Culture Recovery Fund: Repayable Finance
Guidance for applicants

Arts Council England
August 2020
The below is an outline summary of key information. Please see Section three for full eligibility criteria.

Guidance updated 21/08/2020 –
Description of eligibility has been updated to clarify it is organisations ‘which will be at clear risk of no longer trading viably by 31 March 2021’ that are eligible for this programme.

<table>
<thead>
<tr>
<th>Summary of key information</th>
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<tr>
<td><strong>What is the focus of the programme?</strong></td>
<td>To maintain England’s cultural ecology by supporting culturally significant organisations, which were financially sustainable before Covid-19 but which will be at clear risk of no longer trading viably by 31 March 2021 and have exhausted all other options for increasing their resilience. This investment is intended to ensure that organisations can return to sustainable operations (no later than 31 March 2022).</td>
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Companies House
- community interest companies (either limited by shares or guarantee) (CICs) registered with the CIC regulator
- charitable incorporated organisations (CIOs) registered with the Charity Commission for England and Wales
- charitable companies or charitable trusts registered with the Charity Commission for England and Wales
- limited liability partnerships registered at Companies House
- partnerships established under a partnership deed/ agreement under the Partnership Act 1890
- community benefit and co-operative societies registered with the Financial Conduct Authority
- Royal Charter bodies
- statutory bodies and other public bodies including Universities and museums who run or maintain cultural services

The applicant organisation must be based in England and have been properly constituted, and registered with the
relevant regulatory body where applicable, on or before 31 March 2017.

For the purposes of this programme, “cultural organisations” refers to charitable; not for profit; and commercial organisations operating within the arts, museums, heritage (including built, natural and intangible heritage) sectors¹, including independent cinemas.

Museum applicants must be Accredited museums (Full and Provisional) or museums confirmed by the Arts Council as working towards Accreditation (see list here).

Library services are not eligible to apply to this programme.

<table>
<thead>
<tr>
<th>When is the deadline for applications?</th>
<th>12pm (midday), <strong>09 September 2020</strong></th>
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<tr>
<td>How much can be applied for per application?</td>
<td>The minimum amount that can be applied for is £3 million.</td>
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¹ For more detailed information about what is covered, please refer to the [Frequently Asked Questions](#) on the Arts Council website, which supports this guidance.
| **During what period can the finance be used?** | The financing provided should be used to support the costs to achieve financial sustainability, where possible by 31 March 2021, but by exception until 31 March 2022. |
| **Are there particular terms and conditions relating to the acceptance of financing?** | Financing will require agreement to conditions. Some conditions will be standard for all organisations, as outlined in section six. Other conditions will be bespoke and agreed as part of the Repayable Finance Agreement negotiations. |
| **When will decisions be made?** | We will aim to notify all applicants of initial decisions by **w/c 19 October 2020**. Final agreements will be subject to negotiations and entering into negotiations is not a guarantee that a loan will be made. |

**Changes to this guidance or our programmes**
We reserve the right to make changes to the guidance and/or programme after its launch. We will communicate any changes as quickly and clearly as we can.

**Assistance with your application**

We are committed to being open and accessible and want to make the Repayable Finance application process accessible to everyone.

We are also producing this guidance in a range of alternative formats including Easyread, BSL and Large Print. We will publish these as soon as possible. If you require a copy of this guidance in Braille, please contact our Customer Services team.
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SECTION ONE - INTRODUCTION

Welcome

Thank you for your interest in the Culture Recovery Fund.

On 5 July 2020, the Department for Digital, Culture, Media and Sport (DCMS) announced a £1.57 billion package to protect the UK’s culture and heritage sectors from the economic impacts of Covid-19.

This Repayable Finance programme is part of that package and will support cultural organisations that have been affected by the Covid-19 crisis to stay afloat. This will ensure we retain both significant organisations that are the bedrock of the global reputation of England’s cultural sector, and also organisations across the country that enable people to have access to great creative and cultural opportunities, no matter what their background or where they live.

You should be aware that this element of the package is up to £270 million. We anticipate that competition for financing will be very high and only those able to demonstrate genuine need should apply. We will not be able to support all applications.

The criteria for the Culture Recovery Fund have been set by DCMS and the loans will be administered, monitored and collections made by Arts Council England, acting as agent on behalf of DCMS.
The other element of the support available to organisations is Culture Recovery Fund: Grants. A total budget of up to £500 million is available to be distributed across two rounds of the grants programme, with organisations able to apply for funding of up to £3 million. Organisations will be able to access either Grants or Repayable Finance, but not both. Charitable and commercial organisations operating within the remit of Arts Council England\(^2\) will be able to access this funding, which is expected to be in high demand.

Further information on Culture Recovery Fund: Grants can be found [here](#).

Separate portions of the DCMS recovery package are also being distributed by:

- **National Lottery Heritage Fund** & **Historic England**, joint grants programme for heritage organisations, application deadline 17 August 2020

- **The British Film Institute**, grants programme for independent cinemas, open for applications from 10 August - 30 October 2020

**About the programme**

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\(^2\) For more detailed information about what falls within the remit of Arts Council England and the types of organisations eligible to apply for Culture Recovery Fund: Grants, please refer to the [Frequently Asked Questions](#).
A total budget of £270 million is available to be distributed through the Culture Recovery Fund: Repayable Finance programme.

There will be one round of applications for this programme.

It is likely that the majority of successful applicants would be awarded a fixed term loan with fixed repayment and interest repayable as early as feasible and prudent, and in any event not longer than a 20 year maturity. The loan would have an initial interest and capital repayment holiday of up to 4 years, available to profit-making and non-profit organisations, during which time interest will accrue on a 6 monthly basis.

Exceptionally, a flexible loan facility based on repayments as a proportion of commercial income (for example where activity in terms of tickets sold, retail, catering, or other trading income drive the amount repaid each year) may be made available to non-profit organisations. If the flexible loan facility is agreed successful applicants will still need to repay the entire loan balance. In this case, we will look to negotiate a bespoke repayment plan with you.

For more information about the terms of loans see Section eight of this guidance.

About Arts Council England

Arts Council England is the national development agency for creativity and culture. We have set out our strategic vision in Let’s
Create that by 2030 we want England to be a country in which the creativity of each of us is valued and given the chance to flourish and where everyone of us has access to a remarkable range of high quality cultural experiences. We invest public money from Government and The National Lottery to help support the sector and to deliver this vision.

www.artscouncil.org.uk.

Programme partners

In delivering this programme on behalf of the wider cultural sector, Arts Council England will work closely with the National Lottery Heritage Fund, Historic England, the British Film Institute and other relevant sector bodies, as appropriate. This will include their commenting on applications to support the decision-making process.

- **National Lottery Heritage Fund** – NLHF is a non-departmental public body, sponsored by DCMS. NLHF is the largest dedicated funder of the UK’s heritage, including built, natural and intangible heritage.

- **Historic England** – HE is an executive non-departmental public body, sponsored by DCMS. HE is the government’s statutory adviser on the historic environment, championing historic places and helping people to understand, value and care for them.
• **British Film Institute** – BFI is an executive non-departmental public body, sponsored by DCMS. The BFI is the lead organisation for film in the UK and use Lottery funds to support film production, distribution, education and audience development.

Arts Council England will be responsible for the administration of the programme, including ongoing monitoring of organisations and loan repayments.

**Culture Recovery Board**

DCMS has appointed an independent board of representatives, who have been selected to bring perspectives from across the cultural sector as well as specialist financial and business expertise.

The Board will fulfil two key responsibilities: assurance on the overall Culture Recovery Fund (both Grants and Repayable Finance programmes) and final decision making on all Culture Recovery Fund: Repayable Finance applications. Members of the Culture Recovery Board have been appointed by DCMS. It is chaired by Sir Damon Buffini.

The full list of board members on the Culture Recovery Board is as follows:

• Independent Chair – Sir Damon Buffini
Independent Board Members:

- Claire Whitaker
- Baroness Kate Fall
- Hemant Patel
- Samir Shah
- Carol Lake

Advice giving

We have designed this application process to be as straightforward as possible, requesting only the information we need.

We will not be able to offer specific, one-to-one advice about how to write your application, or to read draft applications for this programme.
Our Customer Services team can help you to use the online application form, or to set up or make any required updates to your applicant profile.

On our website you can find more information to help you make your application, including Frequently Asked Questions for this fund.

If you feel you face particular barriers in making an application, please contact our Customer Services team by emailing enquiries@artscouncil.org.uk.
SECTION TWO – PURPOSE OF THE CULTURE RECOVERY FUND

Aims and outcomes

The aim of the Culture Recovery Fund is to help maintain England’s cultural ecology by supporting culturally significant organisations which were financially sustainable before Covid-19 but which will be at clear risk of no longer trading viably by 31 March 2021 and have exhausted all other options for increasing their resilience.

The central aims of the fund are to enable cultural organisations to:

- reopen/restart their operations, where appropriate or
- operate on a sustainable, cost-efficient basis, so that they are able to reopen at a later date if, for example, reopening under social distancing is not permissible or does not represent a value for money approach.

Organisations should only propose to deliver activities that are good value for money with social distancing in place, and that do not entail significant financial risk. For more information please refer to our FAQs.

What we can fund

Through the Repayable Finance programme, we can support a combination of:
• **costs to support sustainability** through the preservation of the organisation's critical assets, people and financial resources whilst the organisation has reduced operations, if that is the most cost-effective route to safeguard for the future, including:

  - essential business expenditure, such as staff salaries and fixed/operational costs
  - protecting cultural assets by:
    1. maintaining buildings and other assets (including collections) while closed (including environmental monitoring and conservation)
    2. stabilising collections at immediate risk
    3. temporary storage for collections, artefacts and documents
    4. supporting the retention of specialist skills and expertise
  - security to ensure buildings and sites are secure over the closure period
  - proportionate redundancy pay outs where decisions have been made to reduce staff
  - costs to prepare for reopening, including hiring staff and building working capital
  - debts incurred as a direct result of the Covid-19 pandemic
  - costs that may prevent the need for additional, unavoidable, public investment further down the line (for example, assets which may revert from third parties to
public ownership in the event of insolvency, or otherwise need saving or protecting), or a future failure to deliver any statutory duties

- **Operational costs** incurred to enable the organisation to remain open, reopen or partially reopen, where this represents a value for money approach, does not constitute unnecessary risks and involves organisations trading in accordance with the Culture Recovery Fund: Repayable Finance programme specific Government Covid-19 guidance\(^3\). Eligible costs include:

  o essential business expenditure, such as staff salaries, freelance employment and fixed/operational costs
  o equipment to ensure compliance with social distancing and other public health requirements
  o any up-front costs for preparing to restart activities that will drive future income, such as performances, exhibitions and marketing
  o redundancy pay outs where decisions have been made to reduce staff
  o advice from professionals, for example on risk, safety, how to support staff or on new business models
  o operating losses your organisation has incurred as a direct result of the Covid-19 pandemic, since 01 March 2020

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\(^3\) [Culture Recovery Fund: Repayable Finance programme specific Government Covid-19 guidance](#)
• costs to ensure the value for money recovery of your organisation’s financial sustainability, including:
  
  o running risk management reviews and testing any identified actions to safeguard the organisation as needed
  o reconfiguring business plans, governance and activity needed to help safeguard the future of your organisation
  o considering or implementing organisational restructures and mergers where these have been identified as the most cost-effective way of sustaining an organisation
  o reflating reserves up to the equivalent of up to eight weeks’ turnover

**What we cannot fund**

We will not be able to consider your application if you include:

• costs that are eligible to be covered by other strands of Government support, for example, furloughing
• costs beyond the point recovery plans demonstrate a return to financial sustainability, no later than 31 March 2022
• repayment of debt used to finance the business including bank loans, shareholder or owner loans
• new projects/activity during a prolonged closure period that are not essential to your continued operations
• reflating reserves beyond the equivalent of up to eight weeks’ turnover
• non-essential building maintenance or capital expenditure
• covering costs/losses already supported through other sources, including but not limited to any other Arts Council funding (for example, National Portfolio funding and the Arts Council’s Emergency Response Funds), other cultural emergency funding from National Lottery Heritage Fund, Heritage England and British Film Institute, and other Government schemes
• costs related to the promotion of the beliefs of political or faith organisations

How much budget is available?

The total budget for this programme is £270 million.
SECTION THREE – ELIGIBILITY

Please read the eligibility requirements for the fund carefully. If you do not meet any of these requirements, we will be unable to consider your application.

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The applicant organisation must be based in England and have been properly constituted, and registered with the relevant regulatory body, where applicable, on or before 31 March 2017.

For the purposes of this programme, “cultural organisations” refers to charitable; not for profit; and commercial organisations operating within the arts, museums, heritage (including built, natural and intangible heritage) sectors⁴, including independent cinemas.

Museum applicants must be Accredited museums (Full and Provisional) or museums confirmed by the Arts Council as working towards Accreditation (see list here).

⁴ For more detailed information about what is covered, please refer to the Frequently Asked Questions on the Arts Council website, which supports this guidance.
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<td><strong>Who cannot apply?</strong></td>
</tr>
<tr>
<td>• Individuals</td>
</tr>
<tr>
<td>• Small partnerships of two or three persons not all of whom are bodies corporate</td>
</tr>
<tr>
<td>• Unincorporated bodies of persons that do not consist entirely of bodies corporate and is not a partnership</td>
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<tr>
<td>• Consortia</td>
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<td>• Sole traders</td>
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<td>• Unincorporated organisations/ associations that have a constitution but are not registered with the Charity Commission for England &amp; Wales or registered with the FCA</td>
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<tr>
<td>• Non-Accredited museums (except those working towards Accreditation)</td>
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<td>• DCMS-sponsored museums</td>
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<td>• MOD-sponsored museums</td>
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<tr>
<td>• Private members’ clubs constituted as companies and registered at Companies House or as unincorporated associations</td>
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<tr>
<td>• Library services</td>
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SECTION FOUR – MAKING AN APPLICATION

This section sets out in detail how to prepare your application.

The online application form will open on Grantium at **12pm (midday)** on 21 August 2020. Applications must be submitted by **12pm (midday)** on 09 September 2020.

Application process

If you do not have a profile in our online application system, you will need to set one up. It can take up to five working days to validate profiles, **so please do this immediately**. If you have not created a profile on the system you will not be able to submit an application – **late applications, and applications submitted outside of the system, will not be accepted**.

You can find **guidance on our website** and if you need further support you can contact our Customer Services team at **enquiries@artscouncil.org.uk**

1. Read this guidance carefully
   This guidance gives you information on how to apply.

2. Check the information in your applicant profile on Grantium is accurate and up to date
   See the **guidance on our website**.
3. **Prepare and submit your application**

   You must apply through our [online application portal](#). You can only submit one application to this fund.

**How to apply**

The application form will ask you to respond to a series of questions and upload a set of mandatory attachments. We have tried to keep the questions as straightforward as possible, so that you can provide us with the information we need to make a decision. Some questions have prompts you need to consider when providing your answer.

The application will firstly ask for some basic details including: the amount you are requesting from us, your mission or purpose and how many members of staff you regularly employ or contract.

You will then be asked to provide three sets of information to inform assessment against the following criteria:

### 1. Financial Resilience and Sustainability

In order to assess financial viability and ability to repay, we will ask you to provide a range of financial documentation supported by a recovery plan. Please note that we, or our third party advisors, will carry out a credit check as part of the assessment.
We will only accept the mandatory attachments, as detailed below, in support of your application. Any other attachments will be disregarded for the purposes of assessment and decision-making.

Solely for the purposes of modelling your future annual budgets and cash flow forecasts, please assume the loan would be paid in full on 01 December 2020 and refer to the indicative term sheet, at section nine of this guidance, for interest rate, loan term and interest free period to utilise within your financial forecast.

**You must upload the following mandatory attachments on the ‘Financial Resilience and Sustainability’ screen of the application form:**

- A recovery plan (as set out below)
- Last three years’ independently certified or audited financial statements Where available, this should include your most recent financial statements eg. to 31 March 2020. If these have not yet been audited, please include draft accounts for this period, together with the previous two years’ independently audited financial statements
- Your most recent management accounts for the year ending 31 March 2021 (these should show your organisation’s actual income and expenditure to 31 July 2020 against your original budget for the year and your forecast income and expenditure to (at least) 31 March 2021)
- Draft balance sheet at 31 July 2020, showing levels of restricted and unrestricted reserves
• Annual budgets for 2021/22, 2022/23, 2023/24 and 2024/25 showing how the proposed loan will allow you to achieve financial sustainability (no later than 31 March 2022), including narrative notes within the documents to clarify the assumptions made.
• Cash flow forecasts for 2021/22, 2022/23, 2023/24 and 2024/25 showing the impact of the proposed loan. The cash flows are to be on a monthly basis for the first two years until 31st March 2023, but can be provided either monthly or annually past that point and should include narrative notes within the documents to clarify the assumptions made.

We request that all financial models, cash flows or detailed financial information be provided as an Excel file for ease of assessment.

The limit on file size for attachments is 10 megabytes.

Allowable formats: jpg, xls, xlsx, jpeg, pdf, doc, docx, pptx, and ppt.

Recovery Plan

We request that the narrative for the recovery plan is no longer than 6000 words and that all of the assumptions made will be clearly reflected in the annual budgets or cash flow forecasts provided.

The attached recovery plan should address the following:
• how Covid-19 has impacted your financial viability, resilience and sustainability
• how you have reduced your organisation’s core costs in order to ensure your organisation is more financially resilient
• how you have taken advantage of other Government schemes and measures which have been introduced since the pandemic began
• how you have exhausted all other reasonable options to ensure that your organisation remains financially viable, including affordable lending, viable alternative options for commercial, contributed and philanthropic income, and using your own resources
• how a loan from this programme will enable you to achieve financial viability (no later than 31 March 2022), demonstrating the most value for money route to sustainability, including for instance:
  o how you have considered whether full reopening, scaled-back reopening, or remaining closed with a reduced cost base provides your best chance for longer-term survival
  o how you intend to restart or continue your business/activity, in a way appropriate for your organisation (reflected in accompanying cash flow and management accounts)
• what activity you anticipate delivering in the period up to a return to financial sustainability, to include any prolonged closure period (reflected in accompanying cash flow and budgets)
• what assumptions you have made about social distancing and the public health context for business planning
• your plan for identifying, managing and mitigating risk
• how you intend to repay the requested loan, including your preference for how repayments would be made ie. whether fixed-term or income-based (applicable only to charities). You should be aware that agreeing income-based repayment terms is at the discretion of the Culture Recovery Board, therefore you should also set out how you would repay a fixed-term loan.
• your organisational governance and leadership structures, including skills and experience available at a senior level to enable you to adapt and flex your business to the changing external environment
• what financial controls, monitoring and reporting processes you have in place to ensure the effective financial management of your organisation
• key business development milestones

2. Cultural Significance

We will ask you about your organisation’s work and its significance within the cultural sector. You will need to respond to the following question, using the prompts below to help you:

• Tell us about your organisation’s work and how it is considered to be culturally significant and/or how it contributes to providing cultural opportunity in England
You will need to tell us about:

a) your national and international significance within the cultural sector and/or
b) your role in providing cultural opportunity in England

You only need to answer option a) or b), although you are welcome to respond to both if you prefer.

a) the following prompts will help you to tell us about your national or international significance in the cultural sector, if that is most relevant for your organisation:

- that you are an organisation which makes a major contribution to the national and international reputation of the cultural sector in England and that you can demonstrate your commitment to excellence and innovation in the way you create, present and distribute content and to building national and/or international partnerships and/or
- that your organisation has national or international reach, relevance and impact, for example whether you care for and provide public access to buildings or collections that are nationally significant or that your activity is important for the development of your artform or discipline and/or
• that you offer public access to nationally or internationally significant artistic, curatorial and/or cultural training or employment, including the development of a diverse and growing talent pipeline provision or content and/or
• that you fulfil a national or international leadership or development role within an artform/sub-artform or discipline that could not be easily replicated or replaced

b) the following prompts will help you to tell us about your role in providing cultural opportunity in England, if that is most relevant for your organisation:

• that you are located in a place where there is a relatively low number of cultural organisations, and whose loss would further reduce cultural engagement opportunities for audiences, particularly for people from underserved groups in society and for young people
• that you are located in a place where there are relatively low levels of cultural engagement and that, as an organisation, you work with people there, particularly those from underserved groups, to help them develop and express their creativity throughout their lives
• that you are a vital cultural organisation in a place, because of the employment opportunities you provide, the contribution you make to economic agendas such as tourism, and/or the important role you play in enhancing local creative skills
● that, as an organisation, you play an important role in supporting a collaborative approach to the cultural ecology within a place, through partnership with other cultural organisations, and/or with organisations in other sectors (for example, a Cultural Education Partnership)
● that, as an organisation, you demonstrate a leading role in driving innovation in a particular art form, or sub-art form, within the country
● that, if your organisation is a museum, you care for collections which have important national, regional, local or community resonance, and/or the loss of that collection would impact disadvantaged communities, and/or our understanding of diverse communities across England

3. Diversity of audiences and workforce

We will ask you about your plans for improving diversity within your organisation and your wider audience base. You will need to respond to the following question, using the prompts below to help you:

● Using the protected characteristics outlined under the Equality Act please tell us how you will improve the diversity of your workforce, governance, audiences, visitors and participants
  (up to 2,000 characters including spaces, approximately 350 words)

5 Please see the Frequently Asked Questions on our website for further information
You will need to tell us:

- what steps you will take to broaden the diversity of your workforce and governance, and the impact of those changes

- what steps you will take to broaden the diversity of your audiences, visitor base and participants, and the impact of those changes

The information you provide in your application form and accompanying attachments will be used to decide whether you will be offered a loan.

If your application does not contain the information we need, in the format we ask for it to be in, we might not be able to consider your application.
SECTION FIVE – HOW DECISIONS WILL BE MADE

Your application will be checked to ensure that you have provided all the information we have requested.

If we require clarification on any of the information provided, we, or someone working on behalf of the Arts Council, will contact you by telephone or email. If we do not receive a response from you within the allocated time, we will process your application without the requested clarification.

Decisions will be based on the information you provide in your application form and accompanying attachments, any further information that we requested as part of the process and, where relevant, data and information held in the public domain.

If your application does not contain the information we need, in the format we ask for it to be in, your application may not be considered for funding.

We will share relevant information from your application with individuals and/or organisations who are helping us assess and monitor this programme.

- Financial Resilience and Sustainability
The assessment will apply a risk rating based on the likelihood of returning to sustainability and the risk that failure of repayment will occur:

- **Minor**: *Failure of repayment unlikely to occur*
- **Moderate**: *Average likelihood of failure of repayment*
- **Major**: *Failure of repayment likely to occur*

**Cultural significance**

The assessment will apply a rating of either:

- **Not met**: *The application does not meet the basic criteria*
- **Met**: *The application sufficiently meets the basic criteria*
- **Strong**: *The application strongly meets the basic criteria*

**Diversity of audiences and workforce**

The assessment will apply a rating of either:

- **Not met**: *The application does not meet the basic criteria*
- **Met**: *The application sufficiently meets the basic criteria*
- **Strong**: *The application strongly meets the basic criteria*

These assessment scores will inform the decision making process. Final decisions on all applications will be at the discretion of the Culture Recovery Board. It is not expected that all financing requests can be met.
Decision Process

To be a successful applicant you must demonstrate your need for the financing, your financial resilience and sustainability and that you have credible, cost-effective plans for using any award from this programme.

You must also demonstrate that your organisation is culturally significant and/or contributing to providing cultural opportunity in England.

The Culture Recovery Fund: Repayable Finance programme must comply with the Equality Act 2010 by making investments to organisations whose activities benefit communities that are often disadvantaged or have particular needs. The public sector equality duty is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act\(^6\).

Should more applications be received than there are resources available, following the initial assessments, applications will be considered against programme objectives and a range of additional ‘balancing criteria’ in order to ensure the right spread of investment

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\(^6\) Under the public sector equality duty 2011, we have the responsibility to eliminate unlawful discrimination, advance equality of opportunity and foster good relations across all protected characteristics as defined in the Equality Act 2010. We are also committed to promoting equality of opportunity regardless of class or socio-economic background and to promoting the social model of disability.
is achieved within the total budget available. The balancing criteria are as follows:

- **Geographic spread**: we will take into account the need to support cultural organisations across England. We will also consider whether your organisation is based in an area of low cultural engagement, as per the [Active Lives Survey](#).

- **Increasing diversity and broadening access and participation in culture**: we want to support organisations who are committed to developing diversity, particularly for those audiences and participants that are less likely to interact with culture, those organisations which promote understanding of diverse communities across the country, and those which promote positive social outcomes through place based collaboration.

- **Range of cultural organisations**: we want to support a range of organisations across the cultural ecology including those with demonstrable international, national and/or local significance working in the arts, museums, music and heritage sectors.

- **Economic impact**: we want to support a mix of cultural organisations that make a contribution to economic growth and sector employment.
These balancing criteria will be used to ensure a good spread of investment, and to differentiate between a number of proposals considered to meet the criteria.

A set of recommendations, based on assessments and balancing criteria, will be put to the Culture Recovery Board for consideration.

The Culture Recovery Board will make initial decisions and identify which organisations will progress to Repayable Finance Agreement negotiation.

**Final decisions on all loan applications will be made at the discretion of the Culture Recovery Board.**

We will aim to notify all applicants of the initial outcome of their application **w/c 19 October 2020.**

**Any initial decision to proceed to loan negotiation will be conditional and subject to successful Repayable Finance Agreement negotiations.**
SECTION SIX – REPAYABLE FINANCE AGREEMENT
NEGOTIATION

Once the Board has confirmed that we should open negotiations with you on a loan, we will engage with you to discuss the potential terms of the loan. More detail on the potential terms are set out in section nine of this guidance.

In particular, when considering your application, a judgement will be made on whether sufficient evidence is provided in support of the level of financing requested and a reduced offer may be made. The reduced offer may be for a value below the £3 million threshold for this programme. Please note that, as the deadline for applications to the Culture Recovery Fund: Grants programme would have passed, you would be unable withdraw your application and reapply for a grant.

Bespoke conditions

As set out in section five – ‘How decisions will be made’ – we will review the level of financial risk associated with making a loan to each applicant. For those loans that are assessed as outside the risk appetite determined by the board, we may require additional bespoke conditions, in order to reduce the risk to investment. These conditions would form part of the Repayable Finance Agreement.

Security requirements
When we confirm a loan, we may take steps to secure it. The form this would take depends on the value of the loan and the nature of your organisation’s assets and finances. Should security be required, it will be set out in the Repayable Finance Agreement. Conditions precedent will need to be met prior to the release of the loan, which may affect your cash flow. If security is going to be taken over a property which you lease, we will require a copy of any authorisation required in connection with the charge of that property in favour of the lender from the landlord.

**Seniority requirements**

If you have existing borrowing, when we confirm a loan, we may expect the government investment to take the senior position in terms of payment and security. The decision to require this would depend on the nature and value of the existing borrowing, your financial plan, and the value and risk of the loan requested. Organisations with existing borrowing or security granted should explore the views of their lenders before applying. Should seniority be required, it would be set out in the Repayable Finance Agreement, this may include an inter-creditor agreement confirming the relative seniority of different creditors and how they will be repaid. Conditions precedent will need to be in place prior to the release of the loan, which may affect your cash flow.

**Paying dividends**
We expect that organisations that receive funding from the Culture Recovery Fund take a proportionate approach to making or paying any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital or capital), before this loan is fully repaid – where any legal obligations allow. Where relevant, we will look to agree an appropriate approach to paying dividends in the Repayable Finance Agreement.
SECTION SEVEN – IF YOU RECEIVE A LOAN

As this programme will be administered and monitored by Arts Council England on behalf of DCMS, all successful applicants will be required to participate in a post-programme evaluation and to comply with reasonable reporting and monitoring arrangements and other ongoing obligations prescribed by the Culture Recovery Board. All successful applicants will be asked to publicise the decision in an appropriate manner.

Should your application be successful and in accepting your loan offer, you will be asked to confirm that you, and your board (or equivalent), accept all conditions as detailed in the Repayable Finance Agreement and accompanying documents.

The following conditions will be applicable to all applicants:

- the organisation will exercise pay restraint for at least 18 months from the date of the Repayable Finance Agreement, where legally possible for them to do so, including imposing a pay freeze for all senior staff and 10% pay reductions to pre-Covid-19 pay for those contracted to receive above £150,000 per year
- the organisation will demonstrate a commitment to increase its organisational diversity and the diversity of its audiences, visitors and/or participants
● the organisation will demonstrate a commitment to progress towards net zero greenhouse gas emissions by 2050 and reporting against it
● the organisation will demonstrate a commitment to increase educational/outreach work
● the organisation will comply with legislation relating to State aid
● the organisation will ensure they take reasonable steps to protect the heritage assets they are responsible for, in particular their physical estates

These conditions will form part of the monitoring requirements for the loan.
SECTION EIGHT – STATE AID

If you are offered a loan, you will be asked to complete a State aid declaration as a requirement of your conditional offer. We may ask for further information from you and/or ask you to comply with further reporting requirements, depending on your answers to the declaration.

State aid law

EU State aid law regulates the award of State subsidies to organisations involved in economic activities (which can sometimes include the arts, heritage and culture). Although the UK has left the EU, the transitional agreement requires EU State aid law applies in the UK until 31 December 2020.

No aid

Measures which are classed as "no aid" can be funded without further administration being required.

A measure will be "no aid" where the recipient of the subsidised loan can show it is not engaged in any commercial activities (including generating income from performances).

No aid will also arise where the recipient can demonstrate there will be 'no effect upon trade between Member States'. Situations where
this may occur are set out the European Commission at Section 2.6 Notion of State Aid guidance "NoSa"7):

34. The Commission considers that public funding of a cultural or heritage conservation activity accessible to the general public free of charge fulfils a purely social and cultural purpose which is non-economic in nature. In the same vein, the fact that visitors of a cultural institution or participants in a cultural or heritage conservation activity, including nature conservation, open to the general public are required to pay a monetary contribution that only covers a fraction of the true costs does not alter the non-economic nature of that activity, as it cannot be considered genuine remuneration for the service provided.

**State aid but lawful by meeting the terms of an exemption**

Measures which are "State aid" can still be funded, provided certain conditions can be shown to be fulfilled. The value of the State aid for the exemptions below is the difference between the market rate loan and the loan offered.

1. **De Minimis**

**De Minimis** allows up to €200,000 of State aid to be awarded in a three year period. In order to comply with this exemption, your organisation (including any wider business group) will need to

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7 Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (2016/C 262/01)
confirm that the State aid received from this loan and all other De Minimis aid received in this financial year and the two previous financial years is €200,000 or less.

2. Limited Amount of aid under the Temporary Framework

The UK Temporary Framework Scheme allows State aid of up to €800,000 to be awarded provided that:

- the total aid of this kind awarded to the organisation does not exceed the threshold of €800,000 (£722,144 at August 2020) between 6 April 2020 and 31 December 2020;
- the business is not active in the processing and marketing of agricultural products (or if the business is active in such a sector it agrees to ensure the support is not passed on to any primary producers of agricultural products); and
- that the recipient has been affected by the Coronavirus pandemic; and
- the recipient was not an “undertaking in difficulty” on 31 December 2019.

An undertaking in difficulty is:

<table>
<thead>
<tr>
<th>For small and micro businesses(^8) the business will be regarded as &quot;in difficulty&quot; if at 31 December 2019 any</th>
<th>For all other businesses, they will be regarded as &quot;in difficulty&quot; if at 31 December 2019 any of the tests below were met:</th>
</tr>
</thead>
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<td></td>
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</tbody>
</table>

\(^8\) ie. having under 50 staff and a turnover or balance sheet total of below €10m
of the tests below were met:

<p>| | |</p>
<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> subject to collective insolvency procedure under national law; and</td>
<td>a) The company's losses exceed its assets and half of its share capital (unless the company is an SME which has been in existence for under 3 years).</td>
</tr>
<tr>
<td></td>
<td>b) Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law to be placed in collective insolvency proceedings at the request of its creditors.</td>
</tr>
<tr>
<td><strong>2.</strong> they have previously received State aid approved by the European Commission for &quot;rescue and restructuring&quot; and not fulfilled all the obligations under that approval.</td>
<td>c) they have previously received State aid approved by the European Commission for &quot;rescue and restructuring&quot; and not fulfilled all the obligations under that approval..</td>
</tr>
<tr>
<td></td>
<td>d) In the case of an undertaking that is not an SME, where, for the past two years:</td>
</tr>
<tr>
<td></td>
<td>(1) the undertaking's book debt to equity ratio has been greater than 7,5; and</td>
</tr>
<tr>
<td></td>
<td>(2) the undertaking's EBITDA interest coverage ratio has been below 1,0.</td>
</tr>
</tbody>
</table>
3. Aid in the form of subsidised interest rates under the Temporary Framework

Loans where the interest rate has been calculated in the table at para.3.2 of the Temporary Framework will be lawful provided⁹:

- loan contracts are entered into by 31 December 2020 at the latest;
- loans are limited to a maximum term of 6 years;
- loans maturing after 31 December 2020 are subject to prescribed ceilings;
- the loan may be used for investment and/or working capital needs; and
- loans shall not be provided to undertakings in difficulty (as explained above).

4. Article 53 of the General Block Exemption

An award which meets all the relevant requirements at Chapter 1 and Article 53 of the General Block Exemption Regulation (Aid for culture and heritage conservation) will be State aid compliant.

The costs which may be funded include investment or operating costs under one of the following headings:

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⁹ Noting that for loans to SMEs, the minimum all-in interest rate (base rate plus the credit risk margins) shall be set at a minimum of 10bps per year.
(a) "museums, archives, libraries, artistic and cultural centres or spaces, theatres, opera houses, concert halls, other live performance organisations, film heritage institutions and other similar artistic and cultural infrastructures, organisations and institutions;
(b) tangible heritage including all forms of movable or immovable cultural heritage and archaeological sites, monuments, historical sites and buildings; natural heritage linked to cultural heritage or if formally recognized as cultural or natural heritage by the competent public authorities of a Member State;
(c) intangible heritage in any form, including folklorist customs and crafts;
(d) art or cultural events and performances, festivals, exhibitions and other similar cultural activities;
(e) cultural and artistic education activities as well as promotion of the understanding of the importance of protection and promotion of the diversity of cultural expressions through educational and greater public awareness programs, including with the use of new technologies.
(f) writing, editing, production, distribution, digitisation and publishing of music and literature, including translations".

Other requirements include submitting an application with all the characteristics set out at Article 6.2 (incentive effect) and for awards above €2m, undertaking a viability assessment. Organisations which are classed as "in difficulty" are also excluded.¹⁰

¹⁰ Note that for small and micro enterprises there is a slightly different test to that set out for the Temporary Framework.
Organisations may wish to obtain legal advice in order to comply with the State aid rules, but this is not mandatory.
SECTION NINE – SUMMARY OF TERMS

Please find below a term sheet for the loan. Please note that the terms set out in the term sheet below are indicative only and do not constitute an offer to arrange or finance the loan. The provision of the Facility is subject to due diligence, approval by the Culture Recovery Board, satisfactory documentation and conditions precedent being met.

<table>
<thead>
<tr>
<th>Borrower</th>
<th>[NAME OF BORROWING ENTITY]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lender</td>
<td>The Department for Digital, Culture, Media and Sport (DCMS)</td>
</tr>
<tr>
<td>Facility</td>
<td>Term loan facility of £[AMOUNT] to be drawn in sterling.¹¹</td>
</tr>
<tr>
<td>Purpose</td>
<td>Term loan facility: To support and maintain the Borrower who was financially sustainable before Covid-19 but which will be at clear risk of no longer trading viably by 31 March 2021 and have exhausted all other options for increasing their resilience in accordance with the Culture Recovery Fund Guidance.</td>
</tr>
<tr>
<td>Availability Period</td>
<td>Term loan facility: From the 1 October 2020 to 31 March 2021¹²</td>
</tr>
<tr>
<td>Interest</td>
<td>2% per annum.</td>
</tr>
<tr>
<td>Interest calculation</td>
<td>Simple interest calculated six-monthly, from the date of the first drawdown of the loan</td>
</tr>
</tbody>
</table>

¹¹ Minimum facility of £3 million
¹² Period to be confirmed
<table>
<thead>
<tr>
<th>Repayment</th>
<th>Unless you are required to repay the Loan (being the outstanding loan principal of the Facility) earlier under the Repayable Finance Agreement, you shall repay the Loan together, where applicable, in instalments on the relevant Payment Dates as set out below. Subject to the prior written consent of the Arts Council, early repayment is available and will not be subject to an early repayment fee.</th>
</tr>
</thead>
</table>
| **Fixed annual repayment** | • Up to 20 years fixed repayment  
• No loan principal is payable in the period up to the first 48 months following the date of first drawdown of the loan.  
• The first repayment instalment will be payable on the Repayment Commencement Date.  
• Number of repayment instalments: [X].  
• Amount of repayment instalments: [Outstanding loan principal divided by number of repayment instalments]. |
| **OR** | |
| **Income-based repayment** | • No loan principal is payable in the period up to the first 48 months following the date of first drawdown of the loan.  
• The first income based repayment instalment |
will be payable on the Repayment Commencement Date.

- After [x] years, the loan principal shall be repaid by annual repayment instalments.
- Number of income based repayment instalments: [X].
- Amount of income based repayment instalments: [percentage of revenue/ticket sales].
- Number of loan principal repayment instalments: [X].
- Amount of loan principal repayment instalments: [Outstanding loan principal divided by number of repayment instalments].

(Please note that the repayment instalment amounts may vary from time to time).

<table>
<thead>
<tr>
<th>Repayment Commencement Date</th>
<th>The fourth anniversary of the date of first drawdown of the loan or such other date as agreed between the Lender and Borrower.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Security</td>
<td>To be determined on a case by case basis, including, but not limited to, debentures and intercreditor agreements (documenting the senior position of the Lender).</td>
</tr>
<tr>
<td>Finance Documents</td>
<td>The Repayable Finance Agreement, documents conferring or intending to confer security on the Lender, intercreditor agreement and any other document designated as a Finance Document by</td>
</tr>
</tbody>
</table>
| Conditions precedent | Standard conditions precedent for a transaction of this nature, in a form and substance satisfactory to the Lender, including but not limited to:  
(1) Execution of the Repayable Finance Agreement.  
(2) Certified copies of constitutional, charter, by-law or trust documents of the Borrower.  
(3) Certified copies of board [and shareholder] resolutions of the Borrower.  
(4) Specimen signatures.  
(5) Certificate in relation to capacity of the Borrower to borrow, grant security or guarantee.  
(6) A copy of any other document, authorisation, opinion or assurance specified by the Lender.  
(7) State aid: at the award stage you will be asked to complete a declaration confirming the compliance of the loan with State aid law. |
| Representations and warranties | Standard representations and warranties for a transaction of this nature, including but not limited to:  
(1) Due incorporation/formation.  
(2) Power and authority.  
(3) Non-conflict with other documents and obligations.  
(4) Authorisations.  
(5) Binding obligations.  
(6) Choice of law. |
| Covenants | Standard covenants for a transaction of this nature, including but not limited to:  
(1) Authorisations.  
(2) Negative pledge.  
(3) Restrictions on other borrowings and guarantees.  
(4) Restrictions on disposals, acquisitions, joint ventures and mergers.  
(5) Restrictions on loans and credit.  
(6) No change of business. |
<table>
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<tbody>
<tr>
<td>Information Undertakings</td>
<td>Standard undertakings on financial reporting and information requests for a transaction of this nature including, without limitation, the delivery of annual financial statements, half year accounts and monthly management accounts.</td>
</tr>
</tbody>
</table>
| Further ongoing undertakings | The Borrower shall take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of ensuring the continuing legality and enforceability of the obligations of the Borrower or other parties under any Finance Documents, the creation, perfection, protection or maintenance of any security conferred or intended to be conferred on the Lender by or pursuant to the Finance Documents.  
Such actions may include the entry into accession or retirement deeds where the Borrower act by trustees or partners who are natural individuals. |
### Events of default

Standard events of default for a transaction of this nature, including but not limited to:

1. Non-payment.
2. Breach of covenant or undertaking.
5. Insolvency, insolvency proceedings and creditors' process.
6. Unlawfulness and invalidity.
7. Cessation of business.

Upon the occurrence of an event of the default, the Lender may cancel any undrawn portion of the Facility, demand repayment of all amounts drawn under the Facility and payment of all accrued interest and other sums due to the Lender and/or enforce any security in favour of the Lender.

<table>
<thead>
<tr>
<th>Governing law</th>
<th>England and Wales.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other</td>
<td>All other terms and conditions standard for a transaction of this nature shall be included in the finance documents.</td>
</tr>
</tbody>
</table>

### Business Purpose

The repayable finance under the Repayment Finance Agreement can only be made available if:
1. the repayable finance is wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by you;
2. you are not an individual; and
3. you are not a relevant recipient of credit (as defined in Article 60L(1) of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001).
SECTION TEN – FOR INFORMATION

Making a complaint

Arts Council England is administering the fund on behalf of DCMS. If you have a complaint against the decision made about your application, or a complaint related to the administration of the loan, including the application and assessment process, this should be addressed directly to DCMS (details below).

Details of the Department for Digital, Culture, Media and Sport complaints procedure can be found here which is available on the gov.uk website, or by contacting DCMS by email at enquiries@culture.gov.uk. If you need to contact DCMS using an alternative method, require a response in an alternative format or need any other assistance, full contact details can be found here.

Contact
Department for Digital, Culture, Media & Sport
100 Parliament Street
Westminster
London
SW1A 2BQ
General enquiries: 020 7211 6000
Email: enquiries@culture.gov.uk
Website: www.gov.uk/government/organisations/department-for-digital-culture-media-sport
Public sector equality duty

Your application form gives us information we may use to report to the Government or to monitor the different backgrounds of people who receive awards. Under the Public Sector Equality Duty we must research and monitor the different backgrounds of people who receive our investment.

Counter fraud measures

Arts Council England has a Counter Fraud Strategy and Policy and appropriate measures will be taken to ensure that loan holders given financing from this programme have obtained the loan honestly. Appropriate checks will be conducted on the financial viability of the loan holder as well as credit checks throughout the life of the loan. All loan holders must retain their financial and other documentation relating to the loan, and Arts Council England reserves the right to request this at any time.

If we reasonably suspect any fraud relating to the loan or application, we can demand immediate repayment of the loan, disclose information about you and the conduct of the loan to appropriate authorities and report this to the police.
SECTION ELEVEN – FREEDOM OF INFORMATION ACT

The Arts Council is committed to being as open as possible. We believe that the public has a right to know how we spend public funds and how we make our decisions.

We are also listed as a public authority under the Freedom of Information Act 2000. By law, we may have to provide your application documents and information about our assessment to any member of the public who asks for them under the Freedom of Information Act 2000.

We may not release those parts of the documents which are covered by one or more of the exemptions under the Act. Please see the Freedom of Information website at [www.ico.gov.uk](http://www.ico.gov.uk) for information about freedom of information generally and the exemptions.

We will not release any information about applications during the assessment period, as this may interfere with the decision-making process.
SECTION TWELVE – DATA PROTECTION

The Department for Digital, Culture, Media and Sport and Arts Council England are committed to using any personal information (or personal data) collected on a lawful, fair and transparent basis, respecting your legal rights as an individual in accordance with the EU General Data Protection Regulation (2016/679), the UK Data Protection Act 2018 and other applicable laws that regulate the use and privacy of personal data (Data Protection Law).

As part of meeting this requirement, Arts Council England and DCMS have produced a joint Privacy Notice for you to refer to here. This tells you more about the personal data the Arts Council collects; the different purposes that it is used for and on what legal basis; who that personal data may be shared with; how long it is kept; and your legal rights, including your right to contact the Arts Council and DCMS and receive information regarding the personal data about you that may be held by both bodies from time to time.

For further information about Arts Council England and DCMS’s obligations and your rights under Data Protection Law, as well as how to report a concern if you believe that your personal data is being collected or used illegally, please also see the Information Commissioner Office website at www.ico.org.uk
SECTION THIRTEEN – CONTACT DETAILS

Department for Digital, Culture, Media & Sport
100 Parliament Street
Westminster
London
SW1A 2BQ

Email: enquiries@culture.gov.uk
Website: www.gov.uk/government/organisations/department-for-digital-culture-media-sport

Arts Council England
The Hive
49 Lever Street
Manchester
M1 1FN

Email: enquiries@artscouncil.org.uk
Website: www.artscouncil.org.uk

August 2020