
DRAFT STATUTORY INSTRUMENTS

2019 No.

The State Aid (EU Exit) Regulations 2019

PART 7

General and final provisions

CHAPTER 1

General provisions

Application of state aid framework in urgent cases

57.—(1) This regulation applies to aid that is granted to—

- (a) remedy a serious disturbance in the economy of the United Kingdom;
- (b) preserve financial stability; or
- (c) prevent serious social hardship.

(2) Notwithstanding the prohibition in Article 107(1) of the TFEU and the notification requirement in Article 108(3) of the TFEU, if due to urgent and exceptional circumstances it is not possible to obtain CMA approval for the aid before it is required to be granted, the aid grantor may grant the aid in accordance with this regulation.

(3) Before granting the aid, the aid grantor must—

- (a) inform the CMA;
- (b) have regard to any relevant CMA statement of policy; and
- (c) consider that the aid is capable of being approved by the CMA under any such statement of policy.

(4) As soon as practicable after granting the aid, the aid grantor must notify the aid to the CMA in accordance with regulation 7.

(5) Regulations 8 to 13 apply to a notification referred to in paragraph (4), and—

- (a) if the CMA approves the aid under regulation 8 or 11, the aid is considered to have been approved in accordance with Article 108(3) of the TFEU;
- (b) if the CMA opens an investigation in respect of the aid under regulation 8(1)(c), the CMA may make an interim suspension order or an interim recovery order in accordance with Part 4 as if the investigation had been an investigation opened under regulation 15(5)(c); and
- (c) if the CMA takes a decision not to approve the aid under regulation 11, the CMA must make a termination order and a recovery order in respect of the aid in accordance with Part 4 as if the decision to not approve the aid had been taken under regulation 17.

Interest rate for recovery of aid

58.—(1) The CMA must, for each calendar year, set and publish the recovery interest rate that is to be applied for the purpose of calculating the amount of interest payable under regulation 44.

- (2) The CMA must set and publish the recovery interest rate—
 - (a) for the year 2019, on or before exit day; and
 - (b) for each subsequent year, on or before 1 January of that year.
- (3) The CMA must also publish the recovery interest rate set by the CMA for all previous years at the same time as publishing the rate for the current year under paragraph (2).
- (4) The CMA must set the recovery interest rate by—
 - (a) calculating the base rate in accordance with the interest rate methodology; and
 - (b) adding one percentage point to the base rate.
- (5) If, during a year, the average base rate calculated over the previous three months deviates more than 15% from the base rate referred to in paragraph (4)(a), the CMA must set and publish a new rate for the remainder of the year that—
 - (a) is calculated by taking that average base rate and adding one percentage point; and
 - (b) takes effect from the first day of the second month following the months used for the calculation.
- (6) In this regulation, the “interest rate methodology” means the methodology included in the CMA statement of policy on the revision of the method for setting the reference and discount rates published under Part 6, or any successor statement of policy.

Method for applying interest rate

- 59.**—(1) This regulation applies for the purpose of calculating the amount of interest payable under regulation 44.
- (2) Interest is charged at the recovery interest rate from the date on which the aid was granted to the beneficiary to the date on which the aid is fully recovered.
 - (3) If the period in paragraph (2) is less than 12 months, the interest rate applied is the recovery interest rate set by the CMA as at the date on which the aid was granted to the beneficiary.
 - (4) If the period in paragraph (2) is 12 months or more—
 - (a) the interest rate applied in the first 12 month period is the recovery interest rate set by the CMA as at the date on which the aid was granted to the beneficiary;
 - (b) the interest rate applied for each subsequent 12 month period is the recovery interest rate set by the CMA as at the date on which the relevant subsequent 12 month period starts; and
 - (c) the interest is applied on a compound basis, added at yearly intervals.
 - (5) If the period in paragraph (2) includes a period before exit day and a period on and after exit day, the period is split into two parts for the purposes of applying interest rates under this regulation and—
 - (a) for the part before exit day, paragraphs (3) and (4) apply but references to the recovery interest rate set by the CMA are to be read as references to the recovery interest rate fixed by the Commission; and
 - (b) for the part on and after exit day, paragraphs (3) and (4) apply.
 - (6) In this regulation, “recovery interest rate fixed by the Commission” means the interest rate fixed by the Commission under article 9(1) of [Commission Regulation \(EC\) No 794/2004](#) of 21 April 2004 implementing Council Regulation [\(EC\) No 659/1999](#) laying down detailed rules for the application of Article 93 of the EC Treaty (as it had effect immediately before exit day).

Variation of time periods

- 60.**—(1) The CMA and the aid grantor may agree to extend any of the following time periods—
- (a) a period in regulation 7(2) (notification);
 - (b) a period in regulation 8(2) (examination of notification); and
 - (c) a period in regulation 15(3), 19(3) or 23(2) (requests for information).
- (2) The CMA may extend any of the following time periods if the CMA considers it appropriate to do so—
- (a) a period in regulation 10(2) or (4) (time for representations), including as those provisions are applied by regulations 16, 20 and 26;
 - (b) a period in regulation 23(4)(b) (time for representations); and
 - (c) a period in regulation 33(3) (complaints).
- (3) The CMA and the beneficiary may agree to extend a time period in regulation 19(4)(b) (requests for information).

Service of documents

61. Section 126 of the Enterprise Act 2002 applies in relation to the service of documents and notices under these Regulations as it applies to the service of documents and notices under Part 3 of that Act.

Further publicity requirements

- 62.**—(1) The CMA must publish—
- (a) notice of any extension under regulation 60(2)(a) or (b) of the period in which representations may be made;
 - (b) any recommendation issued by the CMA under regulation 24, if the aid grantor concerned accepts the recommendation;
 - (c) any enforcement order made by the CMA under Part 4; and
 - (d) notice of any failure by the CMA to take a decision referred to in regulation 9(3).
- (2) If the CMA is under a duty by virtue of paragraph (1) to publish the result of any action or decision, the CMA must also publish its reasons for the action or decision concerned.
- (3) However, the CMA does not need to publish the reasons referred to in paragraph (2) at the same time as the result of the action or decision concerned if it is not reasonably practicable to do so.
- (4) Before publishing information under paragraph (1)(b) or (c), the CMA must send a copy of the information to the aid grantor to provide an opportunity for the aid grantor to indicate whether it considers that the CMA should treat any of the information as confidential information.

Defamation

63. For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice, decision, recommendation or report made by the CMA in the exercise of any of its functions under these Regulations.

Confidential information

64.—(1) A person who sends information to the CMA under these Regulations, a block exemption regulation or the Financial Transparency (EC Directive) Regulations 2009 must indicate

which information the person considers the CMA should treat as confidential information and the reasons for such confidentiality.

(2) If a person indicates that information should be treated as confidential information, the person must send a separate non-confidential version of the information to the CMA.

(3) If information must be provided by a certain deadline, the same deadline applies for providing the non-confidential version.

(4) If the CMA decides that information provided by a person and indicated as confidential is not to be treated as confidential information, the CMA must—

- (a) notify the person; and
- (b) if the CMA intends to disclose the information, give the person at least four weeks' notice before the disclosure.

CHAPTER 2

Final provisions

Revocations etc.

65.—(1) The following are revoked—

- (a) Annex 15 of the EEA agreement, insofar as it forms parts of domestic law on and after exit day by virtue of section 3(1) of the European Union (Withdrawal) Act 2018;
 - (b) [Commission Regulation \(EC\) No 794/2004](#) of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty;
 - (c) Council Decision (2010/787/EU) of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines;
 - (d) Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid; and
 - (e) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.
- (2) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which—
- (a) continue by virtue of section 4(1) of the European Union (Withdrawal) Act 2018; and
 - (b) are derived from—
 - (i) Article 346(1) of the TFEU, so far as Article 346(1) relates to Article 107(1) or 108(3) of the TFEU;
 - (ii) Article 61(1) or 62(1) of the EEA agreement; or
 - (iii) Article 123 of the EEA agreement, so far as Article 123 relates to Article 61(1) or 62(1) of the EEA agreement,

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly) on and after exit day.

Crown application

66. Nothing in these Regulations affects Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

Transitional and savings provisions

67. Schedule 8, which contains transitional and savings provisions, has effect.

Amendments to legislation

68.—(1) Schedule 9, which makes amendments to retained EU law, has effect.

(2) Schedule 10, which makes amendments to legislation, has effect.