



Llywodraeth Cymru  
Welsh Government

GUIDANCE

# **GBER legacy subsidy scheme: Welsh Government support for superfast broadband**

State aid reference no: SC10183. The following scheme provides the legal cover for award of support inline with the General Block Exemption Regulation. The scheme does not provide any additional funding or budget.

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#### **1. Member State**

United Kingdom

#### **2. Region**

Wales

#### **3. Title of aid scheme**

Welsh Government Superfast Broadband Infrastructure Scheme

#### **4. UK legal basis**

Powers of the Welsh Ministers which allow the Welsh Government to support

enterprises under the Scheme are contained in:

- Section 60(1) of the Government of Wales Act 2006
- Section 1(2), 1(3)d and 1(7)f of the Welsh Development Agency Act 1975.

The legislation which gives effect to EC Law in Wales is:

- the European Communities Act (1972) (section 2(1)), and
- the Government of Wales Act 2006 (section 80).

## **5. EC legal basis**

All aid provided under this Scheme will be within the limits set out in Article 52 (Aid for Broadband Infrastructures) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation).

[Full version of the regulation](#) on EUR-Lex

Summary information relating to the scheme has been registered with the Commission under reference SA.60355.

## **6. Definitions**

In this scheme, the following expressions have the same meaning attributed to them as in the General Block Exemption. For ease of reference these have been replicated below:

### **Ad hoc aid**

Means aid not granted on the basis of an aid scheme.

## **Agricultural product**

Means the products listed in Annex I to the Treaty, except fishery and aquaculture products listed in Annex I to Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013.

## **Aid**

Means any measure fulfilling all the criteria laid down in Article 107(1) of the Treaty.

## **Aid intensity**

Means the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge.

## **Aid scheme**

Means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be granted to one or several undertakings for an indefinite period of time and/or for an indefinite amount.

## **Alternative trading platform**

Means a multilateral trading facility as defined in Article 4(1)(15) of Directive 2004/39/EC where the majority of the financial instruments admitted to trading are issued by SMEs.

## **Basic broadband**

‘Basic broadband networks’ means networks with basic functionalities which are based on technology platforms such as asymmetric digital subscriber lines (up to ADSL2+ networks), non-enhanced cable (e.g. DOCSIS 2.0), mobile networks of third generation (UMTS) and satellite systems.

## **Broadband-related civil engineering works**

Means the civil engineering works which are necessary for the deployment of a broadband network, such as digging up a road in order to enable the placement of (broadband) ducts.

## **Coal**

Means high-grade, medium-grade and low-grade category A and B coal within the meaning of the international codification system for coal established by the United Nations Economic Commission for Europe and clarified in the Council decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines ([OJ L 336, 21.12.2010, p. 24](#)).

## **Date of granting of the aid**

Means the date when the legal right to receive the aid is conferred on the beneficiary under the applicable national legal regime.

## **Ducts**

Means underground pipes or conduits used to house (fibre, copper or coax) cables of a broadband network.

## **Entrusted entity**

Means the European Investment Bank and the European Investment Fund, an international financial institution in which a Member State is a shareholder, or a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission: the entrusted entity can be selected or directly appointed in accordance with the provisions of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([OJ L 134, 30.4.2004, p. 114](#)), or any subsequent legislation replacing that directive in full or in part.

## **Equity investment**

Means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking.

## **Exit**

Means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares/loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering (IPO).

## **Fair rate of return (FRR)**

Means the expected rate of return equivalent to a risk-adjusted discount rate which reflects the level of risk of a project and the nature and level of capital the private investors plan to invest.

## **Financial endowment**

Means a repayable public investment made to a financial intermediary for the purposes of making investments under a risk finance measure, and where all the proceeds shall be returned to the public investor.

## **Financial intermediary**

Means any financial institution regardless of its form and ownership, including fund-of-funds, private equity investment funds, public investment funds, banks, micro-finance institutions and guarantee societies.

## **First commercial sale**

Means the first sale by a company on a product or service market, excluding limited sales to test the market.

## **Fiscal successor scheme**

Means a scheme which constitutes an amended version of a previously existing scheme in the form of tax advantages and which replaces it.

## **Follow-on investment**

Means additional risk finance investment in a company subsequent to one or more previous risk finance investment rounds.

## **Gross grant equivalent**

Means the amount of the aid if it had been provided in the form of a grant to the beneficiary, before any deduction of tax or other charge.



## **Guarantee**

In the context of sections 1, 3 and 7 of the regulation means a written commitment to assume responsibility for all or part of a third party's newly originated loan transactions such as debt or lease instruments, as well as quasi-equity instruments.

## **Guarantee rate**

Means the percentage of loss coverage by a public investor of each and every transaction eligible under the relevant State aid measure.

## **Independent private investor**

Means a private investor who is not a shareholder of the eligible undertaking in which it invests, including business angels and financial institutions, irrespective of their ownership, to the extent that they bear the full risk in respect of their investment. Upon the creation of a new company, private investors, including the founders, are considered to be independent from that company.

## **Individual aid**

Means:

- i. ad hoc aid, and
- ii. awards of aid to individual beneficiaries on the basis of an aid scheme.

## **Innovative enterprise**

Means an enterprise:

- a. that can demonstrate, by means of an evaluation carried out by an external expert that it will in the foreseeable future develop products, services or

processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure, or

- b. the research and development costs of which represent at least 10 % of its total operating costs in at least 1 of the 3 years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor.

## **Loan**

Means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period. It may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield. The refinancing of existing loans shall not be an eligible loan.

## **Marketing of agricultural products**

Means holding or display with a view to sale, offering for sale, delivery or any other manner of placing on the market, except the first sale by a primary producer to resellers or processors and any activity preparing a product for such first sale; a sale by a primary producer to final consumers shall be considered to be marketing if it takes place in separate premises reserved for that purpose.

## **Natural person**

For the purpose of Articles 21 and 23 means a person other than a legal entity who is not an undertaking for the purposes of Article 107(1) of the Treaty.

## **Next generation access (NGA) networks**

Means advanced networks which have at least the following characteristics:

- a. deliver services reliably at a very high speed per subscriber through optical (or equivalent technology) backhaul sufficiently close to user premises to guarantee the actual delivery of the very high speed
- b. support a variety of advanced digital services including converged all-IP services, and (c) have substantially higher upload speeds (compared to basic broadband networks).

At the current stage of market and technological development, NGA networks are:

- a. fibre-based access networks (FTTx)
- b. advanced upgraded cable networks and
- c. certain advanced wireless access networks capable of delivering reliable high-speeds per subscriber.

## **Passive broadband infrastructure**

Means a broadband network without any active component. It typically comprises civil engineering infrastructure, ducts and dark fibre and street cabinets.

## **Physical unbundling**

Grants access to the end-consumer access line and allows competitors' own transmission systems to directly transmit over it.

## **Primary agricultural production**

Means production of products of the soil and of stock farming, listed in Annex I to the Treaty, without performing any further operation changing the nature of such products.

## **Processing of agricultural products**

Means any operation on an agricultural product resulting in a product which is also an agricultural product, except on-farm activities necessary for preparing an animal or plant product for the first sale.

## **Quasi-equity investment**

Means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which are unsecured in the event of default. Quasi-equity investments can be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity.

## **Replacement capital**

Means the purchase of existing shares in a company from an earlier investor or shareholder.

## **Risk finance investment**

Means equity and quasi-equity investments, loans including leases, guarantees, or a mix thereof to eligible undertakings for the purposes of making new investments.

## **Small and medium-sized enterprises**

Or 'SMEs' means undertakings fulfilling the criteria laid down in Annex I of the GBER.

## Undertaking in difficulty

Means an undertaking in respect of which at least one of the following circumstances occurs:

- a. In the case of a limited liability company (other than an SME that has been in existence for less than 3 years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, 'limited liability company' refers in particular to the types of company mentioned in Annex I of Directive 2013/34/EU (37) and 'share capital' includes, where relevant, any share premium.
- b. In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than 3 years or, for the purposes of eligibility for risk finance aid, an SME within 7 years from its first commercial sale that qualifies for risk finance investments following due diligence by the selected financial intermediary), where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses. For the purposes of this provision, 'a company where at least some members have unlimited liability for the debt of the company' refers in particular to the types of company mentioned in Annex II of Directive 2013/34/EU.
- c. Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors.
- d. Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan.
- e. In the case of an undertaking that is not an SME, where, for the past 2 years:
  - i. the undertaking's book debt to equity ratio has been greater than 7,5 and
  - ii. the undertaking's EBITDA interest coverage ratio has been below 1,0.

## **Unlisted SME**

Means an SME which is not listed on the official list of a stock exchange, except for alternative trading platforms.

## **Wholesale access**

Means access which enables an operator to utilise the facilities of another operator. The widest possible access to be provided over the relevant network shall include, on the basis of the current technological developments, at least the following access products. For FTTH/FTTB networks: ducts access, access to dark fibre, unbundled access to the local loop, and bitstream access. For cable networks: duct access and bit-stream access. For FTTC networks: duct access, sub-loop unbundling and bit-stream access. For passive network infrastructure: duct access, access to dark fibre and/or unbundled access to the local loop. For ADSL-based broadband networks: unbundled access to the local loop, bit-stream access. For mobile or wireless networks: bit-stream, sharing of physical masts and access to the backhaul networks. For satellite platforms: bit-stream access.

## **7. Objective of the scheme**

The scheme is to deliver digital infrastructure across Wales, including the creation, improvement and expansion of broadband infrastructure to support the access to fast reliable broadband to communities where the market has failed to deliver.

The scheme will be in the form of a grant awarded to local authorities, who will be encouraged both to work with social enterprises and 3rd sector organisations and to collaborate regionally.

## **8. Government body authorised to implement the scheme**

Welsh Government

## **9. Scope of the scheme**

The scheme will be open to all enterprises in Wales excluding those active in the following sectors:

- Fisheries and aquaculture
- The processing and marketing of agricultural products when (1) the amount of aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the enterprise concerned or (2) the aid is conditional on being partly or entirely passed on to primary producers.

Where an undertaking is active in both an excluded sector and a non-excluded sector, aid may be given to fund non-excluded activities with the condition that activities in the excluded sector do not benefit from aid granted under this scheme.

In addition, aid will not be allowed in the following circumstances:

- Aid to export related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity
- Aid to facilitate the closure of uncompetitive coal mines, as covered by Council Decision No 2010/787
- Where aid is subject to the obligation for the beneficiary to have its headquarters in the relevant Member State or to be predominantly established in that Member State
- Where the granting of aid is subject to the obligation for the beneficiary to use nationally produced goods or services

- Aid contingent upon the use of domestic over imported goods
- Aid measures restricting the possibility for the beneficiaries to exploit the research, development and innovation results in other Member States.

Aid may not be given where the proposed recipient is:

- Subject to an outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the common market; or
- Where aid is granted to an undertaking in difficulty (see definition).

## **10. Duration of the scheme**

Aid under this scheme may be granted until 31 December 2025.

## **11. Budget for aid under the scheme**

Although there is no defined budget for aid under this scheme, it has been estimated that the total expenditure will be up to £12.7 million.

## **12. Form of aid**

All aid awarded under the scheme will be transparent and in line with criteria set out in Article 4 of the General Block Exemption Regulation. Aid may be awarded by way of:

- Grants; equity, quasi-equity or financial endowment.

## **13. Eligible activities to be supported under the**



## **scheme**

The scheme supports the financing of broadband infrastructure. A detailed description of the eligible activities that can be supported is set out in Schedule 1.

### **14. Incentive effect**

Aid recipients must demonstrate that the aid is required for projects to proceed by submitting a written application before work on the project activity has started. The application will as a minimum contain the following information:

- a. Name and size
- b. Description of the project, including its start and end dates
- c. Location of the project
- d. List of project costs
- e. Form of and amount of public funding needed for the project.

### **15. Cumulation**

In determining whether the individual notification thresholds and the maximum aid intensities are respected, the total amount of public support for the activity or project shall be taken into account, regardless of whether that support is financed from local, regional, national or community sources.

Aid provided under this scheme will not be cumulated with other forms of aid nor with aid classed as de minimis aid in regard to the same eligible costs if the result would breach the applicable aid intensities.

A mechanism is in place as part of the application process to ensure that cumulation of aid does not exceed the maximum allowable aid intensities of the Scheme. Due diligence checks will be carried out during the awarding process.

## 16. Monitoring and reporting requirements

All recipients of aid under the Scheme will be informed that aid has been provided under the Scheme, registered under SC10183 pursuant to Article 52 (Aid for Broadband Infrastructures) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (General Block Exemption Regulation).

Records will be kept for 10 years from the date the last award of aid under the Scheme. Records will be sufficiently detailed to establish that the conditions of the Scheme are met.

Details of any award exceeding €500,000 given under this scheme must be made publicly available via the European Commission Transparency website within 6 months of granting. An annual report on the expenditure under this Scheme will be provided to the Commission.

The Welsh Government shall provide the Commission with all the information and documentation the Commission considers necessary to monitor the application of this Regulation, within 20 days of such request from the Commission.

Contact information:

State Aid Policy Unit  
Welsh Government  
Cathays Park  
Cardiff CF10 3NQ  
United Kingdom  
Tel: + 44 (0)3000 253568  
E-mail: [state.aid@gov.wales](mailto:state.aid@gov.wales)

# **Schedule 1: Aid for sport and multifunctional recreational facilities**

The investment shall be located in areas where there is no infrastructure of the same category (either basic broadband or NGA network) and where no such infrastructure is likely to be developed on commercial terms within 3 years from the moment of publication of the planned aid measure, which shall also be verified through an open public consultation.

The aid shall be allocated on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.

The network operator shall offer the widest possible active and passive wholesale access, as defined under section 6 'Definitions' above, under fair and non-discriminatory conditions, including physical unbundling in the case of NGA networks. Such wholesale access shall be granted for at least seven years and the right of access to ducts or poles shall not be limited in time. In the case of aid for the construction of ducts, the ducts shall be large enough to cater for several cable networks and different network topologies.

The wholesale access price shall be based on the pricing principles set by the national regulatory authority and on benchmarks that prevail in other comparable, more competitive areas of the Member State or the Union taking into account the aid received by the network operator. The national regulatory authority shall be consulted on access conditions, including pricing, and in the event of dispute between access seekers and the subsidised infrastructure operator.

## **Eligible costs**

The eligible costs shall be the following:

- a. investment costs for the deployment of a passive broadband infrastructure
- b. investment costs of broadband-related civil engineering works

- c. investment costs for the deployment of basic broadband networks, and
- d. investment costs for the deployment of next generation access (NGA) networks

As an alternative to establishing the eligible costs as provided for in the above list, the maximum amount of aid for a project may be established on the basis of an open, transparent and non-discriminatory competitive selection process respecting the principle of technology neutrality.

## **Notification thresholds**

The maximum support that can be provided under this scheme is €70 million total costs per project. Any grant award exceeding these levels will need to be notified directly to the Commission. Where the amount of aid granted to the project exceeds €10 million a monitoring and claw-back mechanism shall be put into place.