.8.2.2. *Payment of grants*

Grants will be paid at an agreed rate, normally *milestone payments* across the duration of the project. Grant awards will be *discretionary*.

3.8.2.3. *Repayment conditions*

The UK Government has powers to suspend or cancel grants and to clawback grants and aid given by the regeneration bodies. Repayment may be sought in the event of fraud or breach of conditions of the award. The *regeneration body* may require an enforceable, contractual obligation for repayment and, where practicable, seek tangible security. *Projects shall be subject to repayment where costs are lower than projected and market values are higher than projected* within a specified period of 5 years.

3.8.2.4. *Proof of incentive effect via annual reports*

The UK Government will submit an *annual report* on the implementation of the scheme, which will enable the Commission to verify that, for each project, the *incentive* to those carrying out the *remediation* and enabling relocation of polluting businesses was the minimum necessary for the project to proceed. The UK Government will also ensure that any plans to modify this aid scheme are notified to the Commission.

3.8.2.5. *Cumulation of aid*

Grants under the scheme cannot be cumulated with any other form of aid towards the same eligible costs.

Assessment of the scheme:

4. LEGALITY

By notifying the scheme as a draft, the UK respected its obligation under Article 88(3) EC.

5. EXISTENCE OF AID AND COMPATIBILITY

In the following, the results of the assessment will be presented separately for the different aid instruments as described under point 3.6 above.

5.1. *Relocation Aid Grant*

The Commission examined the measure pursuant to Article 87 of the EC Treaty and in particular in light of the ‘Community guidelines on State aid for environmental protection (hereafter referred to as ‘*Community Guidelines*’)⁵.

5.1.1. Existence of aid within the meaning of the Treaty

The Commission has come to the conclusion that the measures under the “*Relocation Aid Grant*” constitute aid within the meaning of Article 87(1) EC. The “*Relocation Aid Grant*” involves the use of State resources as UK public funding is made available for the relocation of firms to new sites. The measure *is selective* as it is limited to undertakings established in specified areas (*urban areas* and *Natura 2000 areas*) and fulfilling specified conditions (lawfully carrying out an activity that creates major pollution, administrative or judicial decision to change location on environmental protection grounds). The measure has the *potential to affect trade* between Member States as it cannot be excluded that enterprises benefiting from the measure will be engaged in activities which are subject of trade between Member States. The measure distorts competition by conferring an advantage on the beneficiaries.

5.1.2. Compatibility of the measure

Point 39 of the ‘*Community Guidelines*’ states that, in general the Commission takes the view that the relocation of firms to new sites does not constitute environmental protection and does not therefore give entitlement to aid under the ‘*Community Guidelines*’.

⁵ OJ C 37, 3.2.2001, p. 3

The granting of aid may, however, be justified when a firm established in an *urban area* or in a *Natura 2000* designated area lawfully carries on an activity that creates major pollution and must, on account of this location, move from its place of establishment to a more suitable place.

The Commission considers the “*Relocation Aid Grant*” to be compatible with the common market pursuant to Article 87(3)(c) EC as the measure satisfies the conditions outlined under point 39 of the ‘*Community Guidelines*’:

- The measure is restricted to beneficiaries established in an *urban area* or in a *Natura 2000* designated area who lawfully carry on an activity that creates major pollution and must, on account of this location, move from their place of establishment to a more suitable place.
- The change of location will always be dictated on environmental protection grounds and will have been ordered by administrative or judicial decision
- Firms affected by relocation will in every case comply with the strictest environmental standards applicable in the new region where they are located
- All beneficiaries satisfying these conditions may receive investment aid of up to 30% gross of the eligible investment costs. Where these investments will be carried out by small or medium-sized enterprises within the definition of SMEs given by the Commission⁶, an increase of 10 percentage points gross may be authorised.
- The determination of eligible costs for the purpose of relocation aid will take into account the following elements:
 - The yield from the sale or renting of the plant or land abandoned
 - The compensation paid in the event of expropriation
 - The costs connected with the purchase of the land or the construction or purchase of new plant of the same capacity as the plant abandoned
 - Other gains connected with the transfer of the plant, notably gains resulting from an improvement, on the occasion of the transfer, in the technology used and accounting gains associated with better use of the plant
 - Investments relating to any capacity increase will not be taken into consideration in calculating the eligible costs
 - If the administrative or judicial decision ordering the change of location results in the early termination of a contract for the renting of land or buildings, any penalties imposed on the firm for having

⁶ See FN 4

terminated the contract may be taken in consideration in calculating the eligible costs.

5.2. *Dereliction Aid Grant*

5.2.1. *Existence of aid within the meaning of the Treaty*

The Commission has come to the conclusion that the measures under the “*Dereliction Aid Grant*” *constitute aid within the meaning of Article 87(1) EC*. The “*Dereliction Aid Grant*” *involves the use of State resources* as UK public funding is made available for the *remediation of contaminated land, brownfield land and derelict land*. The measure *is selective*, as it is limited to undertakings engaging in the remediation of *contaminated land, brownfield land and derelict land*. The measure has the *potential to affect trade* between Member States as it cannot be excluded that enterprises benefiting from the measure will be engaged in activities which are subject of trade between Member States.

The *measure distorts competition by conferring an advantage on the beneficiaries*. According to the Court of Justice, the concept of aid embraces “*interventions which, in various forms, mitigate the charges which are normally included in the budget of an undertaking*”⁷. The Commission considers that the costs of *remediating contaminated land, brownfield land and derelict land* constitute costs normally faced by undertakings and included in their budget. When these costs are totally or partially supported by the public, the beneficiaries of such measures receive an advantage as the charges normally faced by them are mitigated.

The fact that the eligible costs are equal to the cost of the work less the increase in the value of the land – and will also include a reasonable level of profit – may reduce the level of aid granted by the Member State, but it does not alter the classification of such measures as being State aid. The method of calculation does not change the fact that the companies concerned will not bear the totality of the costs they would normally have to bear. Consequently such companies will receive an advantage.

This assessment is also consistent with the traditional assessment of the Commission as outlined in the ‘Community guidelines on State aid for environmental protection’, particularly with regard to aid for the rehabilitation of polluted industrial sites.

5.2.2. *Compatibility of the measure*

The compatibility of the proposed measures under the “*Dereliction Aid Grant*” has been separately assessed for the three types of submeasures as foreseen by the scheme and as described under point 3.6.1 above, namely aid to *remediate: (a) polluted industrial sites; (b) land on which there are buildings, structures or works that are derelict or otherwise unsuitable for any new use* and where the costs of adapting them are such that it is more

⁷ Judgement of the Court of 15 March 1994, *Banco Exterior de Espana Case C-387/92*, paragraph 13. See also *Case C-200/97 Ecotrade v Altiforni e Ferriere di Servola*, paragraph 34.

cost-effective for them to be demolished so that the land can be re-used; and (c) *land damaged from or suffering risk of subsidence*.

5.2.2.1. *Polluted industrial sites*

Point 38 of the ‘Community guidelines on State aid for environmental protection’⁸ states that interventions made by firms repairing environmental damage by rehabilitating polluted industrial sites may come within the scope of the ‘*Community Guidelines*’. The environmental damage concerned may be damage to the quality of the soil or of surface water or groundwater.

The submeasure aimed at *remediating contaminated polluted industrial sites* under the “*Dereliction Aid Grant*” of the scheme is *deemed to be compatible with the common market pursuant to Article 87(3)(c) EC* as the measure satisfies the conditions outlined under point 38 of the ‘*Community Guidelines*’:

- The measure is confined to interventions made by firms repairing environmental damage by rehabilitating *polluted industrial sites*. The environmental damage concerned will be damage to the quality of the soil or of surface water or groundwater
- Where the person responsible for the pollution is clearly identified, that person must finance the rehabilitation in accordance with the ‘polluter pays principle’, and no aid will be given. By ‘person responsible for the pollution’ is meant the person liable under the law applicable in the UK, without prejudice to the adoption of Community rules in the matter
- Where the person responsible for the pollution is not identified or cannot be made to bear the cost, the person responsible for the work may receive aid
- Aid for the rehabilitation of polluted industrial sites may amount to up to 100% of the eligible costs, plus 15% of the cost of the work. The eligible costs are equal to the cost of the work less the increase in the value of the land
- The total amount of aid will under no circumstances exceed the actual expenditure incurred by the firm.

5.2.2.2. *Derelict land and land damaged from subsidence*

In the case of the remaining two submeasures of the “*Derelict Aid Grant*”, namely aid to *remediate* land on which there are *buildings, structures or works that are derelict or otherwise unsuitable for any new use* and where the costs of adapting them are such that it is more cost-effective for them to be demolished so that the land

⁸ See FN 5

can be re-used and aid to remediate *land damaged from or suffering risk of subsidence*, the Commission has assessed the compatibility of these measures along the following line.

(a) *Exemption grounds*

Article 87(2) EC provides that certain types of aid are compatible with the common market. In view of the nature and purpose of the aid, as well as the geographical coverage, the Commission considers *literae (a), (b) and (c)* are not applicable to the submeasures in question.

Article 87 (3) EC specifies other forms of aid, which may be regarded as compatible with the common market. In view of the nature and purpose of the aid, the Commission considers that *literae (a), (b) and (d)* are not applicable to the submeasures in question.

In assessing whether the exemptions provided for in Article 87(3)(c) EC may apply, the European Court of Justice has consistently held that Article 87(3) “*gives the Commission a discretion the exercise of which involves economic and social assessments that must be made in a Community context*”⁹. For certain aid categories, the Commission has defined how it will exercise these discretionary powers, be it in the form of *block exemptions* or by *frameworks, guidelines* or *notices*. Where such texts exist, the Commission must follow them in its assessment of aid measures.

The Commission therefore assessed whether the submeasures foreseen by the “*Dereliction Aid Grant*” under the scheme qualify for exemption under one of these texts and has come to the conclusion that none of these guidelines, frameworks or regulations is applicable to the submeasures in question.

(b) *Applicability of the ‘Environmental Aid Guidelines’*

Although the submeasures in question have a clear environmental objective as they intend to grant aid to the *remediation* of land on which there are *buildings, structures or works that are derelict* as well as *land damaged from or suffering risk of subsidence*, the ‘Community guidelines on State aid for environmental protection’¹⁰ do not seem to be applicable.

Point 38 of the ‘Community guidelines on State aid for environmental protection’ foresees the compatibility of aid

⁹ Case C-169/95 *Kingdom of Spain versus Commission of the European Communities* [1997] ECR I-00135. See also C-730/79 *Philip Morris versus Commission* [1980] ECR I-2671

¹⁰ See FN 5

measures aiming at repairing environmental damage by rehabilitating polluted industrial sites, given that all other conditions are fulfilled. At the same time, the definition of pollution as outlined under point 38 of these guidelines seems to be restricted to damage to the quality of the soil or of surface water or groundwater.

The submeasures in question under the “*Derelict Aid Grant*” are aimed at the *remediation of land damaged from or suffering risk of subsidence and of derelict land*. Although such land clearly poses *risks to the environment and to human health*, it is nevertheless simply not possible – in view of the characteristics of such land as described under point 3.1.1 above - to subsume these damages under the *strict definition of environmental damage* as outlined under point 38 of the ‘Community guidelines on State aid for environmental protection’.

(c) *Ensuring environmental protection and sustainable development*

Point 3 of the ‘Community guidelines on State aid for environmental protection’ states that under Article 6 of the EC Treaty, environmental policy objectives must be integrated into the Commission’s policy on aid controls in the environmental sector, in particular with a view to promoting sustainable development.

In line with point 4 of the ‘Community guidelines on State aid for environmental protection’, taking long-term environmental requirements into account does not mean that all aid must be authorised. Consideration has to be given to the effects the aid may have in terms of sustainable development and full application of the ‘polluter pays principle’.

The Commission’s approach therefore consists in determining whether - and under what conditions - State aid may be regarded as necessary to ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth.

(d) *Compatibility with Article 87(3)(c) EC*

The submeasures in question clearly pursue an environmental objective and present clear-cut benefits to the physical environment. However, although applying the logic of point 38 of the ‘Community guidelines on State aid for environmental protection’ on the rehabilitation of polluted industrial sites would seem to be appropriate, the submeasures in question are not unequivocally being taken into account by the current ‘Community guidelines on State aid for environmental protection’.

The Commission has accordingly assessed the submeasures under the “*Derelict Aid Grant*” with regard to their necessity to *ensure environmental protection and sustainable development without having disproportionate effects on competition and economic growth* as stipulated under point 5 of the ‘Community guidelines on State aid for environmental protection’.

i. Contribution to Community objectives

The contribution of the submeasures in question to the achievement of the Community objectives of environmental protection and sustainable development are underlined by the following:

- The ‘*Green Paper on the Urban Environment*’ postulates that industrial development should not take place on *greenfield land*. It stresses the need to *redevelop already derelict land*. According to the ‘*Green Paper on the Urban Environment*’, the many tracts of abandoned land, disused industrial sites, railway sidings, docks and military facilities in urban areas offer valuable opportunities for redevelopment, thereby saving existing recreational and open space within cities and its outskirts from encroachment by development. At the same time, it is emphasised that the problems posed by contaminated land as well as complex ownership patterns are such that the firm lead from public authorities will often be required.¹¹
- The ‘*Structural Fund Guidelines*’ accentuate environmental quality as a major factor in regional development and competitiveness. The integration of environmental quality in productive investment is deemed to ensure a *rational use of resources*, enhancing economic performance and competitiveness and maintaining and creating employment. The combination of environmental improvement and investment in industry and services should include *industrial sites*. *Priority should be given to the rehabilitation of derelict industrial sites and brownfields over the development of greenfield sites*.¹²
- The ‘*URBAN II Guidelines*’ highlight mixed-use and environmentally friendly *brownfield redevelopment* - including the protection and improvement of buildings and open spaces in rundown areas and the preservation of the historic and cultural heritage - as one of the priorities of the

¹¹ Green Paper on the Urban Environment. Communication from the Commission to the Council and Parliament (COM (90) 218 final, 27.6. 1990)

¹² Commission Communication concerning the Structural Funds and their coordination with the Cohesion Fund. Guidelines for programmes in the period 2000 to 2006 (OJ C 267, 22.9.1999, p. 12)

URBAN II Community initiative, leading to reduced pressures on *greenfield development* and urban sprawl.¹³

- The ‘Commission Communication: Sustainable Urban Development in the European Union: A Framework for Action’ regards the promotion of resource-efficient settlement patterns that minimise land-take and urban sprawl as important objective for the protection and improvement of the urban environment and the attainment of local and global sustainability.¹⁴
- The specific objective of LIFE-environment, one of the three major areas of action of LIFE, the Financial Instrument for the Environment of the Community, is to contribute to the further development of Community environment policy. Projects which integrate environmental considerations and sustainable development aspects in land-use development and planning, including in urban areas, are considered to add to the overall objective of LIFE-environment.¹⁵

ii. Exclusion of disproportionate effects on competition and economic growth

The provisions of the scheme pertaining to the two submeasures in question will ensure that the aid given will be the minimum necessary in order to attain the stated policy objective of *remediating derelict land and land suffering from subsidence* and to support the Community objectives of *environmental protection and sustainable development*:

- Aid granted for the *remediation of derelict land and land suffering from subsidence* will be limited to the minimum amount necessary to bring the land up to a condition where it is suitable for any new use.
- The *regeneration body* will have a *rigorous project appraisal process* in place to ensure that the *public sector support is the minimum necessary* to enable the remediation to proceed.
- To obtain *value for money* from the public investment, *remediation* projects are subject to *open competition between*

¹³ Communication from the Commission to the Member States of 28 April 2000 laying down guidelines for a Community initiative concerning economic and social regeneration of cities and of neighbourhoods in crisis in order to promote sustainable urban development (URBAN II) (OJ C 141, 19.5.2000, p. 8)

¹⁴ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Sustainable Urban Development in the European Union: A Framework for Action (COM(98) 605)

¹⁵ Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2002 concerning the Financial Instrument for the Environment (LIFE) (OJ L 192, 28.7.2000, p. 1)

prospective applicants and applications must demonstrate that all works have been competitively procured at all levels.

- The *polluter pays principle* will always be respected.
- The *eligible costs* will be equal to the cost of the work *less the increase in the value of the land*. Any potential increase in the value of the land after remediation will be deducted.
- Independent Chartered Surveyors will *verify the cost of all work* undertaken towards the remediation.

(e) *Conclusion*

The Commission therefore concludes that the two submeasures of the “*Dereliction Aid Grant*” relating to the *remediation* of land on which there are *buildings, structures or works that are derelict or otherwise unsuitable for any new use and land damaged from or suffering risk of subsidence* are *compatible with Article 87(3)(c) EC* as aid to facilitate the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

6. DECISION

On the basis of the foregoing assessment, the Commission concludes that the “*Support for Land Remediation*” scheme is compatible with the common market pursuant to Article 87(3)(c) EC.

The Commission reminds the UK Government to submit an annual report on the implementation of the scheme. The report should allow the Commission to verify that for each project the incentive was the minimum necessary for the project to proceed.

The Commission further reminds the UK Government that all plans to modify this aid scheme have to be notified to the Commission.

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 G1
B-1049 Brussels
Fax No: 32 2 2961242

Yours faithfully,

For the Commission

Mario MONTI
Member of the Commission