

SCHEDULE 8

Regulation 67

Transitional and savings provisions

Interpretation

1. In this Schedule—

“EU state aid decision” means a European Commission or Council decision that—

- (a) is to form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; and
- (b) approves state aid granted or proposed to be granted by the United Kingdom as being compatible with the internal market; and

“state aid rights” has the meaning given in regulation 3.

Application

2.—(1) The state aid rights apply in relation to—

- (a) aid granted on or after exit day (“post-exit aid”); and
- (b) aid granted before exit day if, immediately before exit day, the limitation period for the aid had not expired (“pre-exit aid”).

(2) This paragraph is subject to paragraphs 3 to 10.

EU state aid decisions

3.—(1) This paragraph applies in relation to pre-exit aid and post-exit aid that was—

- (a) approved by an EU state aid decision before exit day; and
- (b) granted at a time when the EU state aid decision had not expired.

(2) The aid is deemed—

- (a) to have been approved by the CMA in accordance with Article 108(3) of the TFEU; and
- (b) to be existing aid.

(3) The EU state aid decision is deemed to be a decision of the CMA that is addressed to the aid grantor and—

- (a) any conditions of the decision to which the approval was subject immediately before exit day continue to apply on and after exit day; and
- (b) any reporting obligations in the decision that applied immediately before exit day continue to apply on and after exit day, except that an obligation for the United Kingdom to report to the Commission is to be read as an obligation for the aid grantor to report to the CMA.

Duration of EU state aid decisions

4.—(1) An EU state aid decision expires at the end of the period for which the aid is approved in accordance with the decision.

(2) However, sub-paragraph (3) applies to an EU state aid decision that was published in the Official Journal on or after 30 March 2017.

(3) For the purpose of establishing when the decision expires under sub-paragraph (1), any condition or observation in the decision that makes the approval of the aid subject to the United Kingdom being a Member State does not apply.

Categories of aid specified by the Council

5.—(1) This paragraph applies if—

- (a) a decision of the Council before exit day specifies a category of aid for the purposes of Article 107(3)(e) of the TFEU (as it had effect immediately before exit day);
- (b) the decision is to form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018; and
- (c) the decision is not revoked by these Regulations.

(2) On and after exit day, the category of aid specified in the Council decision is deemed to be a category of aid that the CMA may approve under Article 107(3) of the TFEU.

Pre-exit aid that was exempt from notification requirement

6.—(1) This paragraph applies to pre-exit aid that was, immediately before exit day, exempt from the notification requirement in Article 108(3) of the TFEU (as it had effect immediately before exit day).

(2) The aid is deemed to be exempt from the notification requirement in Article 108(3) of the TFEU and—

- (a) if the aid was originally exempt by virtue of the road and rail regulation, an SGEI exemption or an EU block exemption, the aid is deemed to have been approved by the CMA under Article 93, 106(2) or 107(2) or (3) of the TFEU (as appropriate);
- (b) if the aid was originally exempt by virtue of an EU de minimis exemption, the aid is deemed to not meet the criteria in Article 107(1) of the TFEU; and
- (c) in any other case, the aid is deemed to not be prohibited by Article 107(1) of the TFEU.

(3) However—

- (a) any conditions to which the exemption was subject immediately before exit day continue to apply on and after exit day; and
- (b) any reporting obligations attached to the exemption that applied immediately before exit day continue to apply on and after exit day, except that an obligation for the United Kingdom to report to the Commission is to be read as an obligation for the aid grantor to report to the CMA.

(4) In this paragraph—

“enabling regulation” means 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 (as it had effect immediately before exit day);

“EU block exemption” means any block exemption made under the enabling regulation or the previous enabling regulation;

“EU de minimis exemption” means any de minimis exemption made under the enabling regulation or the previous enabling regulation;

“previous enabling regulation” means Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid;

“road and rail regulation” means Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No. 1191/69 and 1107/70 (as it had effect immediately before exit day); and

“SGEI exemption” means Commission [Decision 2012/21/EU](#) of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (as it had effect immediately before exit day) or Commission [Decision 2005/842/EC](#) of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest.

CMA approval of pre-exit aid

7.—(1) This paragraph applies if the CMA is deciding whether to approve pre-exit aid under Chapter 2 (unlawful aid) or Chapter 3 (misuse of aid) of Part 3.

(2) In deciding whether to approve the aid—

- (a) regulations 5(2) and 6 do not apply;
- (b) the CMA must have regard to the substantive criteria contained in any appropriate European Commission guidelines, frameworks, notices and communications that applied at the time the aid was granted; and
- (c) in the condition for Article 107(3) of the TFEU in the third column of the Table in regulation 3(4)—
 - (i) in paragraph (a), the reference to an area that was, immediately before exit day, specified in Schedule 1 to the Assisted Areas Order 2014 is to be read as a reference to an area that was, at the time the aid was granted, specified in Schedule 1 to the Assisted Areas Order 2007⁽¹⁾ or Schedule 1 to the Assisted Areas Order 2014 (as appropriate);
 - (ii) in paragraph (c), the reference to an area that was, immediately before exit day, specified in Schedule 2 to the Assisted Areas Order 2014 is to be read as a reference to an area that was, at the time the aid was granted, specified in Schedule 2 to the Assisted Areas Order 2007 or Schedule 2 to the Assisted Areas Order 2014 (as appropriate); and
 - (iii) there is deemed to be a paragraph (e) which provides that the CMA may approve such other categories of aid that had, at the time the aid was granted, been specified by the Council on a proposal from the Commission in accordance with Article 107(3) (e) of the TFEU (as it had effect immediately before exit day).

Application to existing Acts of Parliament

8.—(1) The state aid rights do not apply in relation to aid granted by an existing Act of Parliament.

(2) For the purposes of this Schedule, aid is granted by an existing Act of Parliament if an Act passed before exit day makes provision that—

- (a) amounts to a grant of new aid; or
- (b) requires a grant of new aid by a Minister of the Crown or any other person.

(3) An Act does not require a grant of new aid if a power could be exercised, or a duty performed, in a way that would not amount to a grant of new aid.

Deemed authorisation before exit day

9.—(1) This paragraph applies to pre-exit aid that was existing aid in accordance with Article 1(b)(iii) of the procedural regulation (deemed authorisation by the Commission) before exit day.

(1) [S.I. 2007/107](#).

(2) The aid is deemed—

- (a) to be approved by the CMA in accordance with Article 108(3) of the TFEU; and
- (b) to be existing aid under these Regulations.

(3) In this paragraph, “procedural regulation” means 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 (as it had effect immediately before exit day).

Savings

10.—(1) This paragraph applies to any EU decision or EU tertiary legislation that—

- (a) was made under the enabling regulation, the procedural regulation or the predecessor legislation;
- (b) was in force immediately before exit day; and
- (c) is to form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018.

(2) The EU decision or EU tertiary legislation forms part of domestic law in accordance with section 3 of the European Union (Withdrawal) Act 2018 and continues in force on and after exit day despite the revocations made by regulation 65(1)(d) and (e).

(3) In this paragraph—

“enabling regulation” means 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 (as it had effect immediately before exit day);

“EU decision” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018;

“EU tertiary legislation” has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018;

“predecessor legislation” means—

- (a) Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (as it had effect immediately before exit day); and
- (b) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (as it had effect immediately before exit day); and

“procedural regulation” means 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 (as it had effect immediately before exit day).