

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND  
NORTHERN IRELAND PROTOCOL**

**C(2022) 9120 FINAL: COMMUNICATION FROM THE COMMISSION GUIDELINES  
FOR STATE AID IN THE AGRICULTURAL AND FORESTRY SECTORS AND IN  
RURAL AREAS**

**C(2022) 9131 FINAL: COMMISSION REGULATION (EU) .../... OF 14.12.2022  
DECLARING CERTAIN CATEGORIES OF AID IN THE AGRICULTURAL AND  
FORESTRY SECTORS AND IN RURAL AREAS COMPATIBLE WITH THE  
INTERNAL MARKET IN APPLICATION OF ARTICLES 107 AND 108 OF THE  
TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION + ANNEXES 1-3**

**SEC(22)442: REGULATORY SCRUTINY BOARD OPINION  
SWD(22)418: IMPACT ASSESSMENT  
SWD(22)419: IMPACT ASSESSMENT EXECUTIVE SUMMARY**

**AND**

**C(2022) 8995 FINAL: COMMUNICATION TO THE COMMISSION APPROVAL OF  
THE CONTENT OF A DRAFT FOR A COMMUNICATION FROM THE COMMISSION  
ON THE GUIDELINES FOR STATE AID IN THE FISHERY AND AQUACULTURE  
SECTOR**

**C (2022) 9139 FINAL: COMMISSION REGULATION (EU) .../... OF 14.12.2022  
DECLARING CERTAIN CATEGORIES OF AID TO UNDERTAKINGS ACTIVE IN  
THE PRODUCTION, PROCESSING AND MARKETING OF FISHERY AND  
AQUACULTURE PRODUCTS COMPATIBLE WITH THE INTERNAL MARKET IN  
APPLICATION OF ARTICLES 107 AND 108 OF THE TREATY ON THE  
FUNCTIONING OF THE EUROPEAN UNION + ANNEXES 1-4**

**SEC(22)441: REGULATORY SCRUTINY BOARD OPINION  
SWD(22)408: IMPACT ASSESSMENT  
SWD(22)409: IMPACT ASSESSMENT EXECUTIVE SUMMARY**

Submitted by Department for Environment, Food and Rural Affairs

14 February 2023

## **SUBJECT MATTER**

1. The European Commission has adopted revised State aid rules in relation to Articles 107 and 108 of the Treaty on the Functioning of the European Union (TFEU), and these apply to the agricultural, forestry and fishery and aquaculture sectors. These changes aim to align EU state aid with EU strategic priorities, in particular the Common Agricultural Policy (CAP), the Common Fisheries Policy (CFP), as well as to the European Green Deal. Changes apply to three main areas:
  - Revisions to the Agricultural Block Exemption Regulation ('ABER') and Fishery Block Exemption Regulation ('FIBER'), which declare specific categories of aid compatible with EU State aid rules and exempt them from the requirement of prior notification to and approval by the Commission, provided that they fulfil certain conditions.
  - The new Guidelines for State aid to the agricultural and forestry sectors and in rural areas ('Agricultural Guidelines'), and the new Guidelines for State aid in the fishery and aquaculture sector ('Fisheries Guidelines').
  - The Commission has also decided to prolong the Fishery de minimis Regulation (Regulation (EU) No 717/2014), currently in place until 31 December 2022, until 31 December 2023.

## **SCRUTINY HISTORY**

2. There is no Parliamentary scrutiny history relevant to this Explanatory Memorandum.

## **MINISTERIAL RESPONSIBILITY**

3. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

4. DAERA have an interest in all of the above changes as this would take effect in Northern Ireland. They have previously raised the changes to block exemptions through continued engagement with European Commission officials responsible for this area. We consulted DAERA on both the fisheries and agricultural aspects of the changes to EU State aid regulations. DAERA had comments on the changes which we have reflected throughout this Explanatory Memorandum.

## LEGAL AND PROCEDURAL ISSUES

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### i. **Legal Base**

The legal base of the instruments is Article 107-109 of the Treaty on the functioning of the European Union ('TFEU').

The Northern Ireland Protocol (NIP) provides for certain areas of EU law to continue to apply to and in the UK in respect of Northern Ireland. Article 10(1) states that provisions of Union law listed in Annex 5 shall apply in respect of measures which affect trade between Northern Ireland and the EU which is subject to the NIP. Article 13(3) of the NIP provides that notwithstanding Article 6(1) of the Withdrawal Agreement and unless otherwise provided, reference to EU acts in the NIP shall be read as a reference to that legislation as amended or replaced. The acts addressed in this EM amend or replace (or will replace) provisions of Union law listed in Annex 5 and therefore apply by operation of Article 13(3).

### ii. **Voting Procedure**

Not applicable.

### iii. **Timetable for adoption and implementation**

The revised ABER and FIBER, as well as the Agricultural Guidelines, apply as of 1 January 2023.

The Fisheries Guidelines, which have been endorsed by the Commission, will be formally approved and will apply once all the language versions will be available (entrance into force planned in 1st quarter of 2023). In the meantime, the 2015 Fisheries Guidelines as amended in 2018 continue to apply.

The Fishery *de minimis* Regulation has been prolonged until 31 December 2023 to allow the Commission to finalise its review process, including its ongoing reflection as to whether the processing and marketing of fishery and aquaculture products should no longer be included in the Fishery *de minimis* Regulation and should rather fall under the general *de minimis* Regulation. The final amendment of the Fishery *de minimis* Regulation will be adopted in the course of 2023.

## POLICY IMPLICATIONS

The Northern Ireland Protocol and EU State Aid Law

6. Article 10(2) of the Northern Ireland Protocol (NIP) provides for measures supporting the production of and trade in agricultural products (including fisheries and aquaculture products) to be exempt from applicable EU State Aid law up to certain financial thresholds (the 'carve out'). Above these thresholds, EU State Aid law would apply, further to Article 10(1) and Annex 5 of the NIP. The carve out is intended to accommodate subsidies in NI that would be for a similar purpose to those provided under the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP) and for which EU Member States receive an exemption from EU State Aid rules. The limits of the carve out were agreed in a Decision of the Withdrawal Agreement Joint Committee on 17 December 2020. The limits were agreed based on past NI spend prior to EU Exit (Joint Committee Decision).
7. The limit for agricultural products other than fisheries and aquaculture products is set at £382.2 Million per year (for context DAERA spent £323,642,452 in agricultural subsidies in 2021)<sup>1</sup> for fisheries and aquaculture products it is set at £16.93 Million over 5 years, with a maximum of £4.01 Million per year. As part of this agreement there is a rollover mechanism for NI to carry forward up to £25.03 million to spend in the next calendar year relative to underspend of the preceding year. The rollover mechanism only applies to the carve out for agricultural products and does not include fisheries and aquaculture products (Article 1). Additionally, a further amount of £6.8 million for crisis spending in any year in which crisis conditions emerge was agreed.
8. The spending thresholds within the carve out include conditions and limits that are linked to international rules (WTO rules) which require most subsidies to be non-trade distorting. 83% of the determined limit for agricultural products is required to be compliant with Annex 2 of the WTO Agreement on Agriculture (Green Box).
9. Forestry and support for rural SMEs are not covered by the Carve out; these subsidies still have to go through applicable EU State Aid processes with limited access to expedited process (such as agricultural block exemptions).
10. This allows NI to deliver agriculture and fishery subsidies without seeking approval from the Commission (as would be required under EU State Aid rules) / notifying the EU in advance.
11. The impact of these changes to ABER, FIBER, the new fisheries and agricultural guidelines, and the prolongation of de minimis Regulation would only apply to agricultural and fisheries subsidies not covered under the Article 10(2) carveout. However, this is in the context that the NI Rural Development Programme continued in 2021 but after its conclusion, expenditure under continuing schemes

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<sup>1</sup> Statistical Review of Northern Ireland Agriculture 2021, DAERA, July 2022

will fall under Article 10(2). The main impacts of the changes which would apply to state aid not falling within Article 10(2) would be as follows:

#### ABER and FIBER

12. The main changes to the ABER and the FIBER include increased scope for block-exempted measures, including:
13. New categories of block-exempted measures, such as: aid to prevent or compensate damage caused by protected animals, aid in favour of environmental management commitments and aid for cooperation in the agricultural and forestry sectors or aid to prevent or repair damage caused by adverse climatic events in the fishery and aquaculture sector. Block-exempted measures for Local Development projects.
14. A new ceiling for European Innovation Partnership Operational Group projects aimed at innovations in the farming sector and in rural areas. Projects below €500,000 or up to €2 million per company are now block-exempted.
15. The new rules block-exempt up to 50% of cases which would have previously been subject to notification.

#### Agricultural Guidelines

16. A new, simplified procedure for the authorization of state aid for measures co-financed under the CAP;
17. An enlarged scope of permissible measures targeting animal diseases and plant pests, allowing for aid to be granted for emerging animal diseases and certain invasive alien species;
18. New incentives for farmers to commit to schemes under which they respect stricter environmental standards than what is required by law.

#### *Fisheries Guidelines*

19. Broader scope of permissible measures targeting animal diseases in aquaculture, allowing for aid to be granted for emerging animal diseases and certain invasive alien species.
20. Introduction of new categories of aid, such as aid for fleet and cessation measures (in line with the EMFAF) and aid for investments in equipment that contributes to safety of fishing vessels.

## Fisheries de minimis

21. The Commission has also decided to prolong the Fishery de minimis Regulation (Regulation (EU) No 717/2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector), currently in place until 31 December 2022, until 31 December 2023. The prolongation is intended to allow the Commission to finalise its review process, on particular on whether the processing and marketing of fishery and aquaculture products should no longer be included in the Fishery de minimis Regulation and should rather fall under the general de minimis Regulation (Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid Text with EEA relevance).
22. This Regulation provides for higher ceilings than the Fishery one. The processing and marketing of agricultural products already now fall under the general de minimis Regulation.
23. De minimis Regulations exempt small aid amounts from the scope of State aid control since they are deemed to have no impact on competition and trade in the Single Market.
24. As a consequence, de minimis support can be granted without prior notification and approval by the Commission. A final amendment of the Fishery de minimis Regulation will be adopted in the course of the next year.

## Policy implications- agriculture

25. The revised European Commission's ABER's extension of block exemptions and the new Agricultural Guidelines simplifying and broadening the scope of permissible measures and providing new incentives for environmental standards are positive developments for NI. This is because taken together these changes increase the ability of NI public authorities to take delegated decisions in a number of defined areas without needing to comply with the state aid rules requiring notification to and approval by the EU Commission prior to the state aid being put in place. These changes also incentivise adherence to environmental standards which is consistent with UK policy intent.

## Policy implications-fisheries

26. The key policy takeaway for Fisheries is that the current fisheries de minimis allowance is being extended to the 31st of December 2023. The same amounts can be spent as de minimis aid in Fisheries as was allowed before (30,000EUR/3 years to one recipient). Following the review of fisheries exemptions, the potential

for processing and marketing subsidies to be given as a general de minimis subsidy rather than a fisheries de minimis subsidy would be positive for Northern Ireland as that threshold is higher than the FIBER exemption, which would allow Northern Ireland to give larger amounts of subsidies for fisheries marketing and processing without prior notification and approval by the EU commission. Furthermore, there are new categories of aid that can be given under the block exemption. These changes are all only relevant if Northern Ireland is unable to accommodate future fisheries subsidies within the Article 10(2) limit.

## **CONSULTATION**

27. We have consulted DAERA regarding these changes. DAERA are undertaking analysis of the changes to the EU's regulations and what they would mean operationally. The potential benefits to the state aid changes outlined above are conditional on DAERA's access to them, and as noted DAERA have raised this issue around block exemptions (ABER and FIBER), in particular where reference is made to the provision of information such as that contained in a CAP strategic plan which would only be relevant to an EU member state. DAERA have utilised the ABER block exemptions since 2021 for existing schemes/legacy schemes that were in place pre the NIP (and plan to prolong these using the new ABERS). DAERA haven't established any new schemes using the block exemptions since the NIP was introduced. The EU have informed DAERA that they would be able to provide 'equivalent information' to that which a Member State is required to provide. Technical discussions are ongoing through continued engagement with European Commission officials responsible for this area to clarify the exact nature of what 'equivalent information' would entail.

## **FINANCIAL IMPLICATIONS**

28. It is not anticipated that the changes will require alteration to DAERA plans in relation to the amount of state aid provided in the future.



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