



Law Society
of Scotland

70
Years
1949-2019

Consultation Response

Draft procedural guidance on state aid notifications
and reporting

March 2019



Introduction

The Law Society of Scotland is the professional body for around 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Competition Law Sub-committee welcomes the opportunity to consider and respond to the consultation on *Guidance on state aid notifications and reporting*.¹ We have the following comments to put forward for consideration.

Response

The consultation seeks general views on any aspects of the *Draft procedural guidance on state aid notifications and reporting*. We note that the guidance is not intended to cover all aspects of the state aid regime and look forward to considering further guidance in due course. Generally, we welcome the draft guidance, which we consider is clear and accessible. At the same time we are pleased to note that the CMA will continue to review and update guidance periodically. Brief comments on specific topics addressed are set out below.

Obligation to Notify the CMA

We welcome the guidance at section 3. This summarises the legal obligation under the State Aid (EU Exit) Regulations 2019, regarding the obligation on public bodies to notify a state aid measure to the CMA in order to seek approval. The summary is helpful and likely to be more accessible to people wishing to gain a general understanding of the law in this area than reading the SA Regulations themselves.

Pre-notification

We welcome the introduction of the pre-notification process and the CMA's commitment to work in collaboration with the aid grantor in order to ensure that they provide a complete notification of the state aid measure. Being clear on what information to provide to the CMA from the outset will save valuable time within the 40 day 'relevant period' of notification. Discussions with SGSAT at this stage will be useful to aid

¹<https://www.gov.uk/government/consultations/guidance-on-state-aid-notifications-and-reporting>

grantors before submitting its notification to the CMA. However, we are concerned that lack of certainty regarding the timescales to be expected from the voluntary pre-notification could discourage use of the process, particularly where timescales are tight. The Guidance at Section 5 states that a case team will be assigned within 10 working days, however the timescales hereafter can depend on a variety of factors, and could at worst continue for up to 6 months. For example, where the commencement of a large infrastructure project is dependent upon the approval of the state aid to begin, it may therefore be likely that the aid grantor will go straight to the notification stage for more certainty. We note the CMA's intention to review processes on an ongoing basis and would encourage analysis in this regard to assess the impact of uncertainty of time scales and/or any cases where it takes a significant amount of time to establish a case team.

Time limit for examinations

Regulation 8 sets out the time limit (40 days) within which the CMA must make a decision on a Notification received; this is reflected in paragraph 6.7 of the guidance. However, Regulation 9 goes on to explain what happens in the event that the CMA fails to take such a decision within the 40 day period, providing for a mechanism by which the aid grantor can submit a further notification that it intends to implement the measure and may do so if the CMA does not respond with a decision within 15 days. The Guidance should be updated to reflect the provisions of Regulation 9 and give greater clarity as to the procedure grantors should follow if they do not receive a decision within the first 40 days and to give greater certainty that the Notification will be deemed to be approved if the CMA has not issued a decision within 15 days from this prompt.

Investigations and decision-making

We welcome the CMA's recognition of the importance of the independence of the CMA as a decision-making body in relation to state aid awards. The proposed approach of adopting an independent panel, the State Aid Decision Group (SADG), seems a sensible way to emphasise the independence of the decision-makers. However, further safeguards may still be required. We look forward to considering more detailed proposers on the creation of the group when these are made available.

At paragraph 7.14, it is not clear whether the provisional findings would be prepared by the SADG and enable a direct discussion between the aid grantor and the SADG or whether this discussion would be with the case team or other group. We would welcome additional detail on this point.

For further information, please contact:

Carolyn Thurston Smith

Policy Team

Law Society of Scotland

DD: 0131 476 8205

carolynthurstonsmith@lawscot.org.uk