

Urban Community Energy Fund – Introduction to State aid

The purpose of this document is to provide a general introduction on state aid issues for organisations that are considering applying for funding from the Urban Community Energy Fund.

Organisations must seek independent legal advice to determine their position under state aid rules, given that this introduction is an overview rather than a rulebook to be applied to individual circumstances. As a result, this document must not be relied on as a substitute for such independent advice.

What is State Aid?

State Aid is support given by the state or through state resources that provides a selective advantage to an organisation engaged in an economic activity (such as energy generation or provision of meeting facilities). It is not relevant if the organisation carries out its economic activities for charitable ends, and the support given by the state doesn't have to be simply a direct grant of money. It can be a loan, a tax break, or the use of something like a public building for less than the market rate.

You may have heard that for aid to qualify as State Aid it has to be given at such a scale as to distort competition between member states of the EU, to create a huge advantage for one firm over another. Neither of these are true. It is enough that the grant of aid has the *potential* to distort competition, and affect trade between member states. As such, support for any product or service that is tradeable between member states (even when given in modest amounts to small businesses) may count as State Aid.

Is the support provided through UCEF counted as State Aid?

Yes. Because the grants and loans available under UCEF are given by the Government to organisations that are engaged in an economic activity (the generation of energy), the support given is deemed to be State Aid. This does not mean that this financial support can't be given, merely that it must be given using a route approved by the European Commission.

The simplest route, and the one which UCEF will normally use, is the 'de minimis' regulation. It is the European Commission's view that small amounts of aid are unlikely to distort competition, and it therefore allows sums of less than €200,000 (roughly £150,000) over 3 fiscal years to be given to organisations involved in economic activities. This €200,000 limit is known as the de minimis allowance.

It's important to note that the de minimis allowance is for the receiving organisation, not the project. As an example, if Organisation A secured £150,000 of UCEF funding towards the development of a large hydro project, but then immediately afterwards received a grant of £100,000 from the Department of Transport to run a subsidised bus service which was also granted as de minimis aid, this would exceed the Organisation A's de minimis allowance.

If my group accepts UCEF funding, will this mean we can't claim payments via the Feed in Tariff or Renewable Heat Incentive?

No. You *will* still be able to claim FiTs and RHI payments.

FiT and RHI payments are approved State Aid schemes - they have been specifically approved by the European Commission under EU state aid guidelines. FiT and RHI payments aim to compensate

organisations for the additional capital costs and operating costs that are incurred when installing renewable technologies. UCEF funding, on the other hand, assists with development risk capital and is given under the de minimis Regulation.

In order to ensure that organisations do not receive double-funding for the same costs, the legislation that implements the FiT and RHI schemes specifies that it is not permissible to receive public funding to also pay for the purchase or installation of your energy generating infrastructure (and if you do, your installation will not be eligible for FiT or RHI accreditation). What this means is that if you purchase and install something like a wind turbine or solar array with a state grant, you cannot then claim FiTs on the electricity generated from that system without first repaying the grant monies.

In order to avoid any confusion or challenges in this area, it is a condition of UCEF grants and loans that they **cannot be spent on purchasing or installing the equipment for your project**. They are for development risk capital; the funding will pay for the studies, legal work, financial analysis, planning permission and public consultation work that you will need to do in order to get yourself in the position where you are ready to approach other investors for the build costs. If you don't understand this distinction between development and construction costs, then read our 'Introduction to getting your project investment ready', or call the helpline and we can talk you through it.

Do anticipated FiTs or RHI count towards the de minimis allowance?

No, anticipated revenue from FiTs and RHI does not count towards the de minimis allowance. The reason for this is because UK Government notified the FiTs and RHI schemes to the European Commission and obtained prior clearance for these schemes. The revenue generated through FiTs and RHI is therefore permitted under the European Commission clearance decisions and does not therefore need to be declared as de minimis aid.

What do we need to do to demonstrate that we are entitled to receive UCEF funding as de minimis aid?

You must calculate all funding that you have received as de minimis aid in the current fiscal year and the two previous fiscal years. If adding your UCEF grant and/or loan to this would take you over the de minimis limit of €200,000 then you will need to call us for advice.

In the example below, de minimis aid received by this group is £165,000 (€207,500). Notice that this was received in fewer than 36 months (3 years). However, because they show that their initial Defra grant of £55,000 was not received in the current *fiscal* year, or either of the two that preceded it, this group can still access the UCEF funding that they need.

FY 11/12	FY 12/13	FY 13/14	FY 14/15
£55k Defra grant in March 2012	£15k DECC grant in August 2012	No aid received	£10k UCEF grant in Nov 14. and £85k UCEF loan in Jan 15

Being accurate about the date of receipt is crucial. Imagine that this group incorrectly noted their Defra grant as having been received in March rather than April 2012. The effect could be ruinous:

FY 11/12	FY 12/13	FY 13/14	FY 14/15
	£55k Defra grant in April 2012 and £15k DECC grant in August 2012	No aid received	£10k UCEF grant in Nov 14. and £85k UCEF loan in Jan 15

Incorrectly claiming this final amount will push the group over their de minimis allowance by only around £5k, but it could lead to them having to pay back the whole £85k plus interest

If you have already received some de minimis aid within the current 3-fiscal year period, and your UCEF grant pushes you over your de minimis allowance, you will be required to repay the total amount of State Aid received in your final tranche, plus interest. If such a mistake came to light after you had already spent your UCEF funding, this could spell disaster for your group and your project. This is why it is so important that we check how much State aid under the de minimis Regulation you've already received, and limit your support through UCEF accordingly.

We are required under the De Minimis Regulation to obtain a declaration form from you when you apply, in which you must provide details of all de minimis State aid that your organisation has received in the relevant three year period. Note that this will include de minimis State aid received by other organisations that are linked to your organisation in certain ways. For example, is there a parent company or charity that has the right to appoint directors in your organisation, or which has other contractual rights to influence the way your organisation is run? If so, then we need to know about their State Aid receipts too.

If you have already received a lot of State Aid, you may have to wait to apply to UCEF, or there may be a need for us to manage your application as several smaller loans over a longer time period.

What if we want to apply for further State Aid in future, and have paid the UCEF loan back?

The aim of the UCEF fund is to develop strong projects that can go on to secure investment funding, and at that point the project would pay back the UCEF loan. We do not recommend that you assume that a repaid loan no longer counts as State Aid from the point of view of the de minimis allowance. A reasonable interpretation of the regulations tells us that your UCEF loan would remain on your de minimis aid 'balance sheet' until the three fiscal years have passed.

Here's why. The UCEF loan is a contingent loan and there is no commercially available equivalent source of funding. At the point at which we make the loan to you, it has to count as State Aid because we do not know whether or not your project will proceed to completion and thus whether you will ever pay it back. You will therefore need to complete a de minimis declaration for the full amount of the loan at the point when the legal right to receive it is conferred (which is when you sign the contract). It may be that, some months later, you have completed all your work with the loan and it becomes apparent that your project cannot proceed. The loan is then not repayable, and reverts to being a grant. Clearly this is State Aid.

But what if your project can proceed and you pay back the loan? You may argue that it is no longer State Aid at that point. However, you cannot retrospectively cancel a de minimis declaration, and the fact remains that the loan was made available to you, by the state, on terms that were extremely favourable and for which there was no market equivalent. Therefore even a repaid loan is still State

Aid because you have received advantageous funding during the early stages of your project that was not available in the market.

Would it not be more appropriate for us to receive the UCEF State Aid via the General Block Exemption Regulations (GBER), rather than de minimis?

In almost all cases, our judgement is the answer to this question is no. GBER is another route through which the European Commission has approved the giving of State Aid, and the most relevant part of this regulation from the point of view of UCEF is that the GBER allows for certain levels of State aid investments to be made for the purposes of environmental protection. The amount of aid that is permitted is calculated by reference to 'eligible costs'. Broadly speaking, eligible costs equate to the additional amount that needs to be invested in order to achieve the environmental objective when compared to technology that does not achieve the environmental objective. For example, eligible costs would be the extra costs needed to install a renewable heat system when compared to a conventional boiler.

In order to apply for support under the GBER Environmental Protection route, you would need to be able to demonstrate that the funded activity would not be undertaken or would be cheaper if a conventional technology was installed.

In addition, environmental aid under GBER is only permitted up to a specified percentage of these eligible costs. So, for example, in relation to investment aid to increase the level of environmental protection in the absence of European standards, the maximum permitted level of aid is 40% of eligible costs (with an additional 10% available for medium sized enterprises and 15% for small enterprises). Because of these limits, it is in most cases going to be more beneficial for applicants to UCEF to be supported via the de minimis route. For extremely large projects with development costs that will far outstrip the de minimis allowance, or in cases where your de minimis allowance has already been fully allocated, this is something we can investigate with you further.

Please note that any organisation using this guidance is responsible for determining (or seeking advice to determine) their position under the state aid rules, and we do not accept any responsibility for any loss, damage or other liability resulting from reliance on the guidance.

If you have any questions, please contact the UCEF team for help.

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