



**DfE**

Department  
for the Economy  
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# State Aid: A Beginner's Guide for Public Bodies in Northern Ireland



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## Purpose of this Guide

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This guide is intended to help you, as a public body in Northern Ireland<sup>i</sup>, understand basic State aid concepts and rules. It will help you to identify whether State aid will be present in your policies, schemes and/or project proposals.

If your work might be subject to State aid rules, this guide signposts you to more detailed information, and provides contact details for people who can give you advice.

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The guide is divided into five distinct sections to help you answer the basic State aid questions all policy-makers need to ask:

**Section 1:** How do I identify State aid?

**Section 2:** What do I do if it might be State aid?

**Section 3:** How can I grant State aid legally?

**Section 4:** Export aid, Operating Aid and Rescue and Restructuring aid

**Section 5:** Sources of Help and Further Information

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<sup>i</sup> Public bodies include Government Departments, Arm's Length Bodies, Non Departmental Public Bodies, Councils etc

## Introduction

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State aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU).

State aid may be present whenever state resources are used to provide assistance that gives organisations that are engaged in economic activity (i.e. undertakings) an advantage over others.

State aid can distort competition, which in turn can be harmful to consumers and companies in the EU, so it is generally discouraged by the European Commission.

However, where there is a *genuine market failure* and a policy objective of common interest<sup>ii</sup> State aid might be necessary and justified, and the European Commission's State aid rules provide the procedural and regulatory framework through which Member States can award State aid legally.

The intention/aim/objective of a proposed policy/scheme/project is not material, and assistance can be State aid even if it is designed to benefit society generally and not just specific undertakings.

Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU) provide the legal basis for the rules on State aid.

State aid rules promote a level playing field between Member States and help to ensure aid is targeted to address market failures and avoid negative effects on competition. Reading, understanding and applying the rules takes time and resource, but will ultimately help you ensure Value for Money, and avoid the extremely negative consequences of awarding State aid illegally.

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<sup>ii</sup> Where the policy objectives of the European Commission and the UK align e.g. The European Commission and the UK agree that it is good policy to encourage more enterprises to engage in Research and Development

## Think State aid First!

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If you, as a public authority in Northern Ireland, are planning to provide assistance (either financial or non-financial) to an undertaking (i.e. an organisation engaged in economic activity), **you must consider the State aid implications of your plans at the earliest possible stage.**

*For example:*

Are you setting up a scheme or body to give grants or other financial assistance to enterprises?

Are you setting up a scheme to stimulate economic growth in a local area or region?

Are you setting up a publicly funded body that will provide assistance to large companies or SMEs?

Are you providing incentives to companies to help drive down costs to the consumer?

Are you setting up a scheme to stimulate growth in a target sector e.g. tourism, advanced engineering or agri-food technology?

Are you planning to create a fund to give organisations loans where banks do not?

Are you considering underwriting loans, acting as guarantor for an undertaking, or developing a guarantee scheme?

If so, State aid could and probably will be present.

Please note that the above are just some examples of when State aid rules might apply. It is not an exhaustive list.

## Taking a Risk-based approach to State aid

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It is important to remember that:

- The UK and the European Commission agree that there should be a risk-based approach to State aid. Due to logistical constraints, not all measures can be notified to the Commission to establish definitively whether State aid is present and, if present, whether it is compatible with State aid rules.
- Member States only have a legal obligation to notify State aid under Article 108 (3) of the TFEU. Therefore, the Commission encourages Member States to assess whether State aid is present and only to notify measures when they are certain State aid is present, or need legal certainty that no aid is present e.g. where a no State aid assessment is likely to be controversial and may be challenged in the Member State's national or European courts or would trigger a State aid complaint.
- If your policy/scheme/project involves State aid, it doesn't necessarily mean you can't do it, but it does mean you need to undertake a comprehensive assessment of its State aid implications, and ensure it complies with the specific terms and conditions set out in the relevant State aid rules so that, if the Commission select it for monitoring, it is likely to be found compatible with the rules.
- Further information on sources of State aid information and advice for public officials in Northern Ireland, including contact details for people who are experienced in working on matters concerning State aid, can be found at [Section 5](#) of this guide.



## What is an Undertaking?

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For State aid to be present, there needs to be a transfer of State resources to an undertaking. When you are assessing whether State aid is present, you first need to understand the term ‘undertaking’. The points set out below should help you:

- An undertaking is an umbrella term for any organisation engaged in economic activity, regardless of its legal status, ownership or the way it is financed.
- Economic activity is any activity which consists of offering goods or services on a given market and which could, at least in principle, be carried out by a private contractor, to make a profit.
- The definition of what constitutes an undertaking is broad. A company that provides goods or sells services is clearly an undertaking, but other types of organisation like social economy enterprises or charities can also be undertakings, as they often engage in economic activities.
- Even if an organisation provides goods or services free-of-charge or is financed entirely by the state, it may be an undertaking and subject to State aid rules. Public authorities and State-owned companies can also be undertakings. Undertakings can include, for example:
  - Sole traders, SMEs and large companies
  - Private businesses
  - Voluntary and Community sector organisations
  - Social Enterprise organisations
  - Local Councils
  - State-owned companies
  - Project Delivery Partners
  - Fund Managers
- The key is the nature of the activity rather than the legal form of the organisation. What an organisation does with its profits, whether it distributes them to shareholders, uses them for social aims, or ploughs them back into the organisation, makes no difference in State aid terms.

## Section 1 How do I identify State aid?

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There are 4 basic questions that need to be asked when assessing whether State aid is present in your Policy/scheme/project. For State aid to be present, the answer to all 4 questions must be 'yes'.

Table 1: Is it State aid? 4 key questions

Question	Commentary
<p>1: Is the assistance granted by the State or through State resources to undertakings?</p>	<p>'Granted by the State' means awarded by any public authority or private body controlled by the State (in Northern Ireland, this means national or local Government).</p> <p>The definition of 'State resources' is broad and includes, for example, grants, loans, tax exemptions, State services provided free or at reduced cost, relief from charges the recipient may otherwise have to bear, Lottery funding and funding made available through EU Structural and Investment Funds (over which the State has significant control).</p> <p>An 'undertaking' is any organisation engaged in an economic activity (i.e. putting goods or services on a market). This is about activity rather than the legal form of the organisation, so non-profit organisations, charities and public bodies can all be undertakings, depending on the activities they are involved in.</p> <p>Support to an organisation engaged in a non-economic activity isn't State aid, e.g. energy efficiency grants to households or individuals is not State aid.</p>

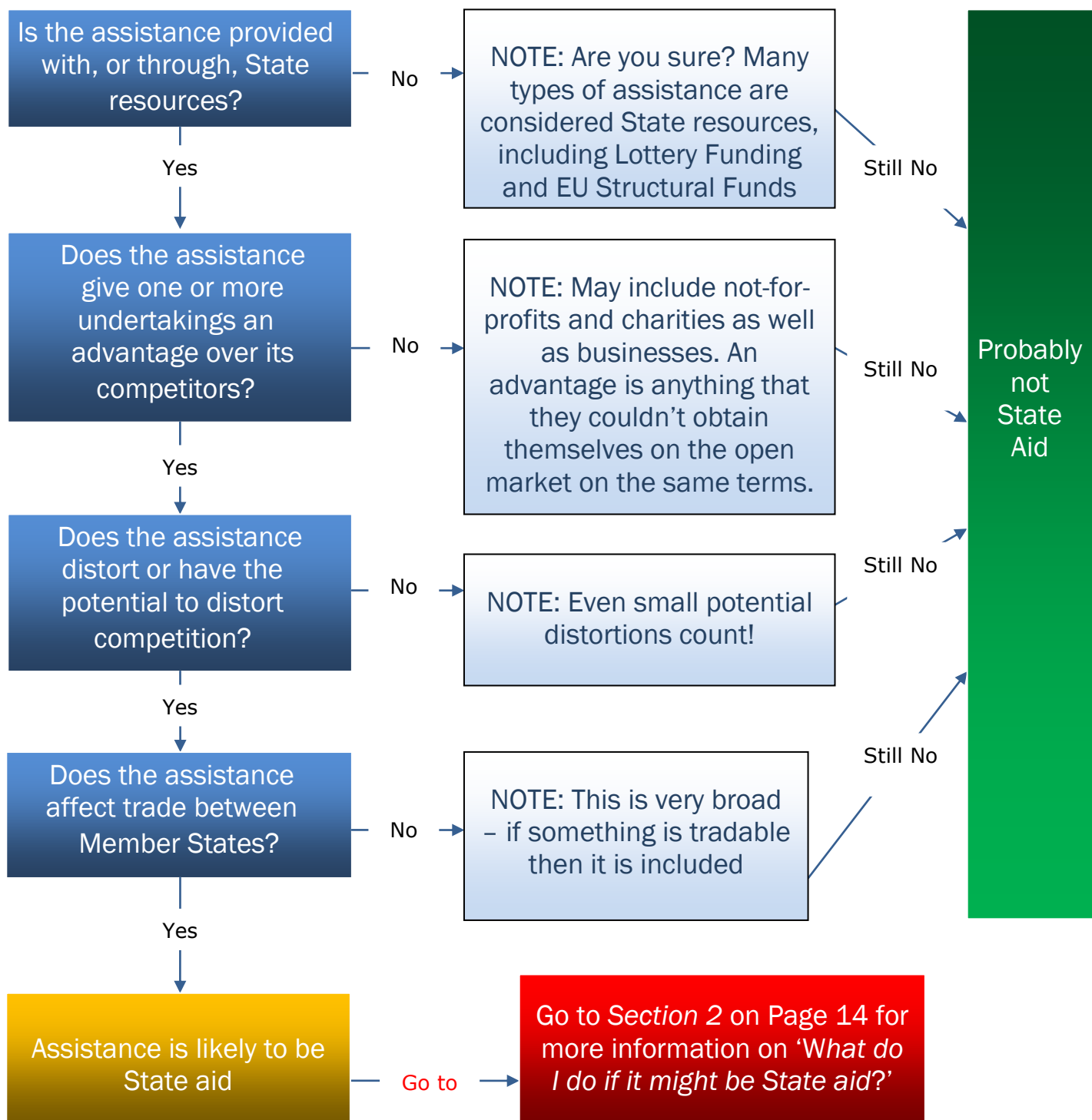
Question	Commentary
<p>2: Does the assistance give a selective advantage to one or more undertakings over others?</p>	<p>When assessing advantage you need to examine all undertakings that may benefit directly or indirectly from the assistance. Remember that an undertaking can also include operators and ‘middlemen’ if they benefit from assistance. For example, in infrastructure projects, undertakings may be involved at three levels: Construction, Operation and Use.</p>
	<p>‘Economic activity’ means putting goods or services on a market. It is not necessary to make a profit to be engaged in economic activity: if others in the market offer the same good or service, it is an economic activity.</p>
	<p>An ‘advantage’ is any economic benefit which an undertaking would not have obtained under normal market conditions. An advantage can take many forms: not just a grant, loan or tax break, but also use of a state asset for free or at less than the market price, e.g. providing one-to-one mentoring with a business consultant for free or at less than the usual rate, or providing State guarantees.</p>
	<p>In Northern Ireland, most measures would be considered selective because they target particular businesses, sectors and/or locations.</p>

Question	Commentary
3. Does the assistance distort, or have the potential to distort, competition?	<p>If the assistance strengthens the recipient relative to its competitors then the answer is likely to be 'yes'.</p> <p>The 'potential to distort competition' does not have to be substantial or significant: it may include relatively small amounts of financial support and firms with modest market share.</p>
4. Does the assistance affect trade between Member States?	<p>The interpretation of this question is extremely broad and the possibility that assistance will affect trade between Member States should not be dismissed without careful consideration. It is enough that a product or service is tradable between Member States, even if the recipient does not itself export to other EU markets. In certain circumstances, it may be possible to argue that aid will have a purely local impact, but making this determination requires careful consideration and expert advice.</p>

To reiterate, the four criteria above are cumulative, not alternative. This means that if your answer to all four questions is 'yes', your assistance is almost certainly State aid, but if any of your answers are 'no', or if you are unsure, it might not be State aid. In all such cases, you should seek advice (e.g. If you wish to argue purely local impact).

[Section 5](#) provides links to key information and sources of help.

Fig 1: Is it State aid? Flow Chart



**NB.** It is essential that you record your conclusions on State aid on the policy/scheme/project file, even if you ultimately determine that State aid is not present. Your records should clearly reflect the rationale for your 'State aid'/'no State aid' decision, and should be kept on file for at least ten years.

## Section 2: What do I do if it might be State aid?

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### 1. Don't ignore it!

Thinking about the State aid rules early in the policy/scheme/project development process will help to ensure that State aid pitfalls are avoided and delays to the project minimised.

A scheme that does not follow the rules could be forced to close, even after it is launched. Giving State aid illegally could result in the money having to be clawed back with interest from the aid recipient, and cause reputational damage to your organisation as a result.

### 2. If you can, redesign your policy/scheme/project proposal so that it isn't!

Having to seek Commission approval can add time to policy/scheme/project development, and mean that you are ultimately limited in the size of award you can make or the types of activity you can support. Consider whether you can use other means to achieve your goal that don't involve State aid at all.

### 3. Consider the Block Exemption Regulations or *de minimis* Regulations

The Block Exemption Regulations and *de minimis* regulations allow State aid in certain circumstances. One of these regulations *might* provide State aid cover for your policy/project proposal.

More information about these regulations is provided at [Section 3](#) of this guide, and in the [BIS State aid Manual \(July 2015\)](#)<sup>1</sup>.

Obtaining Commission approval will nearly always be more time consuming and difficult than designing assistance in a way that either is not State aid or that fits within the block exemption or *de minimis* regulations. Using one of these regulations will simplify and speed up the State aid approval process and save valuable time during the policy/scheme/project development stage.

A key strength in Northern Ireland policy-making and project development is the innovative way in which policies, schemes and individual projects are delivered.

Although it is a strength, it can mean that there aren't always precedents to learn from. It can also mean that approved State aid mechanisms may not look suitable at first examination, but often making minor amendments to proposals allows them to fit within the scope of the block exemption or *de minimis* regulation.

#### 4. Don't commit funds until you are sure of the State aid position!

You must check that your policy/scheme/project complies with State aid rules before you commit funds. This protects you from the worst case scenario: having to claw back money from your recipients because it was paid before the necessary approvals were obtained and ultimately found to be illegal.

You must also ensure that you comply with the requirements of the relevant regulation e.g. If you utilise the General Block Exemption Regulation (GBER), you must register the aid with the Commission within 20 days via the State aid Notification Interactive system (SANI2).

#### 5. If you have to fully notify, don't waste time!

It can take around 12 months from initial contact with the European Commission to obtaining a final State aid decision about your policy/scheme/project.

#### 6. Seek advice

If you are developing a policy measure, scheme or project that could affect organisations/undertakings operating in a market, you should think carefully about whether it will involve State aid. You must consider the State aid implications and, if State aid is present, make sure that your proposal complies with State aid rules.

This guide only provides you with basic information on State aid. It is not intended to be comprehensive. Read in isolation, it will not be enough to help you navigate State aid rules.

The [DfE State aid Unit website](#)<sup>2</sup> provides more information.

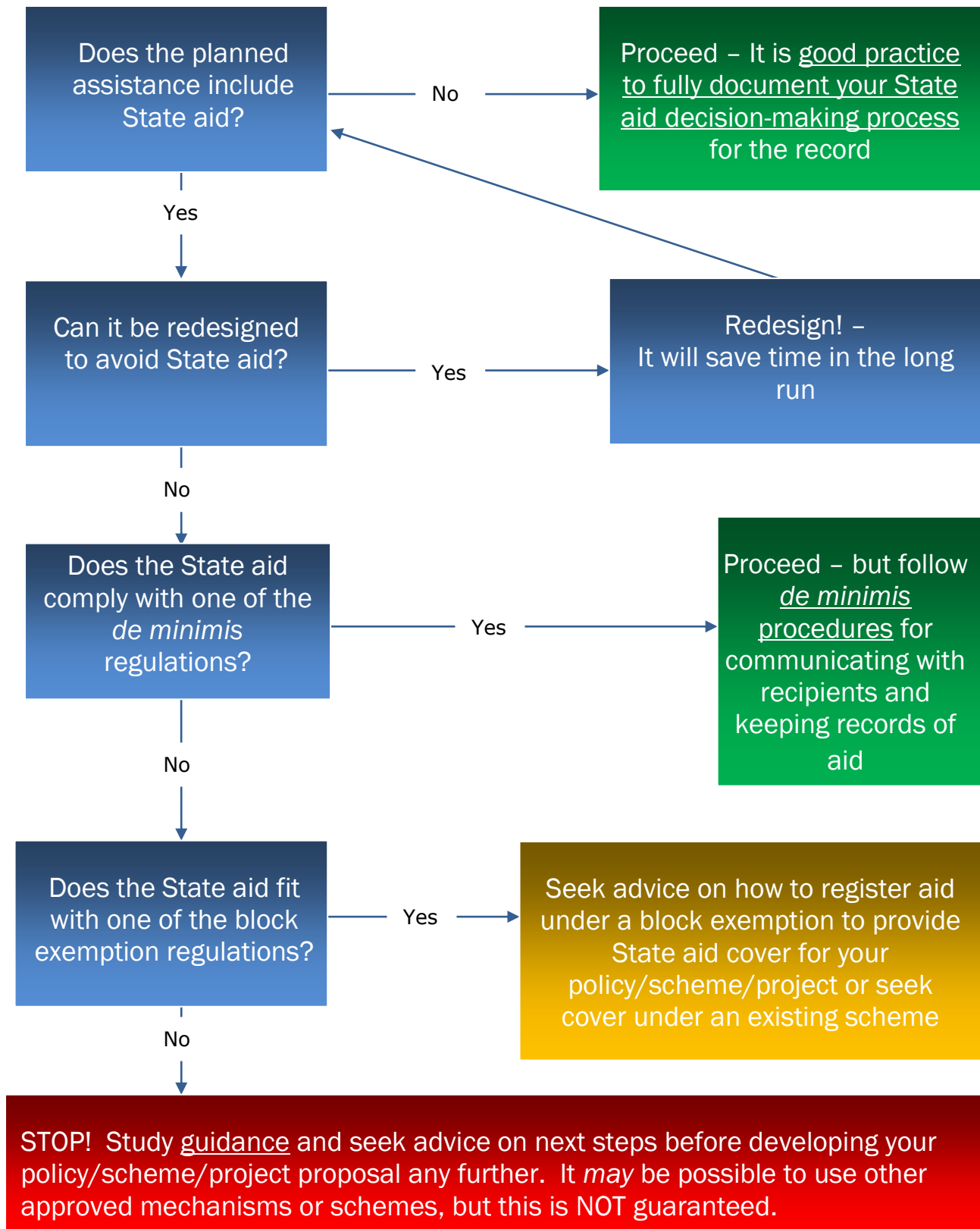
If you are in any doubt about whether your assistance will comply with the State aid rules, seek advice as early as possible.

In Northern Ireland, Departments and their Arm's Length Bodies can seek advice from State aid units in DfE, DAERA and DfI, and legal advice on State aid law from Departmental Solicitor's Office. Contact details are included at page 39.

Private sector organisations, Councils and individuals should seek independent legal advice.



Fig 2. What do I do if it might be State aid? Flow chart



## Section 3: How can I grant State aid legally?

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Where there is a policy objective to be met *and* genuine market failure, State aid might be necessary and justified, and European Commission approval should be possible. Generally, the Commission approves State aid that is:

- the minimum necessary to remedy the failure (**proportionate**)
- really changing the behaviour of the organisation that receives it (**incentive effect**)
- the best way to address the failure (**appropriate**)
- beneficial enough to outweigh any negative effects on competition (**balancing test**)

The Commission's experience has led it to develop regulations, communications and guidelines setting out common ways of meeting these tests. These approved mechanisms make it quicker and easier to implement schemes, and reduce the need for the Commission to consider every case individually.

State aid can be given legally in two ways:

1. By complying with the conditions in a regulation such as one of the *de minimis* or Block Exemption Regulations;

or

2. By obtaining approval for the particular scheme from the EU Commission on the basis that it meets the above tests (the full notification route)

## 3.1 De minimis

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As small amounts of aid are unlikely to distort competition, a useful approved EU mechanism for State aid is the [\*industrial de minimis regulation\*](#)<sup>3</sup> which allows small amounts of aid i.e. less than €200,000 over 3 consecutive fiscal years, to a single undertaking for a wide range of purposes.

If you use the *de minimis* regulation you don't need to formally notify the aid to the European Commission or get prior approval, but there are potential administrative pitfalls that must be avoided.

For example, records must be kept to demonstrate, if required, that all conditions of the *de minimis* regulation have been met. Also, before granting *de minimis* aid, aid providers must document that they have checked that the award will not breach an undertaking's *de minimis* ceiling over a 3 year fiscal period (i.e. the fiscal years used by the undertaking in the Member State concerned, as defined by Article 2, Para 2 of the *de minimis* regulation).

*A decision to use the de minimis regulation for State aid cover must be taken with caution, and with a complete understanding of the regulatory requirements.*

To ensure as much transparency as possible, the European Commission encourages Member States to use Block Exemption Regulations (such as the General Block Exemption Regulation (GBER)) to provide State aid cover where appropriate. Many State aid advisors would therefore suggest that you consider use of the Block Exemption Regulations in preference to the *de minimis* regulation, where this is possible. Further information on the Block Exemption Regulations can be found at [Section 3.2](#) of this guide.

See the [BIS State aid Manual \(July 2015\)](#)<sup>4</sup> for more about the *de minimis* regulation, and advice on the processes required to ensure compliance.

NOTE: Separate rules apply to the Agriculture, Fisheries and Road Transport sectors.

*De minimis* aid to the [agricultural sector](#) is covered by a separate regulation and is [capped at €15,000 over three consecutive fiscal years](#).

*De minimis* aid to the [fisheries and aquaculture sectors](#) also has its own regulation and is [capped at €30,000 over three consecutive fiscal years](#).

*De minimis* aid to perform road freight transport for hire or reward is capped at €100,000 over any period of 3 fiscal years. The aid shall not be used for the acquisition of road freight transport vehicles. See Regulation (EC) No 1407/2013.

Links to the relevant legislation and guidance can be found at Sections 3.5 and 5.2 of this guide.

## 3.2 Block Exemption Regulations

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The Block Exemption Regulations provide a simple and relatively quick way of obtaining European Commission approval for a range of aid measures that do not unduly distort competition.

### ❖ General Block Exemption Regulation

The main Block Exemption Regulation is the [General Block Exemption Regulation \(GBER\)](#)<sup>5</sup>. If you use the GBER mechanism, you don't need prior approval from the European Commission, but you must register the aid with the Commission using the State aid Notification Interactive system (SANI2) within 20 working days of legally committing the aid.

From 1<sup>st</sup> July 2016, you must also publish information about your scheme on the [Northern Ireland State aid website](#)<sup>6</sup> so that information about your GBER scheme is transparent and easily accessible to all who wish to see it.

The Regulation deems aid in favour of the following activities permissible:

- Regional Aid<sup>iii</sup>;
- Aid to SMEs (in the form of investment aid and operating aid);
- Aid for access to finance for SMEs;
- Aid for research and development and innovation;
- Training aid;
- Aid for disadvantaged workers and for workers with disabilities;
- Aid for environmental protection;
- Aid to make good the damage caused by certain natural disasters;
- Social aid for transport for residents of remote regions;
- Aid for broadband infrastructures;
- Aid for culture and heritage conservation;
- Aid for Sport and multifunctional recreational infrastructures; and
- Aid for local infrastructures.

However, you must adhere to the terms and maximum aid amounts set out in the regulation.

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<sup>iii</sup> Regional Aid is aid for investment and job creation, and is only available in [Assisted Areas](#)<sup>7</sup>

GBER schemes are not assessed by the European Commission at the outset, but the Commission *does* undertake an annual monitoring exercise on GBER schemes, and it is possible that your policy/scheme/proposal will be selected for monitoring.

#### ❖ Agriculture, Forestry and Rural Areas Block Exemption Regulation

Block exempted aid to agriculture, forestry and rural areas is regulated by the Agriculture Block Exemption Regulation (ABER):  
[Commission Regulation \(EU\) No 702/2014](#)<sup>8</sup>

#### ❖ Fisheries and Aquaculture Block Exemption Regulation

Block exempted aid to the fisheries and aquaculture sectors is regulated by the Fisheries Block Exemption Regulation (FIBER):  
[Commission Regulation \(EU\) No 1388/2014](#)<sup>9</sup>

[Section 5](#) of this guide provides details of people who can provide you with advice and guidance on the appropriateness of a Block Exemption scheme for a policy/project proposal, and can assist with the registration process if required.

### 3.3 Introduction to Horizontal and Sectoral State aid rules

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In cases where aid is in excess, and outside the scope, of the block exemption and *de minimis* regulations, it can be fully notified and the Commission can assess whether it complies with specific guidelines or specific articles in the TFEU.

The Commission guidelines cover areas such as Research, Development & Innovation, Environmental Protection, access to venture capital, access to broadband, investment in SMEs and support for public services – such as rural transport and social housing.

In these cases, the European Commission will assess the compatibility of the proposed aid against horizontal or sectoral guidelines (frameworks or communications) or directly against Articles 107 (3) (c) or 107 (d) of the TFEU, which allows for ‘aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest’, and ‘aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest’ respectively.

You will find links to further information on the Horizontal and Sectoral State aid rules at [Section 3](#) of this guide.

## 3.4 Horizontal rules

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Horizontal State aid rules apply to any industry, and cover:

### ❖ Regional Aid

Web link:

[Guidelines on regional State aid for 2014-2020](#)<sup>10</sup>

The objective of Regional Aid is to support economic development and employment in disadvantaged regions of Europe. In order to avoid or minimise any distortion of competition caused by this aid, the Guidelines on Regional State aid for 2014-2020 set out the rules under which Member States can provide financial incentives to companies to invest in their region.

Regional Aid is only permissible in Assisted Areas. Depending on its Assisted Area status, a Member State (or a specific region within it) can choose to provide Regional Aid to companies within prescribed limits.

Published by BIS, the 'Introduction to Assisted Areas guide' provides more details about UK Assisted Areas and the maximum allowable aid intensities in each region:

[BIS: An Introduction to Assisted Areas \(October 2014\)](#)<sup>11</sup>

Northern Ireland is a non pre-defined 'c' area, which means that the maximum aid intensity that can be awarded as Regional Aid is as follows:

Type of Area	Maximum Aid Intensity (Gross Grant Equivalent (GGE))		
	Small Firms i.e. <50 employees	Medium firms i.e. 50 – 250 employees	Large firms i.e. >250 employees
Non predefined 'c' area	30%	20%	10%



However, it is important to note that there may be changes to the Assisted Areas map for the UK in the future, with ramifications for Northern Ireland should the region lose its 100% non pre-defined 'c' region status.

## ❖ Research and Development and Innovation

Web link:

[Framework for State aid for research and development and innovation](#)<sup>12</sup>

The current State aid framework for Research and Development and Innovation was adopted on 21<sup>st</sup> May 2014. It allows Member States to fund business research and innovation projects, high-tech start-up companies, and research infrastructure and services under certain conditions.

## ❖ Environmental Protection and Energy

Web link:

[Guidelines on State aid for environmental protection and energy 2014-2020](#)<sup>13</sup>

The latest rules on public support for projects in the field of environmental protection and energy were adopted by the European Commission in 2014, and will be valid from 1<sup>st</sup> July 2014 until the end of 2020.

The guidelines are designed to support Member States in reaching their 2020 climate targets, while addressing the market distortions that may result from subsidies granted to renewable energy sources.

## ❖ Rescue and Restructuring Aid

Web link:

[Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty](#)<sup>14</sup>

The current 'Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty' are valid from 1<sup>st</sup> August 2014 until 31<sup>st</sup> December 2020, and set out the European Commission's rules for assessing Member States' support measures to rescue and restructure companies in difficulty. The rules apply only to non-financial firms in difficulty – separate rules are in place for banks and other financial institutions.

## ❖ Training Aid

Web link:

[\*Criteria for the analysis of the compatibility of State aid for training subject to individual notification\*](#)<sup>15</sup>

This Communication from the Commission sets out the criteria the Commission will apply for the analysis of the compatibility of State aid for training that is subject to individual notification.

## ❖ Employment of disabled and disadvantaged workers

Web link:

[\*Criteria for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers subject to individual notification\*](#)<sup>16</sup>

This Communication from the Commission sets out the criteria the Commission will apply for the analysis of the compatibility of State aid for the employment of disadvantaged and disabled workers that is subject to individual notification.

## 3.5 Sectoral rules

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Sectoral rules, as their name suggests, refer to specific sectors/industries:

### ❖ Agriculture, Forestry and Rural Areas

*European Union Guideline for State aid in the agricultural and forestry sectors and in rural areas 2014-2020*<sup>17</sup>

*Commission Regulation (EU) No 702/2014 - Agricultural, Forestry and Rural Areas Block Exemption Regulation*<sup>18</sup>

### ❖ Broadband Networks

Web link:

*EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*<sup>19</sup>

These guidelines provide a summary of the Commission's policy on the use of State aid to support the deployment of broadband networks. The guidelines also explain the principles that the Commission will apply in the assessment of aid measures for the rapid roll-out of basic broadband and very high speed, next generation access networks.

### ❖ Films and other Audiovisual Works

Web link:

*Communication from the Commission on State aid for films and other audiovisual works*<sup>20</sup>

Audio-visual works, in particular films, play an important role in shaping European identities and reflecting the EU's cultural diversity. The production and distribution of films and other audio-visual works also has an important economic dimension. Article 107 (3) (d) of the Treaty on the Functioning of the European Union explicitly provides for the possibility of granting State aid to promote culture and heritage conservation, provided that it does not affect trading conditions and competition in the EU to an extent that is contrary to the common interest. The Cinema Communication sets out the criteria under which the Commission will assess aid schemes put in place by Member States to support films and other audio-visual works.

## ❖ Fisheries and Aquaculture

Guidelines for the examination of State aid to the fishery and aquaculture sector<sup>21</sup>

Commission Regulation (EU) 1388/2014 - Fisheries and Aquaculture Block Exemption Regulation<sup>22</sup>

## ❖ Shipbuilding

Council Regulation (EC) No 1540/98 - Establishing new rules on aid to shipbuilding<sup>23</sup>

## ❖ Air Transport

Guidelines on State aid to Airports and Airlines<sup>24</sup>

## ❖ Maritime

Guidance on State aid to Ship Management companies<sup>25</sup>

Guidance on State aid complementary to Community funding for the launching of motorways of the sea<sup>26</sup>

Guidelines on State aid to Maritime Transport<sup>27</sup>

## ❖ Rail and Road

Regulation (EC) No 1370/2007 - Public passenger transport services by rail and by road<sup>28</sup>

Communication from the Commission - Interpretative Guidelines concerning Regulation (EC) No 1370/2007 - Public Passenger Transport service by rail and by road<sup>29</sup>

Communication from the Commission: Community guidelines on State aid for railway undertakings<sup>30</sup>

## 3.6 Services of General Economic Interest

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Services of General Economic Interest (SGEI) are economic activities that public authorities identify as being of particular importance to citizens and that would not be supplied (or would be supplied under different conditions) if there was no public intervention.

SGEIs are carried out in the public interest under conditions defined by the State, which imposes a public service obligation on the provider. Examples of SGEIs include transport networks, postal services and social services. Since SGEI provision may not generate a sufficient profit for the provider, an appropriate level of public compensation may be required to offset the additional costs stemming from the public service obligation.

Four documents (collectively known as the SGEI package) produced by the European Commission provide the policy and procedural basis for the State aid rules on SGEIs:

- [Commission Communication on SGEIs](#)<sup>31</sup>
- [Commission SGEI Decision - 20 Dec 2011](#)<sup>32</sup>
- [European Union framework for State aid in the form of public service compensation \(2011\)](#)<sup>33</sup>
- [Commission Regulation \(EU\) No 360/2012 - SGEI de minimis](#)<sup>34</sup>

Further information on SGEIs can be accessed through the [DfE State aid website](#)<sup>35</sup>.

## 3.7 Full Notification Process

A full notification is required for measures that fall outside of the scope of the block exemption regulations and for any ‘no aid’ measures that might need a Commission decision on record in case of subsequent legal challenge. This would include innovative or controversial measures or measures that may be subject to legal challenges in the National or European courts.

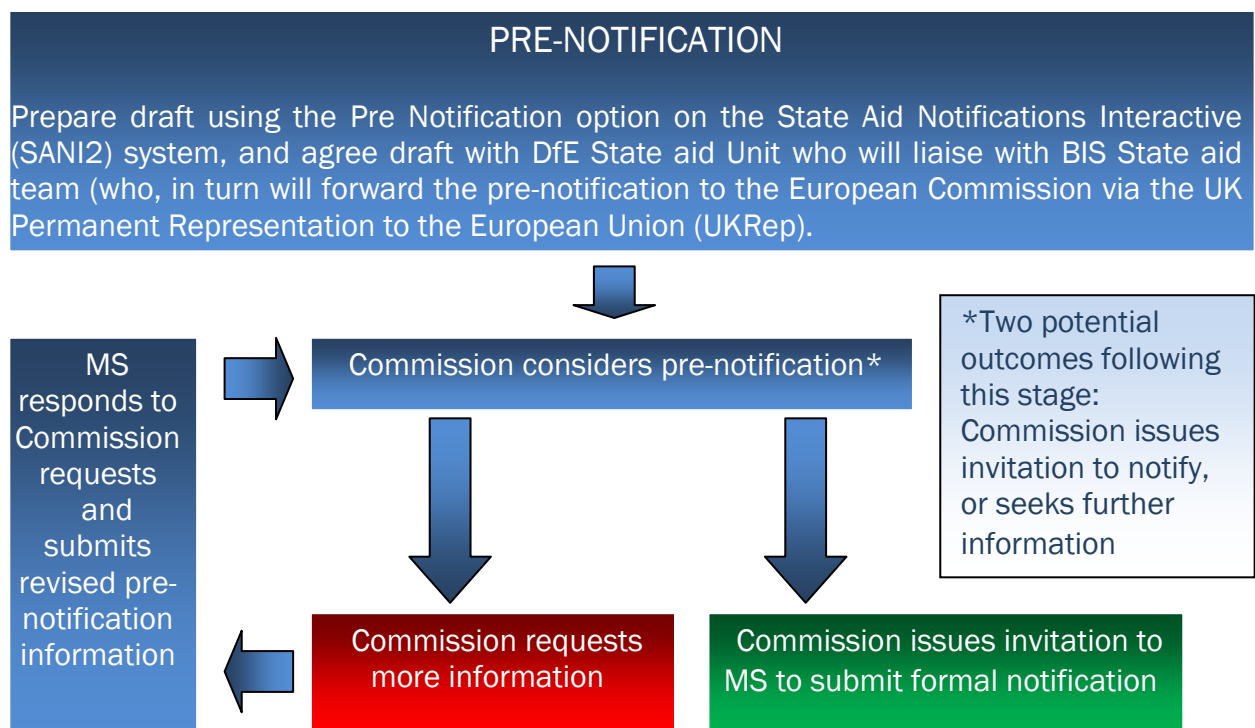
The key objective of the notification process is to enable you to obtain the Commission’s approval for your policy/scheme/project so that the assistance is provided lawfully.

There are two stages to the notification process: Pre-notification and Notification.

### 3.7.1 Pre-Notification

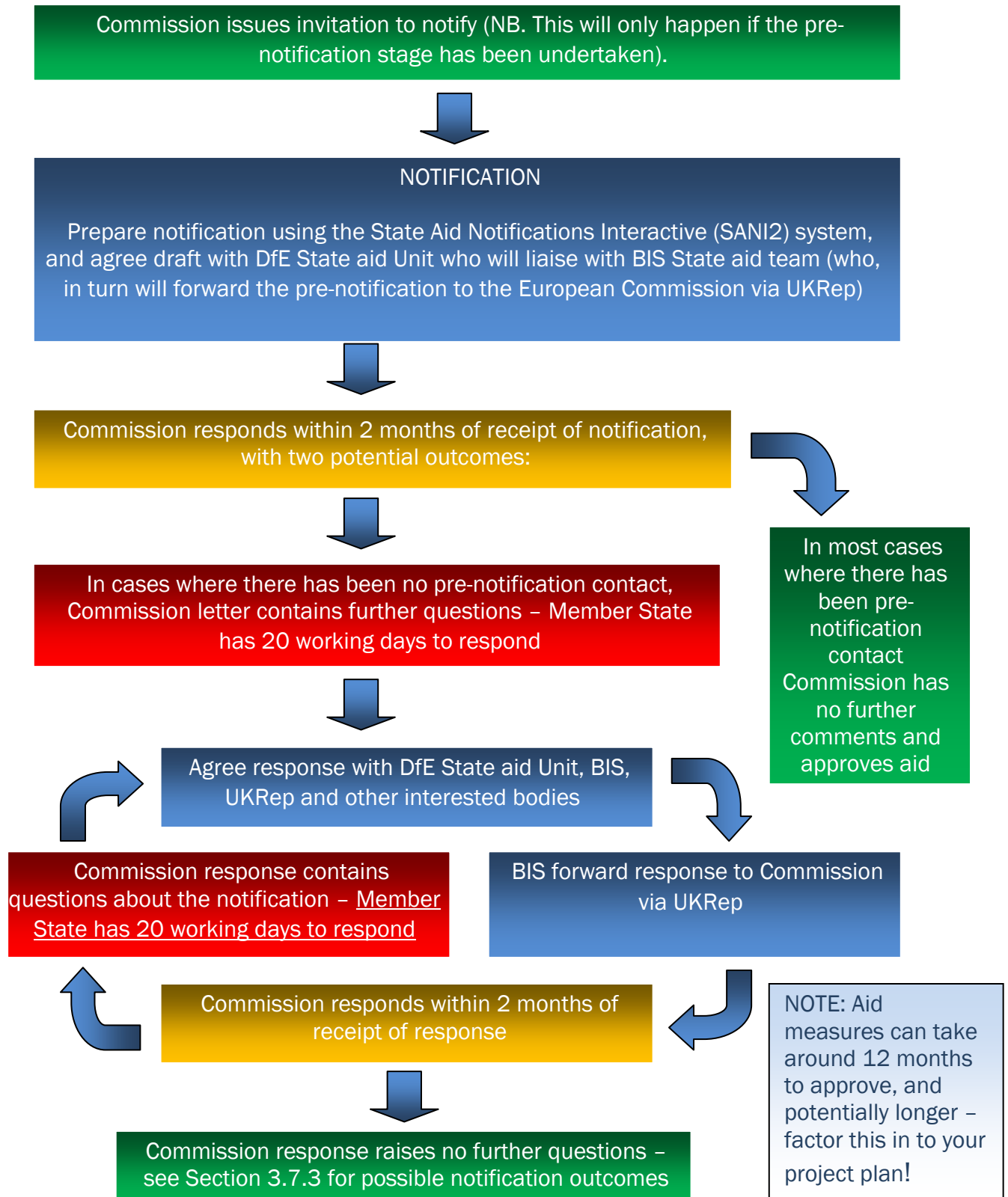
The first stage in the notification process is pre-notification, which is essentially the preparation and submission of a draft ‘notification’ to the Commission for its consideration. Pre-notification is not mandatory, but if you work proactively with the Commission develop your formal notification, and accept its advice and address its concerns, it can save time in the long-run.

Fig 3. Pre-Notification process: Flow Chart



### 3.7.2 Notification

Fig 4. Notification process: Flow Chart



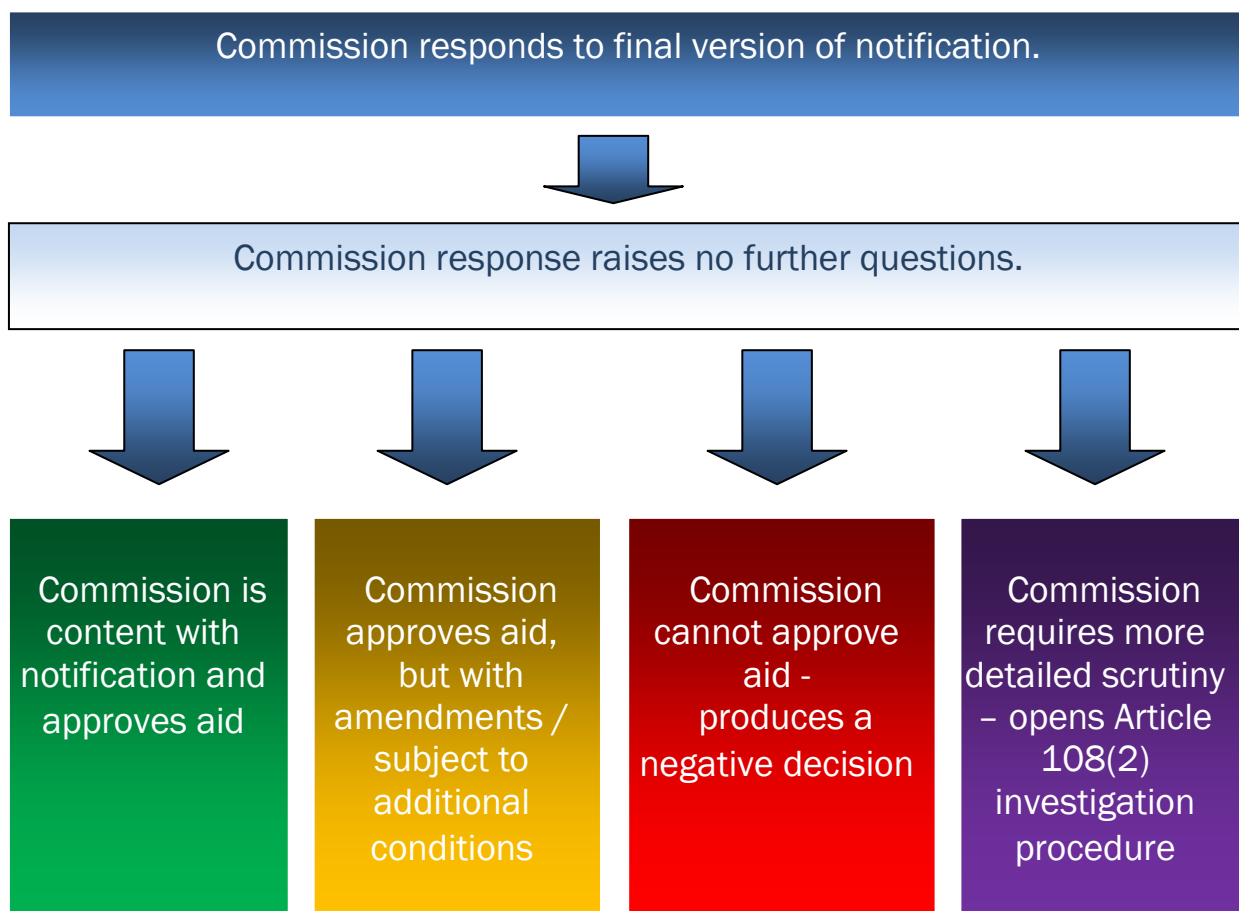
### 3.7.3 Possible Notification Outcomes

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There are a number of possible outcomes that will result from notification to the Commission, as set out in Fig. 5 below. Further information about the notification process, and how best to manage it, can be found in the [BIS State aid Manual \(July 2015\)](#)<sup>36</sup>

Fig 5. Possible Notification outcomes: Flow Chart

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### 3.7.4 Full Notification – Important Points to Consider

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A standard notification to the European Commission usually takes at least 12 months to be approved, from your initial contact with the Commission until you receive a final decision. With this point in mind, you should find out whether your proposed policy/scheme/project could fall within the scope of *de minimis* or a block exemption regulation such as the GBER. This will rule out the need for formal notification.

Notifications that present new issues, are contentious, or do not fall under existing rules usually take even longer, especially if the European Commission deems that a formal investigation is needed.

There is no guarantee that notified aid measures will ultimately be approved. The Commission may ask you to amend your scheme before it is approved, which could impact upon your planned implementation timeframe.

You should seek advice from one of the State aid contacts listed at [Section 5](#) of this guidance **as soon as possible** if you are considering full notification to the Commission.

Further information on the notification process can be found in the [BIS State aid Manual \(July 2015\)](#)<sup>37</sup>.

## Section 4: Export Aid, Operating Aid and Rescue and Restructuring Aid

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### ❖ Export Aid

The European Commission State aid rules do not allow aid for ‘export-related activities’. However, the phrase ‘export-related activities’ is often misunderstood.

In its decision in relation to a scheme implemented by the Federal Republic of Germany in connection with the sale and export of products from the Land of Mecklenburg-Western Pomerania, the Commission clarified that aid for export-related activities means aid that is used for financing the establishment and operation of a distribution network in other countries or aid that is used to subsidise other current expenditure linked to the export activity.

The Commission also made it clear that aid towards the cost of participating in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market in another Member State or third country does not normally constitute aid to export-related activities.

If you think your scheme might be providing aid for export-related activities, you should seek specialist advice from one of the State aid contacts listed at [Section 5](#) of this guidance.

### ❖ Operating Aid

‘Operating Aid’ means aid to cover costs which a company could expect to pay in the normal course of business, such as rates, rent and utility bills.

In general, operating aid is not allowed, but some operating aid is allowed under the *de minimis* regulation and certain articles in the GBER e.g. Article 15 which relates to Regional Operating aid.

If you are planning to give this kind of assistance, seek advice at an early stage.

## ❖ Rescue and Restructuring Aid

The European Commission views rescue and restructuring aid to be one of the most distortive types of State aid. In the Commission's view, successful sectors of the economy witness productivity growth not simply because all the undertakings present in the market gain in productivity, but rather because the more efficient and technologically advanced undertakings grow at the expense of those that are less efficient or have obsolete products, which ultimately exit the market. However, by interfering with this exit process, rescue and restructuring aid has the potential to significantly slow economic growth.

However, The Commission also accepts that State aid may be appropriate where parts of an undertaking in difficulty remain viable and it is possible to restructure the undertaking so there is a reasonable prospect of long-term viability. In such cases Member States may grant State aid to undertakings in difficulty in accordance with the Commission's [Rescue and Restructuring Aid Guidelines](#)<sup>38</sup>.

Since all Rescue and Restructuring aid has to be fully notified, if you are thinking of providing State aid to undertakings in difficulty, you should seek specialist advice from one of the State aid contacts listed at [Section 5](#) of this guidance as soon as possible.

## Section 5: Sources of Help and Further Information

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The following section provides you with information on the regulations that govern State aid, guidance on how the regulations should be interpreted. It also provides contact details for people you can speak to if you need specific advice or guidance about the State aid implications of your policy/scheme/project.

### 5.1 State aid Guidance

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You should study the following guidance, ideally at the earliest possible stage in developing your policies/schemes or projects, and seek advice if you need it: Links to State aid Regulations can be found at [Section 5.2](#).

- [DfE State aid website](#)<sup>39</sup>
- [BIS State aid Manual](#)<sup>40</sup>
- [Policy Champions Network website](#)<sup>41</sup>
- [Managing Public Money NI – Annex 4.9](#)<sup>42</sup>
- [NI Guide to Expenditure Appraisal and Evaluation \(NIGEAE\)](#)<sup>43</sup>
- [BIS State aid website](#)<sup>44</sup>
- European Commission State aid web pages:
  - [State aid control: Overview](#)<sup>45</sup>
  - [Agriculture and Rural Development](#)<sup>46</sup>
  - [Fisheries](#)<sup>47</sup>

- *Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of Guarantees (2008/C 155/02)*<sup>48</sup> *iv*
- *Draft Commission Notice on the notion of State aid pursuant to Article 107(1) TFEU – the draft Notion of aid paper*<sup>49</sup>

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<sup>iv</sup> Further information on Guarantees can also be found in Section 3 of the [BIS State aid Manual](#)

## 5.2 State aid Regulations

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Links to key State aid regulations are set out below:

- [General Block Exemption Regulation – Commission Regulation \(EU\) No 651/2014](#)<sup>50</sup>
- [Agricultural, Forestry and Rural Areas Block Exemption Regulation – Commission Regulation \(EU\) No 702/2014](#)<sup>51</sup>
- [Fisheries and Aquaculture Block Exemption Regulation – Commission Regulation \(EU\) No 1388/2014](#)<sup>52</sup>
- [De minimis regulation – Commission Regulation \(EU\) No 1407/2013](#)<sup>53</sup>
- [Agricultural de Minimis Regulation – Commission Regulation \(EU\) No 1408/2013](#)<sup>54</sup>
- [Fisheries and Aquaculture de minimis Regulation – Commission Regulation \(EU\) No 717/2014](#)<sup>55</sup>
- [Procedural Regulation – Council Regulation \(EC\) No 659/1999](#)<sup>56</sup>
- [Public passenger transport services by rail and by road - Commission Regulation \(EC\) No 1370/2007](#)<sup>57</sup>

## 5.3 State aid Contacts

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- For advice on State aid in the Northern Ireland transport sector, please contact Department for Infrastructure (DfI) Transport Policy, Strategy and Legislation Division: [TPSLD.SupportGroup@infrastructure-ni.gov.uk](mailto:TPSLD.SupportGroup@infrastructure-ni.gov.uk)
- For advice on State aid in the Northern Ireland agriculture, forestry, fisheries and aquaculture sectors, and on support to rural development, please contact the Department for Agriculture, Environment and Rural Affairs (DAERA): [esb@daera-ni.gov.uk](mailto:esb@daera-ni.gov.uk)
- For advice on industrial State aid in all other sectors, please contact the Department for the Economy (DfE) State aid Unit: [stateaid@economy-ni.gov.uk](mailto:stateaid@economy-ni.gov.uk)

Please be aware that the Northern Ireland State aid contacts above can advise on State aid and comment on proposals, but will have to prioritise and won't be able to hand-hold every case.

*Please note that the State aid contacts cannot provide legal advice. If you require legal advice you should contact either the Departmental Solicitor's Office or your organisation's own legal advisor.*

NB. Tailored State aid advice from the above contact points can usually only be given to public bodies. Private sector organisations, individuals or other recipients should seek independent legal advice.

## 6. Glossary of Links

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- <sup>1</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443742/BIS-15-148-state-aid-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443742/BIS-15-148-state-aid-manual.pdf)
- <sup>2</sup> <https://www.economy-ni.gov.uk/topics/economic-policy/state-aid>
- <sup>3</sup> [http://ec.europa.eu/competition/state\\_aid/legislation/de\\_minimis\\_regulation\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf)
- <sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443742/BIS-15-148-state-aid-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443742/BIS-15-148-state-aid-manual.pdf)
- <sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0651&from=EN>
- <sup>6</sup> <https://www.economy-ni.gov.uk/topics/economic-policy/state-aid>
- <sup>7</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365657/BIS-14-1152-An-introduction-to-assisted-areas.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365657/BIS-14-1152-An-introduction-to-assisted-areas.pdf)
- <sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0702&from=en>
- <sup>9</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1388&from=EN>
- <sup>10</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013XC0723\(03\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013XC0723(03)&from=EN)
- <sup>11</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/365657/BIS-14-1152-An-introduction-to-assisted-areas.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365657/BIS-14-1152-An-introduction-to-assisted-areas.pdf)
- <sup>12</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0627\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0627(01)&from=EN)
- <sup>13</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0628\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0628(01)&from=EN)
- <sup>14</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC0731(01)&from=EN)
- <sup>15</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0811\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0811(01)&from=EN)
- <sup>16</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0811\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XC0811(02)&from=EN)
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- <sup>19</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF>
- <sup>20</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:332:0001:0011:EN:PDF>
- <sup>21</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC0702\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC0702(01)&from=EN)
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- <sup>24</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2014:099:FULL&from=EN>
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- <sup>36</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/443742/BIS-15-148-state-aid-manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/443742/BIS-15-148-state-aid-manual.pdf)
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- <sup>43</sup> <https://www.dfpni.gov.uk/topics/finance/northern-ireland-guide-expenditure-appraisal-and-evaluation-nigeae>
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