

## Omicron Hospitality and Leisure Grant Policy

### 1. Introduction

- 1.1 On 21 December 2021, Government announced the introduction of grant support for hospitality and leisure businesses in England. See announcement here: <https://www.gov.uk/government/news/1-billion-in-support-for-businesses-most-impacted-by-omicron-across-the-uk>
- 1.2 The latest guidance was issued by the Department for Business, Energy & Industrial Strategy (BEIS) on 21 January 2022: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1048968/omicron-hospitality-and-leisure-grant-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1048968/omicron-hospitality-and-leisure-grant-guidance.pdf)
- 1.3 The scheme provides support to hospitality, leisure and accommodation businesses, in recognition that the rise of the Omicron variant means that some businesses are likely to struggle over the coming weeks.
- 1.4 This support will take the form of a one-off grant funding scheme. Funding to be made available in Financial Year 2021-2022 and can be used in Financial Year 2021/22 only. The scheme is called the Omicron Hospitality and Leisure Grant and is administered by business rate billing authorities in England.
- 1.5 Local (Billing) Authorities have received funding to be allocated in one-off grants to businesses. The scheme will close for all applications on 18 March 2022 and all final payments must be made and dispersed to recipients by 31 March 2022.
- 1.6 Medway Council has been informed under a grant determination letter that it will receive £1,650,087 for this purpose. Central Government will fully reimburse Local Authorities in line with the guidance provided and the grant determination letter for the cost of the grant under section 31 of the Local Government Act 2003.
- 1.7 As a consequence of these announcements this policy identifies the circumstances in which Medway Council will grant an Omicron Hospitality and Leisure Grant.

### 2. Eligibility criteria and application process

- 2.1 Where a grant is issued, the business that according to the billing authority's records was the ratepayer in respect of the hereditament on 30 December 2021 is eligible to receive the grant. Where a Local Authority has reason to believe that the information that they hold about the ratepayer is inaccurate they may withhold or recover the grant and take reasonable steps to identify the correct ratepayer. Local Authorities should make clear to recipients that the grant is for the ratepayer and may be liable for recovery if the recipient was not the ratepayer on the eligible day.
- 2.2 The primary principle of the Omicron Hospitality and Leisure Grant scheme is to support businesses that offer in-person services, where the main service and activity takes place in a fixed rate-paying premises, in the hospitality, leisure and accommodation sectors.
- 2.3 Hospitality is defined as a business whose main function is to provide a venue for the consumption and sale of food and drink.
- 2.4 Leisure is defined as a business that provides opportunities, experiences and facilities, for culture, recreation, entertainment, celebratory events, days and nights out, betting and gaming.

- 2.5 Accommodation is defined as a business whose main lodging provision is used for holiday, travel and other purposes.
- 2.6 This table sets out types of businesses that are Government guidance states is eligible under the sector thresholds for this scheme. This list is not exhaustive, but indicative of the types of businesses that can be supported under this scheme.

<b>Support type</b>	<b>Types of businesses</b>	
Hospitality	Food courts Public houses/pub restaurants Restaurants	Roadside restaurants Wine bars Cafés
Leisure	Casinos and gambling clubs Cinemas Museums and art galleries Stately homes & historic houses Theatres Zoos & safari parks  Amusement parks Wedding venues  Events venues Night clubs & discotheques	Arenas Concert halls Tourist attractions Theme parks Amusement arcades Soft play centres or areas Clubs & institutions Village halls & scout huts, cadet huts, etc
Accommodation	Caravan parks Caravan sites and pitches Chalet parks Coaching inns Country house hotels  Guest houses Hostels Hotels Lodge	Holiday apartments Cottages or bungalows Campsites Boarding houses Canal boats or other vessels B&Bs Catered holiday homes Holiday home

- 2.7 Businesses will only be eligible where their main service falls within hospitality, leisure or accommodation. If a business operates services that could be considered hospitality or leisure, and also fall into another category, the main service can be determined by assessing which category constitutes 50% or more of their overall income. The main service principle will determine whether a business receives funding. Businesses will need to declare which is their main service. Local Authorities will need to exercise their reasonable judgement to determine whether or not a business is eligible for grants and be satisfied that they have taken reasonable and practicable steps to pay eligible businesses.
- 2.8 It is understood that in some cases it may not be materially clear whether a business falls into one of the eligible categories, so decisions on the eligibility of these businesses will be at the Local Authorities' discretion.
- 2.9 Businesses must have been trading on 30 December 2021 to be eligible to receive funding under this scheme.
- 2.10 For the purposes of this grant scheme, a business is considered to be trading if it is engaged in business activity. This should be interpreted as carrying on a trade or profession or buying and selling goods or services in order to generate turnover. Fully constituted businesses in liquidation, dissolved, struck off or subject to a striking-off notice are not eligible under these conditions. To help further, some trading indicators are included

below that can help assess what can be defined as trading for the purposes of the grant schemes. Indicators that a business is trading are:

- The business continues to trade, including online, via delivery services etc.
- The business is not in liquidation, dissolved, struck off or subject to a striking-off notice or under notice
- The business is engaged in business activity, managing accounts, preparing for reopening, planning and implementing COVID-safe measures
- This list of indicators is not exhaustive and Local Authorities must use their discretion to determine if a business is trading.

2.11 The council will operate an application process for all applicants for the grant and must be satisfied that businesses that have previously received related grants meet the eligibility criteria for the Omicron Hospitality and Leisure Grant. As a minimum, Local Authorities must hold the following information on all applicants:

- a) Name of business
- b) Business Trading Address including postcode
- c) Unique identifier (preferably Company Reference Number (CRN)) if applicable. If not applicable, VAT Registration Number, Self-Assessment/Partnership Number, National Insurance Number, Unique Taxpayer Reference, Registered Charity Number will also be acceptable)
- d) High level SIC Code
- e) Nature of Business
- f) Date business established
- g) Number of employees
- h) Business rate account number

2.12 This data may be shared with BEIS. The BEIS privacy notice, setting out how BEIS will handle personal data across all COVID-19 business grant schemes, can be found here: <https://www.gov.uk/government/publications/covid-19-grant-schemes-privacy-notice/covid-19-grant-schemes-privacy-notice>

2.13 Local Authorities are required to undertake pre-payment checks prior to the award of a grant.

## 2.14 **Hospitality**

2.14.1 For the purposes of this scheme, a hospitality business can be defined as a business whose main function is to provide a venue for the consumption and sale of food and drink.

2.14.2 Local Authorities may use the following criteria to assess whether a business is eligible for a grant under this threshold:

- Businesses offering in-person food and drink services to the general public.
- Businesses that provide food and/or drink to be consumed on the premises, including outdoors.

2.14.3 For these purposes, the definition of a hospitality business should exclude: food kiosks and businesses whose main service (generating 50% or more of income) is a takeaway (not applicable to those that have adapted to offer takeaways during periods of restrictions, in alignment with previous COVID-19 business grant schemes).

## 2.14.4 **Leisure**

2.14.5 For the purposes of this scheme, a leisure business can be defined as a business that provides opportunities, experiences and facilities, in particular for culture, recreation, entertainment, celebratory events and days and nights out.

2.14.6 Local Authorities may use the following criteria to assess whether a business is eligible for a grant under this threshold:

- Businesses that may provide in-person intangible experiences in addition to goods.
- Businesses that may rely on seasonal labour.
- Businesses that may assume particular public safety responsibilities.
- Businesses that may operate with irregular hours through day, night and weekends.

2.14.7 For these purposes, the definition of a leisure business should exclude: all retail businesses, coach tour operators, tour operators, and gyms and sports businesses where physical exercise or training is conducted on an individual basis or group basis.

### 2.14.8 **Accommodation**

2.14.9 For the purposes of this scheme, an accommodation business can be defined as a business whose main lodging provision is used for holiday, travel or other purposes.

2.14.10 Local Authorities may use the following criteria to assess whether a business is eligible for a grant under this threshold:

- Businesses that provide accommodation for 'away from home' stays for work or leisure purposes.
- Businesses that provide accommodation for short-term leisure and holiday purposes.

2.14.11 2.16.3 For these purposes, the definition of an accommodation business should exclude: private dwellings, education accommodation, residential homes, care homes, residential family centres and beach huts. Where holiday letting businesses cannot demonstrate any income generated from the let of the premises under consideration over a given period (e.g. the last 6-months) this could justify a judgement that the business is not trading.

## 3. **Exclusions to Omicron Hospitality and Leisure Grant funding**

3.1 The proposed exclusions in the list at paragraphs 2.14.3, 2.15.3 and 2.16.3, are not intended to be exhaustive and it is for the Local Authority to determine those cases where eligibility is unclear. Billing authorities will have a good understanding of the premises in their areas and will be readily able to form a view on eligibility in most cases.

3.2 Businesses that are not within the ratings system will not be eligible to receive funding under this scheme.

3.3 Businesses that have already received grant payments that equal the maximum permitted subsidy allowances will not be eligible to receive funding.

3.4 Businesses that are in administration, insolvent or where a striking-off notice has been made, are not eligible for funding under this scheme.

## 4. **How much funding will be provided to businesses?**

4.1 The Omicron Hospitality and Leisure Grant will support hospitality, leisure and accommodation business premises with one-off grants of up to £6,000.

4.2 The following thresholds apply for these businesses:

- Businesses occupying hereditaments appearing on the local rating list with a rateable value of exactly £15,000 or under on 30 December 2021 will receive a payment of £2,667.
- Businesses occupying hereditaments appearing on the local rating list with a rateable value over £15,000 and less than £51,000 on 30 December 2021 will receive a payment of £4,000.
- Businesses occupying hereditaments appearing on the local rating list with a rateable value of exactly £51,000 or over on 30 December 2021 will receive a payment of £6,000.

**5. COVID-19 business grant subsidy allowance – Any queries on this complex area should be raised either with the relevant government department or your financial advisor.**

5.1 The EU State aid rules no longer apply to subsidies granted in the UK following the end of the transition period, which ended on 31 December 2020. This does not impact the limited circumstances in which State aid rules still apply under the Withdrawal Agreement, specifically Article 10 of the Northern Ireland Protocol. However, in the vast majority of cases this will not apply. The United Kingdom remains bound by its international commitments, including subsidy obligations set out in the Trade and Cooperation Agreement (TCA) with the EU. BEIS Guidance for public authorities explaining the subsidies chapter of the TCA, World Trade Organisation rules on subsidies, and other international commitments can be found here: <https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities>

**5.2 COVID-19 business grants subsidy allowances provided on the basis of the TCA**

5.2.1 The below scheme rules should be applied to applicants at the level of economic actor, which is defined as an entity or a group of entities constituting a single economic entity regardless of its legal status, that is engaged in an economic activity by offering goods or services on a market.

5.2.2 There are three subsidy allowances for the COVID-19 Business Grant Schemes set out below: Small Amounts of Financial Assistance Allowance, the COVID-19 Business Grant Allowance and the COVID-19 Business Grant Special Allowance. For grants that could be in scope of the Northern Ireland Protocol, please see paragraphs 5.5.4 to 5.5.5 below.

5.2.3 We have concluded that the COVID-19 Business Grant Allowance and the COVID-19 Business Grant Special Allowance are compatible with the principles set out in Article 366 of the TCA and are targeted, proportionate, and effective in order to remedy difficulties caused by the COVID-19 pandemic for the purposes of Article 364(3). These two allowances constitute subsidy schemes for the purposes of Article 373(4) of the TCA and the transparency requirements at Article 369 of the TCA. Local Authorities will still need to consider their own transparency obligations in relation to individual award (see paragraph 5.5.4. below).

**5.3 Small Amounts of Financial Assistance Allowance**

5.3.1 Grants may be paid in accordance with Article 364(4) of the TCA, which enables an applicant to receive up to a maximum level of subsidy without engaging Chapter 3 of the TCA. This allowance is up to £325,000 Special Drawing Rights, to a single economic actor over a rolling period of three fiscal years (the “Relevant Period”), which is the equivalent of £335,000 as at 2 March 2021 (The Special Drawing Right calculator here can be used to calculate the exchange rate on the day the subsidy is awarded: [https://coinmill.com/SDR\\_calculator.html](https://coinmill.com/SDR_calculator.html).) When calculating the amount of subsidy an

applicant has received under Article 364(4) of the TCA in a Relevant Period, a local authority should have regard to 15 any subsidy given under Article 364(4) and any subsidy given under Commission Regulation (EU) No 1407/2013 (the De Minimis Regulation). An applicant may elect not to receive grants under the Small Amounts of Financial Assistance Allowance and instead receive grants only using the below allowances available under this scheme.

#### **5.4 COVID-19 Business Grant Allowance**

5.4.1 Where the Small Amounts of Financial Assistance Allowance has been reached or an applicant has elected not to receive a grant under this allowance, grants may be paid in compliance with the Principles set out in Article 366 of the TCA and in compliance with Article 364(3) of the TCA under the COVID-19 Business Grant Allowance (subsidies granted on a temporary basis to respond to a national or global economic emergency). For the purposes of the COVID-19 Business Grant Schemes, this allowance is £1,900,000 per single economic actor. This allowance includes any grants previously received under other COVID-19 Business Grant Schemes using the COVID-19 Business Grant Allowance and any State aid previously received under Section 3.1 of the European Commission's Temporary Framework across any other UK scheme. This may be combined with the Small Amounts of Financial Assistance Allowance to equal £2,235,000 (subject to the exact amount applicable under the Small Amounts of Financial Assistance Allowance using the Special Drawing Right calculator, and any other support an applicant has received under the Small Amounts of Financial Assistance Allowance in the Relevant Period).

#### **5.5 COVID-19 Business Grant Special Allowance**

5.5.1 Where an applicant has reached its limit under the Small Amounts of Financial Assistance Allowance and COVID-19 Business Grant Allowance, it may be able to access a further allowance of funding under the COVID-19 Business Grant Schemes of up to £10,000,000 per single economic actor, provided the following conditions are met: a. The Special Allowance covers only the applicant's uncovered fixed costs incurred during the period between 1 March 2020 and the date of application, including such costs incurred in any part of that period ('eligible period'); b. Applicants must demonstrate a decline in turnover during the eligible period of at least 30% compared to the same period in 2019. The calculation of losses will be based on audited accounts or official statutory accounts filed at Companies House, or approved accounts submitted to HMRC which includes information on the applicant's profit and loss; c. 'Uncovered fixed costs' means fixed costs not otherwise covered by profit, insurance or other subsidies; d. The grant payment must not exceed 70% of the applicant's uncovered fixed costs, except for micro and small enterprises (for the purposes of this scheme defined as less than 50 employees and less than £9,000,000 of annual turnover and/or annual balance sheet), where the grant payment must not exceed 90% of the uncovered fixed costs; e. Grant payments under this allowance must not exceed £10,000,000 per single economic actor. This allowance includes any subsidies previously received in accordance with Section 3.12 of the European Commission's Temporary Framework or previously received under the COVID-19 Business Grant Schemes using this COVID-19 Business Grant Special Allowance; all figures used must be gross, that is, before any deduction of tax or other charge; f. Grants provided under this allowance shall not be cumulated with other subsidies for the same costs.

5.5.2 An applicant must be able to provide the necessary documentation to demonstrate it is eligible for funding under this COVID-19 Business Grant Special Allowance. Local Authorities must first verify that an applicant can meet all the criteria set out under this allowance before providing further funding under this allowance.

5.5.3 Grants provided in excess of the Small Amounts of Financial Assistance Allowance may not be granted to applicants that were defined as an 'undertaking in difficulty' (as defined in

Annex C below) on 31 December 2019. In derogation to the above, grants can be granted to micro or small enterprises (as defined above) that were already in difficulty on 31 December 2019 provided that they are not subject to collective insolvency proceedings.

5.5.4 Local Authorities must ensure the remaining applicable provisions of the subsidies chapter of the TCA are complied with. In particular, the transparency obligations under article 369. The transparency database can be found at <https://manageuksubsidies.beis.gov.uk/>. All schemes and individual awards over £500,000 must be uploaded within six months of being granted. Any ad hoc awards of at least 325,000 Special Drawing Rights over three years to an individual beneficiary must also be uploaded within six months of being granted. For access to and any further questions on the database, please contact the BEIS subsidy control team at [subsidycontrol@beis.gov.uk](mailto:subsidycontrol@beis.gov.uk).

5.5.5 For the avoidance of doubt, grants under the Small Amounts of Financial Assistance Allowance, the COVID-19 Business Grant Allowance and the COVID-19 Business Grant Special Allowance may be combined for a potential total allowance of £12,235,000 (taking into account all grants previously received under the COVID-19 business grants schemes and subject to the exact amount applicable under the Small Amounts of Financial Assistance Allowance using the Special Drawing Right calculator and the three fiscal year period applicable to the Small Amounts of Financial Assistance Allowance).

## 5.6 Article 10 of the Northern Ireland Protocol

5.6.1 Grants in scope of Article 10 of the Northern Ireland Protocol remain subject to EU State aid rules, following the end of the Transition Period which ended on 31 December 2020. Article 10 provides that EU State aid rules will continue to apply to the UK in respect of measures which affect trade in goods and electricity between Northern Ireland and the European Union.

5.6.2 In assessing whether Article 10 may apply, Local Authorities are directed to Section 7 of the technical BEIS Guidance which covers the practical application of Article 10. Local Authorities applying Article 10 must follow Section 7 of the technical BEIS Guidance.

5.6.3 Where a Local Authority grant falls within scope of Article 10 of the Northern Ireland Protocol, then a Local Authority cannot rely on the Small Amounts of Financial Assistance Allowance. Instead, a Local Authority must see if the grant can be awarded under the De Minimis Regulation which allows for up to 200,000 euros of subsidy to be given to an undertaking in a rolling three year fiscal period. If a grant falls within scope of the Northern Ireland Protocol and the De Minimis Regulation cannot be relied upon, then the Local Authority will need to satisfy itself there is another legal route to award the grant in compliance with EU State aid Rules. For example, the grants may be given under the European Commission's Temporary Framework.

## 6. Appeals

6.1 Under the Local Government Finance Act 1992, there is no right of appeal against the Council's use of discretionary powers. However, the Council operate an internal review process and will accept a customer's request for an appeal of its decision. All requests must be made in writing to the Head of Revenues and Benefits, within one month of the Council's decision, and should state the reasons why the ratepayer is aggrieved with the decision of the council. New information may be submitted at this stage to support the ratepayer's appeal. Requests will be considered by the Chief Finance Officer as Section 151 Officer.

6.2 For ratepayers who remain aggrieved and wish to pursue the matter further, the next step is to make an application for judicial review