



**PUBLIC FUNDING OF TOURISM ACTIVITIES
and
STATE AID RULES**

GUIDANCE FOR PUBLIC FUNDING BODIES

This guidance is primarily an overview of how State aid rules apply to the funding of tourism activity and is aimed at public funders in SCOTLAND.

Recipients of public funding should seek further advice from their funding bodies.

Section 1 – Background and Introduction

Following complaints to the European Commission (EC) from private tourism businesses in England, Wales and Scotland about the use of public funds by UK Tourism Authorities (TAs) to support tourism websites, the EC conducted an informal investigation into whether public funding by UK TAs is compliant with State aid regulations. The EC set out to identify the types of activity not being undertaken primarily (or not at all) to carry out the UK authorities' public purpose of providing tourist information and promoting the country, region or area and does, or may, compete with activities that could be carried out by a private sector organisation.

This investigation was concluded in Dec 2013 with the EC and UK Authorities (including the Scottish Government (SG)) reaching an agreement on how to address the EC's concerns, resolve the existing complaints and provide guidance and clarity to tourism authorities when supporting future measures.

The result of this is that UK and Devolved Administration's (DA's) have undertaken to remind tourism authorities by Ministerial letter, that public funding of tourism activities is subject to State aid rules. The letter is attached as Annex A.

The agreed undertaking

In order to resolve the complaints the letter highlights the State aid risks that TAs should be aware of and requests that they, and the organisations and Destination Management Organisations (DMOs) they fund, reviewed their current practices and addressed any potential state aid issues no later than mid-March 2014.

Since issue of the Minister's letter, the Scottish Government disseminated information and the action required to address the complaints to publicly funded tourism bodies by way of workshops delivered from Jan – February 2014 (the Welsh and UK Government's delivered similar sessions in February and March respectively). This meant that, in practice, the implementation of the complaint solution varied across the UK. In order to ensure consistency of application across the UK, the Administrations asked stakeholders to contact Tourism policy teams if they had any concerns that activity did not fit with State aid rules by 31st May 2014.

Meantime DG COMP wrote to all complainants to inform them of the action taken to address their concerns and to formally close the complaints. The EC have also confirmed that any future challenges or complaints about State aid in the tourism sector should be directed to SG Tourism policy officials in the first instance who will consult with SG State aid unit and attempt to resolve the complaint.

The purpose of this guidance document is therefore to assist public funding bodies in Scotland to implement the undertaking as agreed with the EC and other UK Administrations. It is structured in order to discuss each of the issues highlighted in the Minister's letter while explaining the State aid rules and how to assess measures for the presence of State aid. Annex B provides flowcharts on the State aid assessment process and possible compatible solutions.

This paper is not legal advice and does not provide State aid cover for tourism activities. It is simply initial guidance on State aid rules as they apply to tourism activities and individual State aid advice should be sought when necessary.

Section 2 - State aid

State aid is an (EC) term which refers to forms of public assistance, given to undertakings¹ on a discretionary basis, which has the potential to distort competition and affect trade between Member States of the European Union.

The State aid rules are set by the EC and comprise various articles of the Treaty on the Functioning of the European Union (TFEU), Regulations, Frameworks and Guidelines - which set out what aid *can* be given and under which circumstances. The EC governs Member States' compliance with these rules and many aid measures must be notified to the Commission for approval. Ignoring the rules can result in the Commission viewing aid as unlawful and possibly subject to repayment - by the aid recipient.

There are **four key tests derived from Article 107 (1) of the TFEU²** which need to be considered in order to establish whether a measure constitutes State aid. These tests are cumulative and all four must be met for State aid to be present.

1. There has been an **intervention by the State or through State resources**. This includes all resources of the public sector including resources of intra-state entities. E.g., VisitScotland, Local Authorities. Scottish Canals. It also includes funding controlled or regulated by the State e.g. Lottery funding, European Structural funds, Leader funding.

State resources can take a variety of forms including direct grants, interest and tax reliefs, guarantees, sub commercial loans or providing goods and services on preferential terms.

If the support is provided directly by the EU or international financial institutions, with no discretion on the part of national authorities, it is not considered to be a State resource.

¹ An undertaking is defined as any organisation regardless of its legal status that is engaged in economic activity. This includes e.g. charities, third sector organisations.

²http://eur-lex.europa.eu/resource.html?uri=cellar:ccccda77-8ac2-4a25-8e66-a5827ecd3459.0010.02/DOC_1&format=PDF

2. The intervention **gives the recipient an advantage on a selective basis**. An advantage, within the meaning of Article 107(1) TFEU, is any economic benefit which an undertaking would not have obtained under normal market conditions. Whenever the financial situation of an undertaking is improved as a result of State intervention, an advantage is present e.g. funding of operating costs or website construction costs.

Economic transactions carried out by a public body or a public undertaking do not confer an advantage and do not constitute aid if they are carried out in line with normal market conditions.

Selective basis means the measure applies only to certain (groups of) undertakings or certain sectors of the economy in a given Member State such as the tourism sector.

3. **Competition has been or may be distorted.**

A measure granted by the State is considered to distort or threaten to distort competition when it is liable to improve the competitive position of the recipient compared to other undertakings with which it competes. For all practical purposes, a distortion of competition within the meaning of Article 107 TFEU is thus assumed as soon as the State grants a financial advantage to an undertaking in a liberalised market where there is, or could be, competition.

For aid to be presumed to distort competition, it is normally considered sufficient that the aid gives the beneficiary an advantage by relieving it of expenses it would otherwise have had to bear in the course of its day-to-day business operations.

For aid to be present there has to be a market. If market failure can be demonstrated, it may be possible to justify intervention.

4. The intervention is likely to **affect trade between Member States**.

The threshold for this test is very low and it is up to the public authority granting the aid to prove that the measure is not likely to have an effect on trade across the EEA. Even if the undertaking receiving the aid is not directly involved in cross-border trade, intra community trade could still be affected as subsidy could make it more difficult for operators in other Member States to enter the market.

However, the Commission in several cases considered that, due to their specific circumstances, certain activities had a local impact and consequently did not affect trade across the EEA. Common features of these decisions are:

- (a) the aid does not lead to demand or investments being attracted to the region concerned and does not create obstacles to the establishment of undertakings from other Member States;

- (b) the goods or services produced by the beneficiary are purely local or have geographically limited attraction zone;
- (c) there is at most a marginal effect on the markets and on consumers in neighbouring Member States.

Some examples of cases are:

- swimming pools and other leisure facilities intended predominantly for a local catchment area (this is unlikely to include spa or health resorts or hotels with leisure facilities);
- museums or other cultural infrastructure unlikely to attract visitors from other Member States;

The 'local trade' argument should be applied on a case by case basis and reference wherever possible made to similar decisions made by the EC.

There are no State aid rules that are specific to the tourism sector. If the four tests are met and aid is present, State aid cover may be available under various horizontal State aid rules, regulations and frameworks, discussed further below.

If an assessment considers any one or more of the four tests have not been met, robust information should be retained to justify the 'no aid' position in event of challenge.

See flowchart at Annex B for assessing State aid.

The *de minimis* regulation³

The *De minimis* regulation allows public funding to a single recipient of up to €200,000 over a 3 year fiscal period as EC considers this has a negligible impact on trade and competition, and does not require notification. This aid can be given for most purposes, including operating aid, and is not project-related.

- The maximum *de minimis* funding any single recipient can receive is €200,000⁴ (cash grant equivalent) over a 3 year fiscal period.
- This ceiling takes into account **all** public assistance given as *de minimis* funding over the previous 3 years and which can take various forms (grants, loans, subsidised contracts, etc.).

TAs and fund recipients have to be careful that the total public funding they receive as *de minimis* over a three year period does not breach the *de minimis* threshold.

Exclusions; export related activities, purchase of road freight vehicles.

³http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf

⁴ €100,000 in the road freight transport sector

Transparency requirements In the tourism sector, many DMOs receive *de minimis* funding from a number of public funders. Public funders are required to establish up front how much *de minimis* aid an organisation has received prior to committing funding. It is for recipients to confirm to funders the value of *de minimis aid* they have received from all public funding bodies within the three year period and that they have enough *de minimis* allowance available to receive further *de minimis* funding. Recipients can usually find this on an 'offer of grant' letter or by confirmation from the funding body.

De minimis and tourism websites

If a website is restricted to a particular (or group of) undertakings who promote their businesses over others e.g. golf, public funding of that website could (for construction or maintenance costs) confer an advantage to the businesses involved. If the website is also used to provide an online booking service e.g. accommodation, tee-times, that could be in direct competition with private website providers, then publicly funding this activity could also breach the current undertaking to resolve the complaints.

However, if the activity fits with and strengthens the authorities public purpose of destination marketing, information provision or economic development etc. then *de minimis* could be used. To comply with the undertaking and prevent challenge an assessment of a market gap for the proposed activity would be required. See section 4 for further information.

Paragraphs 8 and 9 of the *De minimis* regulation explains how existing *de minimis* commitments are applied to a new company in the case of mergers or acquisitions, or if one undertaking splits into two or more separate undertakings.

General Block Exemption Regulation (GBER)⁵

The GBER sets out categories of compatible aid that are exempt, subject to certain conditions, from the EC's State aid notification process. The process for registering schemes or ad hoc aid under the GBER is relatively quick and easy. Schemes must be registered with the EC (via the SG State aid unit) within 20 days of their start date but there is no requirement to wait for an official decision from the EC. Each category of aid has its own criteria that must be met.

The 2014 GBER currently provides legal cover for awards of State aid for the following activities:

- Regional Investment and Operating aid;
- Investment aid to SME's;
- Aid for consultancy in favour of SME's
- Aid to SMEs for participation in fairs;
- Cooperation costs for SME's in ETC Projects
- Risk finance/Aid for start-ups

⁵http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_187_R_0001&from=EN

- Research, development and innovation, research infrastructure.
- Training aid; and
- Employment of disabled and disadvantaged workers.
- Environmental protection; energy infrastructures,
- making good the damage caused by certain natural disasters;
- social aid for transport for residents of remote regions;
- certain broadband infrastructure;
- culture and heritage conservation;
- aid schemes for audio-visual works
- aid for sport and multifunctional recreational infrastructure.

Public funding offered under GBER provisions above, are restricted to the specific activity and maximum aid levels as stated in the relevant article. No additional public funding (from any public body, including *de minimis* aid) can be offered if it exceeds the intervention level.

For Regional Investment and Operating Aid, aid intensities are limited to the maximum permissible under the published UK Assisted Areas Map.

GBER Transparency requirements

Member states are required to publish on a central website the nature and value of all GBER schemes and individual aid above €500k. The UK system is still under discussion but is expected to go live in 2016.

Scheme spend under each GBER Article also needs to be reported to the EC on an annual basis (via the SG State Aid Unit).

Horizontal frameworks and guidelines

If compatible cover cannot be found by using the exemptions provided in the GBER there is a series of State aid horizontal frameworks and guidelines that apply to most sectors where cover can be sought. Frameworks usually provide for activity or higher aid intensities that do not fit with the GBER and requires individual notification to the EC in advance for approval. No aid can be issued prior to approval so the notification timescale has to be built in to any project planning process. Notification is often a prolonged process and generally takes between 6 and 18 months depending on the complexity of the measure.

For aid to be approved under a Framework the Commission will assess the need for aid using seven common principles. Aid needs to –

1. Contribute to an objective of common European interest.
2. Necessary.
3. Appropriate.

4. Proportional.
5. Has an incentive effect.
6. Avoids undue negative effects.
7. Transparent.

See Annex C for descriptions of each principle.

The horizontal frameworks and guidelines⁶ currently in force are:

- Research, Development and Innovation Framework;
- Environmental Protection Guidelines;
- Risk Capital Guidelines;
- Regional Aid Guidelines; and
- Rescue and Restructuring Guidelines.

Sector specific guidelines are also in force, available from EC website below.

Further guidance and information on State aid

The EC has recently produced a 'Notice on the notion of State aid pursuant to Article 107(1) TFEU'⁷ (currently in draft). The notice intends to provide practical guidance in order to identify State aid measures which have to be notified to and approved by the Commission before being lawfully implemented. In doing so, the draft notice aims to cover all the constitutive elements of the notion of State aid: existence of an undertaking, imputability of the measure to the State, financing through State resources, grant of an advantage, selectivity and effect on trade and competition. It also provides further information about the State aid tests.

Scottish Government State aid website

[:http://www.scotland.gov.uk/Topics/Government/State-Aid](http://www.scotland.gov.uk/Topics/Government/State-Aid)

European Commission state aid website:

http://ec.europa.eu/competition/state_aid/overview/index_en.html

In addition to informing TAs to assess their activity for compatibility with State aid rules, the Minister's letter also informs TAs that funded tourism activity has to fit with the UK authorities' public purpose as required of the agreement in order to satisfy complainants that public funding for tourism activities are being issued compliantly.

⁶http://ec.europa.eu/competition/state_aid/legislation/horizontal.html

⁷http://ec.europa.eu/competition/consultations/2014_state_aid_notion/draft_guidance_en.pdf

Section 3 - The definition of a ‘Tourism Authority’ and ‘Tourism Activity’ as applies to this exercise

A Tourism Authority (TA) is a national tourism authority such as VisitScotland or VisitEngland whose public purpose is to provide tourist information and promote the country, region or area.

The Minister’s letter states;

‘...UK tourism authorities financed wholly or partly by public funds... must not carry out or finance any commercial activity which is not undertaken primarily (or at all) to carry out the UK authorities’ public purpose of providing tourist information and promoting the country, region or area and which does or may compete with activities carried out by private sector organisations in the tourist industry, including booking facilities, buying and selling holidays and holiday accommodation, and advertising.

The agreed undertaking requires UK TAs to assess their own activity, and the activity of tourism bodies they fund, to ensure public funding is carried out to fulfil the TAs public purpose only in order to close the existing tourism complaints.

TA Public Purpose Tourism Activity
Tourism activity can be in competition with private competitors as long as activity fits with providing tourist information and promoting the country, region or area as a tourist destination and complies with State aid rules or is on a wholly commercial basis with separation of accounts.
Commercial activity that is not part of information provision or destination marketing e.g. offering online accommodation booking services or advertising should not be carried out or funded by TAs. Exceptionally, the activity may be able to be funded only if it is not provided by a commercial market and it complies with State aid rules or is on a wholly commercial basis with separation of accounts.

Other Public funding bodies.

Responsibility for ensuring compliance with State aid rests with the public funder. As tourism activities in Scotland are funded and carried out by various public bodies such as **Local Authorities, Scottish Enterprise, Highland & Islands Enterprise, National Parks Authorities etc.** these bodies are also required to ensure that all tourism activity and organisations they fund, including DMO's, comply with State aid rules.

In addition, and in order to comply with the agreed undertaking and satisfy Scottish complainants, public funding bodies should ensure that funding they offer for tourism activity does not distort the market for tourism goods and services or displace activity from private competitors. This is to ensure that public funding supports growth rather than displacement and is in keeping with EU goal of ‘good aid’.

Public bodies can therefore continue to fund commercial tourism activity if the activity falls within an authorities’ public purpose of providing tourist information and promotion, it does not duplicate activity already provided by the market and it complies with State aid rules e.g. *de minimis*, *GBER*.

Public authorities also provide funding to businesses to achieve other public purposes, e.g. economic development in form of small businesses grants. In this case, providing funding to tourism businesses or organisations for commercial type activities should not breach the current agreement if funding complies with State aid rules.

This exercise does **not** apply to undertakings who carry out or fund tourism activities but who receive **no form of public funding**. (Public funding can include e.g. in-kind costs, tax reductions).

Section 4 - Commercial activity

Economic (commercial) activity is defined by the EC as the provision of goods and/or services on a market which competes with activities carried out by the private sector. This includes; booking facilities, buying and selling holidays and holiday accommodation, advertising, providing training services.

Providing public funding to these types of activities risks distorting the functioning of the market for tourism goods and services and risks conferring an advantage to selected undertakings by funding costs that their private competitors have to meet without any public sector support.

This exercise has highlighted the changing market for tourism goods and services. State intervention in the past may have been justified in order to fill historic gaps in the market but these gaps have almost disappeared as services become increasingly provided by the private sector and the need for public funding diminishing. This is evident by the fact that several complaints were from small Scottish tourism businesses who believed they offered similar tourism activity without state intervention. The provision of booking facilities and online advertising was of particular concern to Scottish complainants. These types of activities should not therefore be supported on a publicly funded website as they fall outside the TAs public purpose remit and/or can be provided by the market.

However, this does not prevent tourist organisations and DMOs from fulfilling their public purpose by promoting their area or conducting thematic promotions e.g. golf. The risk of State aid can be minimised if activity involves providing information about attractions in an area and listing accommodation and other tourist facilities using publicly funded websites as long as the opportunity to participate is open to all on a non-discriminatory basis (e.g. a first come first served basis) and has a direct link between the thematic promotion and the business. Any fee charged should be at a level to cover the cost of the promotion and not be a profit making exercise.

When TAs/DMO's pursue economic activities that are **not** part of information provision or destination marketing and that **are** in competition with private undertakings, it should only be done on a wholly commercial basis that is profit making, does not benefit from public subsidy and requires the respective financing, costs and revenues to be accounted for separately on the basis of consistently applied and objectively justifiable cost accounting principles. (time sheets, individual cost centre codes, set up of trading company).

Alternatively funding for commercial tourism activities may fulfil this undertaking if there is an identified market gap and/or funding is awarded for a public purpose other than information provision and promotion of an area.

In essence, the EC/UK have agreed that public funding of tourism activities should be driven by policy aims and aligned with national and local tourism strategies. This should ensure best value and that the activity is not already provided by the private market. If State intervention is required a market gap should be identified and evidence retained to justify intervention. This will be required in event of challenge.

There is no hard and fast rule to establish market failure in the tourism sector, but the European Commission has provided guidance in other sectors that we may adapt as a proxy. The most useful is probably the broadband guidelines⁸, which classifies areas as 'white', 'grey' and 'black' by their levels of provision and customer choice. The market situation in these areas still has to be researched fully to justify state intervention.

Otherwise the EC uses seven common principles (see page 7 above and Annex C) which may be of use when assessing whether aid is required.

Section 5 - Disposal of Assets

Tourism authorities are required to review all of their activities to ensure fit with their public purpose and State aid rules. If, after reviewing activities, a tourism authority decides to withdraw existing initiatives, financed wholly or partly by public funds, and would like to dispose of the associated assets accordingly, tourism authorities will need to ensure that any such disposal takes place in accordance with State aid rules.

All assets should therefore be disposed of at the market rate, to ensure that the undertaking purchasing the asset is not gaining an unfair advantage over its competitors as a result of the public investment. This would also require compliance with value for money principles and your organisations 'disposal of assets' policy. The general principles for determining an appropriate market rate can be found in the Commission's communication on the disposal of public land and buildings, which can be applied by analogy to other types of assets:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:209:0003:0005:EN:PDF>.

Section 6 - Quality Assurance schemes

The Commission is keen to improve quality within the tourism sector and Tourism authorities can run quality assurance schemes as long as there is no link between participation in a given quality assurance scheme for accommodation providers and the listing of an accommodation provider on a website financed wholly or partly by public funds. For example, the listing of an accommodation provider must not be conditional upon them having participated in a given QA scheme. As quality assurance schemes are deemed as commercial activity they need to comply with the State aid rules.

⁸ http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html

Section 7 - Next Steps

Public authorities who fund tourism activities from 1st June 2014 should refer to this guidance and/or SG State aid or EC websites, to assess whether proposed tourism activity fits with its public purpose, does not distort the tourism market and is compatible with the State aid rules.

Any publicly supported activity considered to be in breach of the State aid rules and where no suitable cover can be found, should be stopped immediately, or where this is not possible, steps put in place to ensure that the activity is stopped within a reasonable time frame.

Any public funding body with concerns about the compatibility of their funded activities should contact SG as below.

The Tourism Team, Scottish Government Tourism and Major Events Division,
by email - tourism@scotland.gsi.gov.uk
by post – 8th Floor, Ocean Point, 94 Ocean Drive, Edinburgh, EH6 6JH

State Aid Unit , Scottish Government, European Structural Funds Division.
By email – stateaid@scotland.gsi.gov.uk

This guidance has been updated to provide more clarity on the implementation of the complaint solution and to accommodate the new GBER, Frameworks and guidelines in force from 1st July 2014 and replaces earlier versions.

**Ministearairson Cumhachd, Iomairtagus Turasachd
Minister for Energy, Enterprise and Tourism**

Fearghas Ewing BPA
Fergus Ewing MSP

F/T: 0845 774 1741

E: scottish.ministers@scotland.gsi.gov.uk

To the Chief Executives of:

VisitScotland
Scottish Enterprise
Highlands and Islands Enterprise
Local Authorities
National Park Authorities

By email

4th December 2013

PUBLIC FUNDING FOR TOURISM AND STATE AID RULES

Following complaints to the European Commission about the use of public funds by UK tourism authorities to support tourism websites, I am writing to Scottish authorities to remind them that this funding is subject to state aid rules.

Regional and local tourism websites in Scotland are of course operated by a number of different independent organisations, comprising different mixes of public and private management at various levels outside the control of the Scottish Government. As such, the Scottish Government does not have direct control over these individual websites. However, we have agreed with the Commission that we would write to tourism authorities - public, private and public-private partnership organisations - to remind those organisations in receipt of public funds of their obligations to comply with state aid rules when applying those funds.

Please provide the Scottish Government at the contact details given at the foot of this letter with a list of the bodies that you fund, for example, Destination Marketing Organisations, by mid-December, or confirm that you have informed them of the outcome of the UK's agreement with the Commission no later than 23 December.

The state aid regulations form part of the body of EU competition law, which is enforced by the European Commission. State aid refers to forms of assistance granted by the state or through state resources to selected undertakings which have the potential to distort competition and to affect trade between Member States of the European Union. In this context, an undertaking is any entity which sells goods or services within the European single market. Put simply, where public funding is being used to provide financial benefit (of any kind) to a company, charity or other



entity which is carrying out economic activity, it is necessary to consider whether such support constitutes state aid.

Although state aid can be given legally if it is approved by the Commission, any aid which does not have Commission approval is potentially illegal under the state aid rules. Legal cover should therefore be sought for any funding which could potentially be aid before the funding is granted. While the process for gaining Commission approval varies, the state aid regulations are guided by the principle that aid should only be given to remedy identified market failures, or where it contributes to the common interest and where the benefits of the intervention outweigh any potential distortion of competition.

If the Commission discovers aid which has been granted without approval, they may order that the funding be stopped to allow them to investigate. If the aid already granted is found not to be compatible, the consequences can be severe: the Commission can rule the aid subject to recovery, with interest, from the date granted. The Government is obliged to recover illegal aid if ordered to do so by the Commission even if the recovery of aid means that recipient companies go bankrupt. Companies can also take the Government or granting authority to court for damages against illegal aid. There can be severe reputational damage to the public authorities concerned.

In conclusion, any existing activity which is likely to breach state aid rules should be stopped immediately. If you are unsure about whether a particular activity constitutes aid, you should consult the guidance on state aid provided by the Scottish Government's State Aid Unit in the first instance:
<http://www.scotland.gov.uk/Topics/Government/State-Aid>.

I would ask you to review your existing activity and confirm by mid-March 2014 if you have any concerns that your activities are not compatible with the state aid rules.

Agreement between the UK Government and the Commission

The UK has agreed with the Commission to communicate to you the substance of our discussions with them during their investigation of the complaints, and the terms of the agreement reached between the UK and the Commission at the conclusion of that investigation. The different elements of this agreement are outlined in turn below.

1. Commercial activity

The UK has agreed with the Commission that UK tourism authorities financed wholly or partly by public funds (including via financial assistance and operational support provided through any participation in joint ventures and/or other forms of commercial partnership) must not carry out or finance any commercial activity which is not undertaken primarily (or at all) to carry out the UK authorities' public purpose of providing tourist information and promoting the country, region or area and which does or may compete with activities carried out by private sector organisations in the tourist industry, including booking facilities, buying and selling holidays and holiday accommodation, and advertising.

The provision of accommodation booking facilities online was of particular concern to complainants addressing themselves to the Commission. The UK Government has agreed with the Commission that providing an accommodation booking tool on a website financed wholly or partly by public funds is an example of the type of commercial activity which does not carry out the UK authorities' public purpose and which may compete with activities carried out by private sector organisations.

Tourism authorities should take care where activities carried out in the course of their public function could potentially be seen to advertise one or more commercial products over and above other commercial products, in a way which is not part of that function. For example, activities should be aimed at providing information about local accommodation in a neutral way, rather than advertising an individual hotel. In seeking and choosing commercial organisations as cooperative partners in the sectors of national, regional or thematic promotions tourism authorities should not use selection criteria which are biased towards certain organisations in the sector in question.

2. *De minimis* aid

I would remind tourism authorities of the need for careful analysis of the *de minimis* regulation (Regulation (EC) No 1998/2006) to ensure that all the regulation's requirements are complied with fully. In particular, authorities should examine carefully the definition of what constitutes a separate undertaking for the purposes of their application for funding. More guidance can be found here:

<http://www.scotland.gov.uk/Topics/Government/State-Aid/if-its-aid/deminimis>.

3. Disposal of assets

Where authorities withdraw existing initiatives financed wholly or partly by public funds, and would like to dispose of the associated assets accordingly, tourism authorities will need to ensure that any such disposal takes place in accordance with state aid rules. All assets should therefore be disposed of at the market rate, to ensure that the undertaking purchasing the asset is not gaining an unfair advantage over its competitors as a result of the public investment. This would also require compliance with value for money principles. The general principles for determining an appropriate market rate can be found in the Commission's communication on the disposal of public land and buildings, which can be applied by analogy to other types of assets:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:209:0003:0005:EN:PDF>.

4. Quality assurance schemes for accommodation and online accommodation listing

Finally, the UK Government has agreed with the Commission that it would clarify that there should be no link between participation in a given quality assurance scheme for accommodation providers and the listing of an accommodation provider on a website financed wholly or partly by public funds. For example, the listing of an accommodation provider must not be conditional upon them having participated in a given scheme, nor should the fee for participation in a quality assurance scheme being run on commercial terms include listing on an authority's website for no fee or

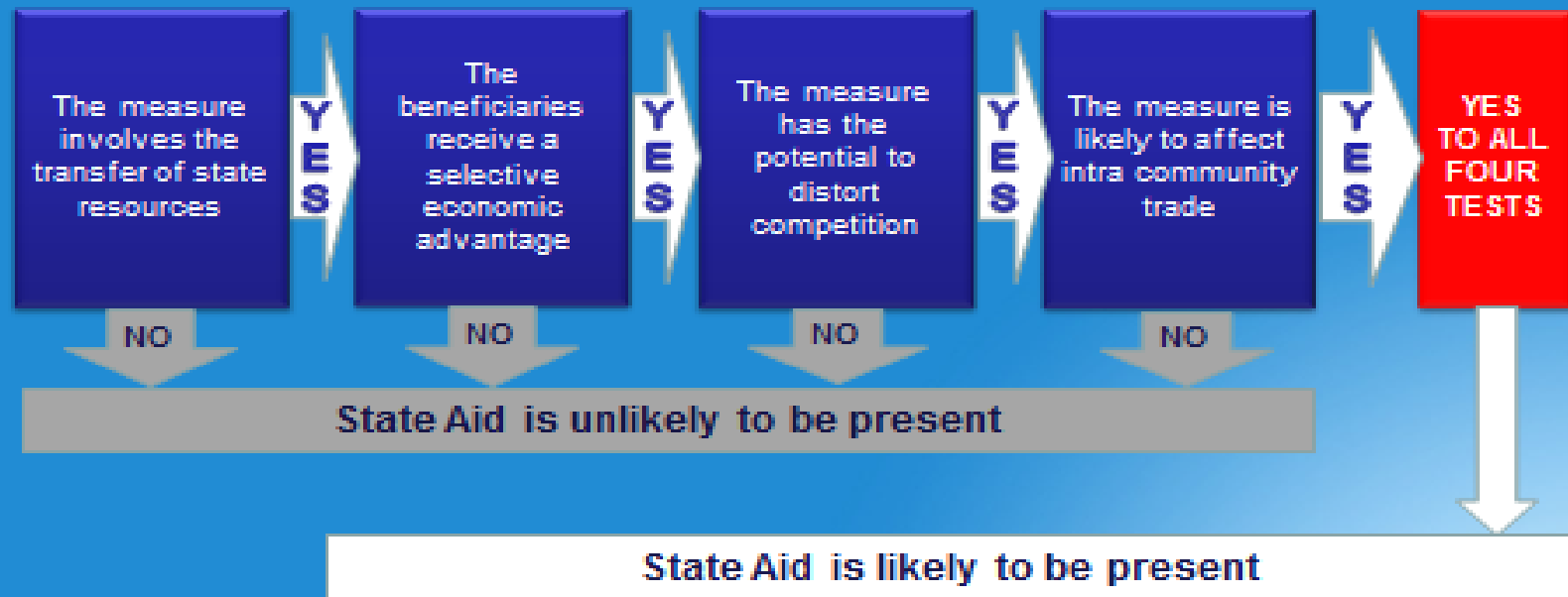
for a reduced fee. To summarise, properties may still be listed online, provided that there is no link between the provision of the listing service and participation in any quality assurance scheme.

Finally, please note that any stakeholder with concerns about the activities of a publicly-funded tourism authority that cannot be resolved with the tourism authority concerned should contact the Tourism Team within the Scottish Government Tourism and Major Events Division, by email - tourism@scotland.gsi.gov.uk - or by post - 8th Floor, Ocean Point, 94 Ocean Drive, Edinburgh, EH6 6JH.

The Scottish Government will be involved in a number of workshops over the next few weeks which will give organisations the opportunity to explore the requirements of this letter in more detail.

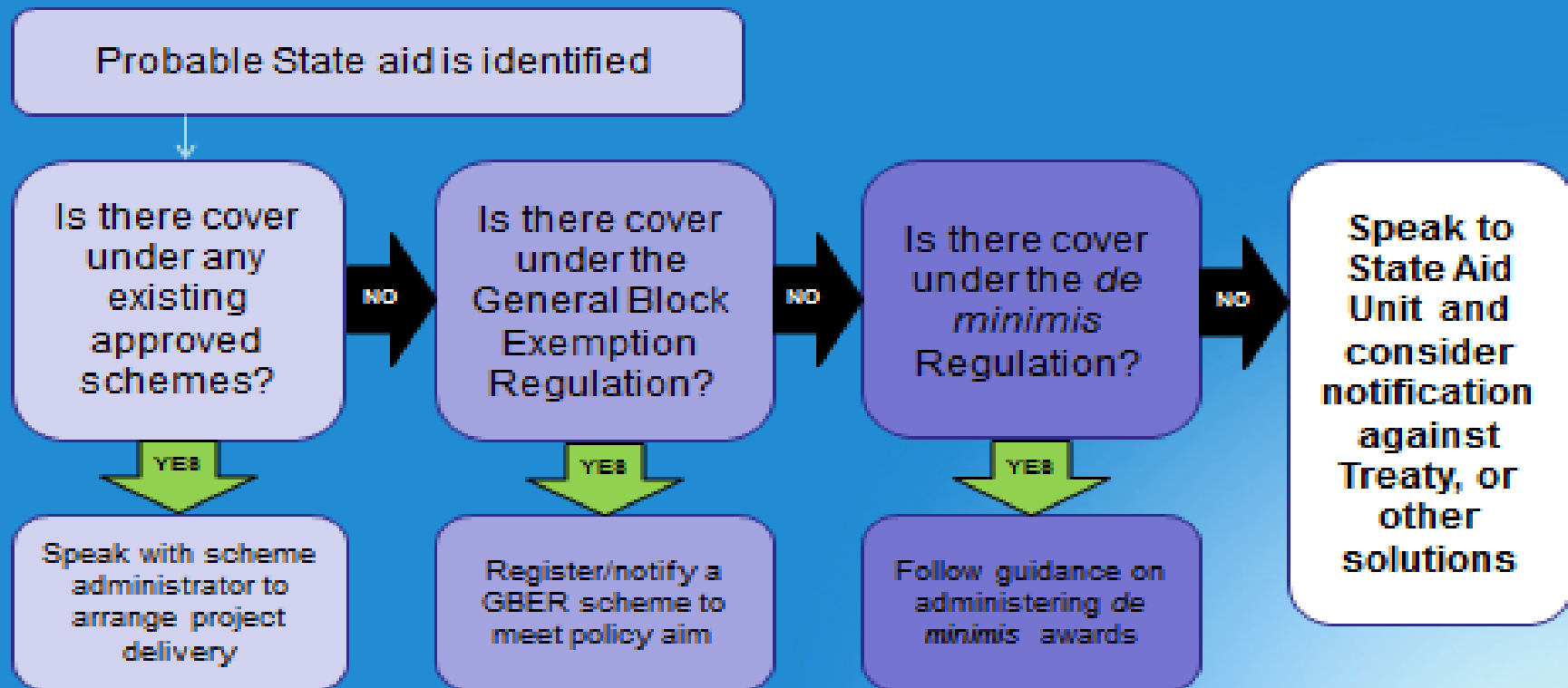
Fergus Ewing

The four tests summarised:



The Scottish Government
Riaghaltas na h-Alba

If State aid is present...



The Scottish Government
Riaghaltas na h-Alba

The Need for State intervention – Seven common principles.

The Communication on State Aid Modernisation⁹ (SAM) called for the identification and definition of common principles applicable to the assessment of compatibility of all aid measures carried out by the Commission. An aid measure will be considered compatible with the internal market pursuant to Article 107(3) of the Treaty provided that the following cumulative conditions are met:

1. contribution to a well-defined objective of common interest: a State aid measure must have an objective of common interest in accordance with Article 107(3) Treaty;
2. necessary: a State aid measure must be targeted towards a situation where aid can bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or addressing an equity or cohesion concern;
3. appropriateness of the aid measure: the aid measure must be an appropriate policy instrument to address the objective of common interest;
4. incentive effect: the aid must change the behaviour of the undertakings concerned in such a way that they engage in additional activity which they would not carry out without the aid or they would carry out in a restricted or different manner or location;
5. proportionality of the aid (aid limited to the minimum): the aid amount must be limited to the minimum needed to induce the additional investment or activity in the area concerned;
6. avoidance of undue negative effects on competition and trade between Member States: the negative effects of the aid must be sufficiently limited, so that the overall balance of the measure is positive;
7. transparency of aid: Member States, the Commission, economic operators, and the interested public, must have easy access to all relevant acts and to pertinent information about the aid awarded.

⁹http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

