



EUROPEAN COMMISSION

Brussels, 13.11.2001
C(2001)3459fin

Subject: **State aid N° N 497/01 – United Kingdom (Scotland)**

 Grants for Owner Occupation

Sir,

1. Procedure

By letter dated 9 July 2001, the UK Permanent Representation notified, pursuant to Article 88(3) of the EC Treaty, the Scottish aid scheme referred to above. The arrival of the notification was registered on 13 July 2001.

By letter dated 14 August, the Commission requested additional information needed for its assessment of the scheme. Part of the additional information was supplied by means of a letter dated 10 September 2001. The remainder was supplied in a meeting at service level held on 18 September and by means of a letter dated 24 September and registered on 25 September 2001.

2. Description of the Scheme

The purpose of the Grants for Owner Occupation scheme is to provide more affordable owner occupation housing in Scotland. According to the responsible authorities, the presence of owner occupiers stimulates the demand for improvements as well as the local environment and such householders act as role models thus playing a very important part in developing communities and tackling regeneration and social inclusion issues. The scheme is targeted at projects, which contribute to the provision of low cost housing for owner occupation either in single tenure housing estates and older urban neighbourhoods, or in pressured market areas. Scottish

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Homes, which plays a major role in the continuing regeneration of a wide range of neighbourhoods throughout Scotland, decides where in these areas it is appropriate to promote or support projects. Houses are provided for designated client groups, notably local residents who aspire to home ownership and wish to remain in the neighbourhood but are denied the opportunity because the level of house prices exceeds their capacity to purchase. After a fixed time any houses not sold to these priority groups will be offered on the open market with the aim of attracting into deprived areas residents whose presence will stimulate the regeneration of such areas.

The scheme provides gap funding in the form of grants to private developers to meet the difference between the costs of production of social housing and the price, at which the completed housing will be sold to the owner occupier.

The legal basis of the scheme is the Housing (Scotland) Act 1988 and the Scotland Act 1998. The administrative body with statutory responsibility for the scheme and its implementation is Scottish Homes. The Administrative Instructions for the scheme, which were provided to the Commission by letter dated 24 September 2001, contain a number of provisions to ensure that the gap funding will be limited to the minimum necessary to achieve the project (point 1.7.6 and Section 3 of the Administrative Instructions). These are notably:

- Whenever possible, potential projects will be subject to open competition between prospective applicants (point 1.8.1).
- Applications will have to demonstrate that, wherever practicable, all construction works have been competitively procured (point 1.8.2).
- In those cases where particular sites are identified for specific regeneration reasons and these sites are already in the ownership of applicants, competitive tendering can become impractical. In these cases Scottish Homes will conduct a verification with the help of professional Chartered Surveyors registered with the Royal Institution of Chartered Surveyors, who are independent of the project's promoters or developers, to certify that the construction costs are at, or below, the prevailing market rate (point 1.8.2).
- All valuations of land or property will be undertaken by an independent Chartered Surveyor (point 1.8.3).
- If costs are lower than projected and market values are higher than projected, part of the grant may have to be repaid (point 1.11).
- Grant recipients must provide security for any grant approved by Scottish Homes (point 1.10).
- The grants cannot cumulate with any other form of aid towards the same eligible costs (point 1.4.1).
- For projects involving initial sales at less than full market value, Scottish Homes will always seek to clawback any surplus profits made in the event of re-sales (point 4.5).

The duration of the scheme will be as of the date of the Commission's approval until 31.12.2006 (as last possible day to grant an aid).

Expenditure on the scheme will be determined each year by the Scottish Ministers. It is expected that the available grants will amount to app. £ 15 million (€ 9.4 million) p.a. on average, with which up to 1,000 houses could be built. Grants cannot exceed 40% of project cost in designated Social Inclusion Partnerships and Smaller Urban Renewal Initiatives. In all other areas the grant will not exceed 33%. The average level of aid is expected to amount to app. 23% of project costs.

The UK authorities are of the opinion that the scheme does not confer aid in the meaning of Article 87(1) EC. They nevertheless notified the scheme pursuant to Article 88(3) EC for reasons of legal security.

3. Appraisal

Aid to the less affluent in order to enable them to become owner occupier of a house does not normally fulfil the criteria of Article 87(1) EC. Under the present scheme all houses provided with grants must be marketed and sold for the purposes of owner occupation by individuals intending to occupy the house as their sole residence (point 4.6.1). Therefore such aid, if awarded directly to the owner occupier, would not favour certain undertakings or the production of certain goods in the sense of Article 87(1)¹.

The Commission notes, however, that the applicants for aid are not the prospective owner occupiers, but rather private suppliers of housing and housing trusts. Point 1.3.1 of the Administrative Instructions correctly states that private housing suppliers consist of individuals, partnerships or registered companies set up for the purposes of building houses and that these are undertakings in the meaning of Article 87(1). They may or may not undertake the construction works themselves. The Commission also notes the information supplied by your authorities, according to which many applicants are private developers who own the land in question and who would be unwilling to surrender these assets to enable open competition for their development. The Commission furthermore recalls its final Decision on English Partnerships under the partnerships investment programme², in which a distinction was made between aid to so-called "speculative" projects and aid to "bespoke" projects. In the latter situation, it is in principle the end user, who is the beneficiary of the aid, whereas the likely beneficiary of a "speculative" project is the developer of such a project. The projects to be aided under the present scheme are of a "speculative" nature, as the prospective owner occupiers of the social housing are not known, when an application for aid is made. Indeed, the scheme provides for the possibility that not all houses will be sold to owner occupiers in the target group, in which case the houses will be sold on the open market. The Commission would furthermore point out that the property development business is a very mobile activity across

¹ In line with the Commission's decision on aid N 348/98 – Italy (Trento), reported in the XXVIIIth Competition Report.

² OJ N° L 145 dated 20.06.2000, page 27.

Member States. The Commission can therefore not exclude that aid granted to certain private housing suppliers could fulfil all criteria set out in Article 87(1) EC. This finding is in line with the Commission's Decision on English Partnerships referred to above and subsequent decisions on regeneration aid schemes³.

By notifying the scheme as a draft to the Commission, the UK has respected its obligations laid down in Article 88(3) of the EC Treaty.

The UK authorities, whilst being of the opinion that the scheme does not involve aid in the meaning of Article 87(1) EC, also referred to the principle expressed in point V.6.c) of the Commission's Communication on State Aid and Risk Capital⁴, which they believe should also apply to the Grants for Owner Occupation Scheme:

“In general, where a transfer made by the State would be compatible with the State aid rules, the Commission believes that a measure which provides a minimum incentive to other economic operators to make that same transfer should also be authorised, even if technically an aid to those operators is involved.”

It is the Commission's opinion that this principle can indeed be applied to the Grants for Owner Occupation Scheme. The scheme contains the provisions needed to ensure that the suppliers of housing, who apply for the grant, only receive the minimum incentive necessary for them to realise the housing in question at their own risk. The scheme is notably based on competitive tendering whenever practicable and verifications by Chartered Surveyors and furthermore contains a “clawback” mechanism.

Under those circumstances the aid, of which the suppliers of housing are the direct beneficiaries, is largely channelled to the future owner occupiers of the social housing. The Commission has also taken into consideration that, without the aid, the social housing at affordable prices would not be realised; that grant applicants are incentivised to pursue reductions in cost and increases in value; finally, that no cumulation with other aid is possible. The Commission draws the conclusion that the minimum incentive to the suppliers of the housing will not adversely affect trading conditions to an extent contrary to the common interest in the meaning of Article 87(3)c) of the EC Treaty.

4. Decision

On the basis of the foregoing assessment, the Commission concludes that the Grants for Owner Occupation Scheme is compatible with the common market pursuant to Article 87(3)c) of the EC Treaty.

³ Partnership Development Scheme (N 656/99), Partnership Support for Regeneration: support for speculative development (N 747/A/99), English Cities Fund (N 82/01).

⁴ OJ N° C 235 dated 21.08.2001, page 3.

The Commission reminds the UK Government to submit an annual report on the implementation of the scheme. The report should allow the Commission to verify that for each project the incentive to suppliers of housing was the minimum necessary for the project to proceed.

The Commission further reminds the UK Government that all plans to modify this aid scheme have to be notified to the Commission.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State aid Registrar
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: 32 2 2961242

Yours faithfully,
For the Commission

Mario MONTI
Member of the Commission