Welsh Government State Aid Unit

How to run a ‘Service of General Economic Interest’ scheme

Version 2 –June 2018

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How to run a Service of General Economic Interest scheme

This document provides practical guidance on how to run a Service of General Economic Interest (SGEI) scheme. This guide is not a summary of the European Commission SGEI Package:

- 2012/C 8/03 (SGEI Framework);
- 2012/21/EU (SGEI Commission Decision);
- 360/2012 (SGEI *de minimis* Regulation)

This guidance will be most relevant to Welsh Government officials, local authorities, the third sector and organisations in receipt of SGEI Support.

This guide is not a substitute for legal advice which should be sought in individual cases. The guidance is accurate at the date of publication but please note the law is subject to constant change.

Full texts of the SGEI Package can be found at:

http://ec.europa.eu/competition/state_aid/legislation/sgei.html

IMPORTANT – you should use this guide in conjunction with the full version of the SGEI package.

Background

Services of general economic interest (SGEI) are services which the State wants to provide for the general public, but which are not adequately supplied by market forces alone.

The SGEI package is made up of the SGEI Framework, SGEI Decision (known as the 'SGEI Block Exemption Regulation' or 'SGEIBER') and SGEI *de minimis* Regulation, all of which are different from the general State aid rules.

SGEI Framework

The SGEI framework specifies the conditions under which State aid in the form of public service compensation is allowable.

To use the SGEI Framework you first need to notify the European Commission (EC) of what you want to do and wait for their decision. This is a potentially long and complex process but may allow you to do a lot more than would otherwise be possible under the other aspects of the SGEI package.

If you wish to provide support in line with the SGEI Framework you should contact the State Aid Team: state.aid@gov.wales.

SGEI Decision (SGEIBER)

The SGEIBER details the support which can be given without first notifying the EC. Whilst this allows public authorities to act much more quickly to put support in place the flipside is that providers are more limited both in what they can support and the value of the support they can provide. Aid given under the Decision must be supported by an 'Act of Entrustment' but this is a relatively straightforward process.

If you are looking to provide support via the SGEIBER you should read **Annex 1** and use **Checklist A** in **Annex 3** to assist you.

SGEI *de minimis* Regulation

The SGEI *de minimis* Regulation covers aid amounts that the EC considers to be too small to affect competition, in this specific instance an amount of less than €500,000 over a 3 year period (the current and last 2 fiscal years) to a single undertaking.

Whilst the SGEI *de minimis* Regulation provides a great deal of flexibility for providing State Aid, it should only be used as a last resort where it is not possible to provide cover for the funding under either the Framework or the SGEIBER.

This is important because:

- Any **industrial *de minimis* aid** (Commission Regulation 1407/2013), **Agricultural *de minimis* aid** (Commission Regulation (EU) No.1408/2013) and any **Fishery and Aquaculture *de minimis* aid** (Commission Regulation (EU) No.7171/2014) received over the current and previous two fiscal years must also be factored into calculations, potentially reducing the amount accessible drastically;

- an organisation may have received *de minimis* funding from a number of different sources and the €500,000 threshold can quickly become exhausted;

- SGEI *de minimis* aid can be difficult to administer.

As with the SGEI Decision above, aid providers must write and entrust the service to the provider before the aid is granted.

If you are looking to provide SGEI *de minimis* you should read **Annex 2** and use **Checklists B and C** at **Annex 3** to assist you.

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ANNEX 1 – Using a SGEI Decision scheme (SGEIBER)

To run a SGEIBER Infrastructure scheme the correct procedures must be put in place.

Step 1 – Check that SGEIBER provisions apply

Is the funding for:

(a) The provision of medical care by hospitals, including emergency services;
(b) The provision of air or maritime links to islands with an average annual traffic of fewer than 300,000 passengers;
(c) The provision of:
    a. Ports with an average annual traffic of fewer than 200,000 passengers;
    b. Airports with an average annual traffic of fewer than 300,000 passengers.
(d) The provision of social objectives:
    a. Health and long-term care;
    b. Social Housing for the disadvantaged;
    c. Childcare;
    d. Access to, and reintegration into, the labour market.

If you have answered yes to one of the scenarios above, then it is likely that the SGEIBER provisions will apply.

Step 2 – Make sure that the support you want to give is compatible with all the conditions for SGEIBER.

Support is only considered to be compatible State aid where it meets all the terms and conditions of the SGEIBER, and therefore the registered scheme. Each investment will need to be checked against these terms. **Checklist A** of this document in **Annex 3** contains checklists that you can use to assist you.

You will also need to keep supporting evidence to show that all the terms and conditions are met. This is because if the European Commission asks, you will need to be able to show that the support you gave was compatible with the rules.

Step 4 – Check you are registered for biannual return monitoring

Write to the Welsh Government's State Aid Unit to inform them you are using SGEIBER providing a contact name, telephone number and email address. The State Aid Unit need this information because they co-ordinate the biannual return monitoring process for Wales. They need to have a contact for each organisation that is providing funding via the SGEIBER. The State aid email address is:

state.aid@gov.wales

The Postal address is:

State Aid Unit, Welsh Government, Cathays Park 2, Cardiff, CF10 3NQ

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ANNEX 2 - Providing SGEI *de minimis* aid

Step 1 – check eligibility

There are some restrictions in the *de minimis* Regulation which means certain types of companies and certain sectors are unable to get *de minimis* aid. These restrictions can be found in **Annex 3 checklist B**.

Some sectors have a lower *de minimis* threshold. Information about these can be found in **Annex 3 Checklists B and C**.

Checklist B	SGEI *de minimis* Regulation general conditions
Checklist C (you will need to use checklist B and C)	SGEI *de minimis* Regulation extra conditions for loans and guarantees

Step 2 – check how much de minimis aid has already been received by the beneficiary

Every undertaking that asks for *de minimis* aid must declare how much other *de minimis* aid they have received during its current and previous two fiscal years, of all types and from all sources. This statement should include any Industrial, Agricultural and Fisheries *de minimis* they may have received in addition to SGEI; their *de minimis* total from all sources must be included in your calculations. They must do this in writing.

An undertaking for these purposes is any single organisation or two or more organisations deemed to be linked. Linked means:

Two or more enterprises which have any of the following relationships:

- One enterprise holds a majority of the shareholders' or members' voting rights in another;
- One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another;
- A contract between the enterprises, or a provision in the memorandum or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other;
- One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another.

A typical example of a linked enterprise is the wholly-owned subsidiary.

As this has to be done before you grant aid you may wish to build the request for information into application forms, depending on the nature of the *de minimis* scheme being operated. You can also request the information separately; **Annex 3 Form 1** below is a template that you can adapt to suit.

Step 3 – check the de minimis *threshold is not breached*

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Aid can be provided in a variety of forms including grants, subsidised services, loans, guarantees. However they must all be given a gross grant equivalent. This means that you have to calculate the amount of the aid as if it had been provided as a grant.

You will then need to add that to the information you have already collected about any previous *de minimis* (of all types) aid the beneficiary has received (see step 2) to make sure that the €500,000 threshold is not breached. If it is breached then you cannot provide the aid.

When calculating the value of the support (and calculating the value of the threshold) you must use the Commission exchange rate applicable on the written date of offer of the *de minimis* funding. The Commission's exchange rate can be found here:

http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm

An example of how to ensure the *de minimis* threshold is not breached can be found below:

*** Worked example (for ensuring de minimis threshold has not been breached) ***

Company ABC has received £25,000 in October 2015.

What would be the maximum amount of *de minimis* aid that could be awarded on 15 June 2016 if their fiscal year is 6th – 5th April?

- Calculate the total amount of *de minimis* aid received by the beneficiary during the current and previous two fiscal years i.e. 2013-14, 2014-15, 2015-16; in this case the total amount is £25,000.
- Convert the *de minimis* ceiling into Euros on the relevant date (15/06/2016) using the appropriate Exchange rate (in this case 0.76125), and deduct the total amount of de minimis aid received by the beneficiary during the qualifying period (three fiscal years)

Sterling equivalent of *de minimis* threshold @ June 16	£380,625
Previous *de minimis* awarded in last 3 fiscal years	(£25,000)
Unutilised *de minimis* threshold	£355,625

*** The maximum *de minimis* that may be awarded on 15 June 2016 is £355,625 ***

For guarantees it is even easier to calculate the value of the aid. This is because if certain conditions are met the level of aid is deemed to be at the *de minimis* threshold automatically.

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For **guarantees** the *de minimis* threshold is automatically met where:

- The guarantee does not exceed 80% of the loan; and
- The amount guaranteed is €3,750,000 or lower; and
- The gross grant equivalent is calculated using the European Commission's safe-harbour premiums or a methodology agreed with the Commission prior to granting aid.

Where the loan/guarantee amounts or terms are less then the amounts can be prorated.

The conditions for loans can be found in Annex 3 checklist C

Step 4 – inform the recipient of the value of the de minimis *aid*

Write to the applicant, entrust them with the Service of General Economic Interest and inform them of the *de minimis* nature of the aid. You should clearly define nature of the public service obligation being entrusted to the recipient. You must specify the value of the aid and include reference to and a link to the full version of the SGEI *de minimis* Regulation. If you are not able to do this at the time of award you can issue a summary of the aid granted as long as at the conclusion of the grant, you write to the beneficiary specifying the full value of the aid.

In the letter, you must also inform the beneficiary of their responsibilities. Including the need to declare the value of the SGEI *de minimis* aid to any body that requests it (this will usually be done when the beneficiary seeks further SGEI *de minimis* funding.)

A template letter can be found at **Annex 4 Form 1**.

Step 5 – comply with monitoring requirements

The SGEI *de minimis* Regulation requires you to have a system in place to monitor *de minimis* aid.

Detailed records of *de minimis* aid provided must be kept for 10 years from the date on which the last individual aid was awarded or, for schemes, the date on which the last individual award was granted under the scheme.

Records should include:

- details of the information collected prior to the aid being awarded (including the amount of *de minimis* the beneficiary has received in the current and prior two fiscal years);
- the name of the beneficiary and the scheme;
- the amount and date of the aid awarded;
- any other information required to evidence that the terms and conditions of the Regulation have been met.

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The Commission can request from Member States within a period of 20 working days, sufficient information to demonstrate compliance with the SGEI *de minimis* Regulation.

A quick recap

Have you……

Looked at the checklist and ensured all the terms and conditions are met?	
Checked eligibility?	
Checked how much *de minimis* aid has been received by the beneficiary in the current and previous two fiscal years? Remember, they should include *de minimis* aid of <u>all</u> types.	
Checked the value of the *de minimis* aid and that the €500,000 threshold is not breached?	
Informed the recipient of the value of the *de minimis* aid?	
Collected and retained the records to evidence that the support is compatible with the SGEI *de minimis* Regulation?	

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ANNEX 3 – Checklists

Annex 3 - Checklist A – SGEI Decision (SGEIBER) General Conditions

Information about the service being assisted		Confirm y/n	Supporting Evidence Provided
Confirm that the service being assisted is in one of the following sectors:	(a) The provision of medical care by hospitals, including emergency services; (b) The provision of air or maritime links to islands with an average annual traffic of fewer than 300,000 passengers; (c) The provision of: • Ports with an average annual traffic of fewer than 200,000 passengers; • Airports with an average annual traffic of fewer than 300,000 passengers. (d) The provision of social objectives: • Health and long-term care; • Social Housing for the disadvantaged; • Childcare; • Access to, and reintegration into, the labour market.		
Confirm that the service being assisted is **NOT**:	• Primarily in the field of medical research; • In the field of land transport;		
Confirm that, where the recipient delivers other services not covered by this SGEIBER, they are able to demonstrate through separation of accounting that there will be no cross-transfer of the support.			
Information about notification thresholds			
Confirm that compensation will not exceed an average of €15 million per year over the period of entrustment.			
Confirm that the period of entrustment will not exceed ten years.			
Confirm that the letter of entrustment contains **all** of the following:	• The content of the Public Service Obligation (PSO); • The duration of the PSO; • Details of the recipient undertaking;		

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	• The territory concerned (where applicable); • The nature of any exclusive or special rights assigned to the recipient undertaking; • A description for the methods of calculating, controlling and reviewing the compensation; • The arrangements for both avoiding and recovering any overcompensation; and • A reference to the 2012/21/EU SGEI Decision.		
Information about reporting			
Confirm that you have provided contact name and information for reporting requirements to state.aid@gov.wales			

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Annex 3 - Checklist B – SGEI *de minimis* Regulation general conditions

Information on the enterprise assisted		Confirm y/n	Supporting Evidence Provided
Confirm that the enterprise is not in one of the following sectors	• fishery and aquaculture sectors; • primary production of agricultural products; • processing and marketing of agricultural products where the amount of aid is fixed upon the basis of the price or quantity of products purchased or put on the market; • The Coal Sector; • The Road Freight Transport Sector.		
Confirm that the enterprise assisted is **NOT:**	An 'undertaking in difficulty' within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty 2004/C 244/02)		
Confirm that the enterprise assisted is **NOT** subject to:	An outstanding order for the recovery of aid which has been declared by the Commission to be illegal and incompatible with the Common market.		
Is the recipient organisation a linked enterprise or legally separate?	A linked enterprise is defined as having any of the following relationships: • One enterprise holds a majority of the shareholders' or members' voting rights in another; • One enterprise is entitled to appoint or remove a majority of the administrative, management or supervisory body of another; • A contract between the enterprises, or a provision in the memorandum		

	or articles of association of one of the enterprises, enables one to exercise a dominant influence over the other; • One enterprise is able, by agreement, to exercise sole control over a majority of shareholders' or members' voting rights in another. A typical example of a linked enterprise is the wholly-owned subsidiary.		
Is the recipient organisation part of a merger or acquisition?			
In the case of mergers or acquisitions, all prior *de minimis* aid granted to any of the merging undertakings should be taken into account when determining whether any new *de minimis* aid to the new or the acquiring undertaking exceeds the *de minimis* ceiling.			
Information about the support			
Confirm that support is **NOT** for any of the following activities:	• Export related activities; • Aid contingent upon the use of domestic over imported goods.		
Confirm type of aid:	• Grant; • Public loan (complete checklists A&B); • Guarantee (complete checklists A&B).		
Confirm that no other aid has been given for the same eligible costs.	SGEI *de minimis* can be cumulated with other types of *de minimis* aid as long as the relevant aid given does not exceed the highest aid intensity or aid amount applicable. SGEI *de minimis* cannot be cumulated with other forms of aid.		
Information about the calculation			
Confirm the applicable **reference period** (the recipient's current and previous two fiscal years)			
Confirm the date and amounts (in sterling) of *de minimis* aid of		**Box A**	

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all types that the recipient has received in the **reference period:** • For linked enterprises you must include all *de minimis* aid granted to the 'group' of undertakings. • For undertakings that have been merged you must include any *de minimis* received by all companies that have been merged		
Confirm the date of award		
Confirm the sterling equivalent of the €500,000 using the Commission's exchange rate on the date of award: http://ec.europa.eu/budget/contracts_grants/info_contracts/inforeuro/inforeuro_en.cfm	**Box B**	
Confirm the total amount of *de minimis* aid (in sterling) you are awarding:	**Box C**	
Confirm that when the amounts in **Box A and C** are added together they are equal to or less than the amount in **Box B:**		
Information about administration		
Confirm that you have written to the recipient entrusting them with the Service of General Economic Interest and informing them of the value of the aid. Make sure the letter includes a reference to the SGEI *de minimis* Regulation including a link to the full regulation and setting out their responsibilities (see **Annex 4 Form 1**)		

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Annex 3 - Checklist C - *de minimis* Regulation extra conditions for loans and guarantees

Information on the enterprise assisted		
Confirm that you have completed **Checklist B:**		
Confirm that the enterprise is not a firm in difficulty:		
Confirm the size of the undertaking (SME or large):		
For loans		
The gross grant equivalent of the loan has been calculated as a proportion of the €500,000 threshold using the applicable reference rate:		
For Guarantees		
Confirm that the guarantee does not exceed 80% of the loan and the amount guaranteed does not exceed €3.75m, giving a Gross Grant Equivalent of €500,000:		
OR		
The gross grant equivalent of the guarantee has been calculated on the basis of safe-harbour premiums in the Commission notice on guarantees:		

ANNEX 4

ANNEX 4 Form 1: Eligibility to receive SGEI *de minimis* aid

This form can be used to determine the Value of any *de minimis* aid of all forms previously received by a client, in order to ascertain whether there is scope to give SGEI *de minimis* aid.

Aid administrators may also wish to build the relevant information into their application forms, depending on the nature of the *de minimis* scheme being operated.

Dear

[SCHEME TITLE (IF APPLICABLE)] STATE AID: SERVICE OF GENERAL ECONOMIC INTEREST (SGEI) *DE MINIMIS* AID

This Agreement is an Act entrusting to the Service Provider responsibility for providing a service of general economic interest for the purposes of the Commission Decision 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 (Commission Regulation (EU) No.360/2012).

The purpose of this Agreement is to *INSERT DETAIL OF SGEI HERE*.

In order to minimise distortion of competition the European Commission sets limits on how much assistance can be given to organisations operating in a competitive market. This letter sets out what is needed to ensure compliance with those limits. You should note carefully the requirements and the obligations. If you have any queries please discuss them with the aid administrator.

Under EU Regulation No.360/2012 (SGEI *de minimis* Aid Regulation) as published in the Official Journal of the European Union 25 April 2012, the support can be provided up to a ceiling of €500,000 to any single undertaking over a three fiscal year period (i.e. your current fiscal year and previous two fiscal years). A full version of the Regulation can be found at:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0360&from=EN

Any SGEI *de minimis* aid provided to you under this scheme will be relevant if you wish to apply, or have applied, for any other SGEI *de minimis* aid. The value of the aid under this scheme is (or estimated to be) [*****]. You will need to declare this amount to any other aid awarding body who requests information from you on how much SGEI *de minimis* aid you have received. For the purposes of the SGEI *de minimis* Regulation, you must retain this letter for 3 years from the date on this letter and produce it on any request by the UK public authorities or the European Commission. (You may need to keep this letter longer than 3 years for other purposes.)

Please advise us now of any other *de minimis* aid which your enterprise and any enterprises linked to it may have received during your current and previous two fiscal years, as we need to check that our support added to that previously received, will not

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exceed the threshold of €500,000 the last 3 fiscal years. This should include any Industrial *de minimis* aid granted in line with Commission Regulation (EU) No.1407/2013, any Agricultural *de minimis* aid granted in line with Commission Regulation (EU) No.1408/2013 and any Fishery and Aquaculture *de minimis* aid granted in line with Commission Regulation (EU) No.7171/2014. *De minimis* aid includes not only grants but also assistance such as free or subsidised consultancy services, marketing advice etc. If you are in any doubt about whether previous assistance received classes as *de minimis* assistance please include it. Please sign the attached statement confirming your eligibility for support.

Yours sincerely

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Statement of *de minimis* aid of all types received

I confirm that my company (and any company linked to it) have received the following *de minimis* aid during the previous 3 fiscal years (i.e. current fiscal year and the previous two fiscal years), including any SGEI *de minimis* aid granted in line with Commission Regulation (EU) No.360/2012, any Industrial *de minimis* aid granted in line with Commission Regulation (EU) No.1407/2013, any Agricultural *de minimis* aid granted in line with Commission Regulation (EU) No.1408/2013 and any Fishery and Aquaculture *de minimis* aid granted in line with Commission Regulation (EU) No.717/2014:

Body providing the assistance/aid	Value of assistance	Date of assistance

I acknowledge that if I fail to meet the Eligibility Requirements, I/we shall become liable to pay the full price that would otherwise be payable in respect of the services received.

COMPANY

CLIENT NAME

SIGNATURE

DATE

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ANNEX 4 Form 2: Value of SGEI *de minimis* aid given

This form can be used to provide the client with the actual Value of SGEI *de minimis* aid provided at the end of a project, where it is not possible to quantify the exact level of aid at the outset, for example, in a business support scheme where service can be provided up to a maximum level.

Project Name_____

SGEI *de minimis* Aid Provided.

I, _____(sponsor representative), on behalf of _____(sponsor), confirm that _____ (the client) received the following value of *de minimis* aid on the above programme:

Nature of Assistance	Value of Assistance £	Date of Assistance

Signed on behalf of sponsor_____

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Name_____
_____

Signed on behalf of
Client_____

Name_____