



The Scottish Parliament  
Pàrlamaid na h-Alba

## INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

### AGENDA

#### 5th Meeting, 2011 (Session 4)

Wednesday 5 October 2011

The Committee will meet at 10.00 am in Committee Room 2.

1. **Decision on taking business in private:** The Committee will decide whether to take item 9 and future consideration of a draft report on the inquiry, in private.
2. **Subordinate legislation:** The Committee will take evidence on the Construction Contracts (Scotland) Exclusion Order 2011 (SSI 2011/draft) and the Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 (SSI 2011/draft) from—

Alex Neil MSP, Cabinet Secretary for Infrastructure and Capital Investment, Jessie Laurie, Procurement Policy Manager, Colin Judge, Principle Construction Adviser, Scottish Procurement and Commercial Directorate, and March Richards, Solicitor, Scottish Government.

3. **Subordinate legislation:** Alex Neil MSP to move—S4M-00910 and S4M-00913—

That the Infrastructure and Capital Investment Committee recommends that the Construction Contracts (Scotland) Exclusion Order 2011 (SSI 2011/draft) and the Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 (SSI 2011/draft) be approved.

4. **Infrastructure and Capital Investment:** The Committee will take evidence from—

Alex Neil MSP, Cabinet Secretary for Infrastructure and Capital Investment, Ainslie McLaughlin, Director MTRIPS, Transport Scotland, and Aileen McKechnie, Head of Innovation and Industries Division, DBUS, Scottish Government.

5. **Draft Budget 2012-13 and Spending Review 2011 Scrutiny:** The Committee will take evidence on the Scottish Government's 2012-13 and Spending Review 2011 from—

Professor Tom Rye, School of Engineering and the Built Environment,  
Napier TRI;

David Connolly, Director of Technical Development, MVA Consultancy;

Professor Iain Docherty, Professor of Public Policy and Governance,  
University of Glasgow.

6. **Draft Budget 2012-13 and Spending Review 2011:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in relation to the Draft Budget 2012-13 and Spending Review 2011.
7. **Subordinate legislation:** The Committee will consider the following instruments which are not subject to any parliamentary procedure—
  - the Property Factors (Scotland) Act 2011 (Commencement No. 1) Order 2011 (SSI 2011/328 (C.28))
  - the Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 3) (Scotland) Order 2011 (SSI 2011/337 (C. 30))
8. **Petition PE1390:** The Committee will consider a petition by Neil Kay on governance of essential ferry services.
9. **Broadband Infrastructure in Scotland (in private):** The Committee will consider its approach to the inquiry.

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The papers for this meeting are as follows—

**Agenda item 2**

Cover note

ICI/S4/11/5/1

[The Construction Contracts \(Scotland\) Exclusion Order 2011](#)

[Scheme for Construction Contracts \(Scotland\) Amendment Regulations 2011](#)

**Agenda item 4**

PRIVATE PAPER

ICI/S4/11/5/2 (P)

**Agenda item 5**

PRIVATE PAPER

ICI/S4/11/5/3 (P)

**Agenda item 7**

Cover note

ICI/S4/11/5/4

[The Property Factors \(Scotland\) Act 2011 \(Commencement No. 1\) Order 2011 \(SSI 2011/328 \(C.28\)\)](#)

[The Local Democracy, Economic Development and Construction Act 2009 \(Commencement No. 3\) \(Scotland\) Order 2011 \(SSI 2011/337 \(C. 30\)\)](#)

**Agenda item 8**

Petition note

ICI/S4/11/5/5

**Agenda item 9**

PRIVATE PAPER

ICI/S4/11/5/6 (P)

**Infrastructure and Capital Investment Committee**

**5th Meeting, 2011 (Session 4), Wednesday, 5 October 2011**

**Subordinate Legislation Cover Note**

<b>Title of Instruments</b>	The Construction Contracts (Scotland) Exclusion Order 2011 (SSI 2011/draft)  The Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 (SSI 2011/draft)
<b>Type of Instruments</b>	Affirmative
<b>Laid Date</b>	1 July 2011
<b>Circulated to Members</b>	30 September 2011
<b>Meeting Date</b>	5 October 2011
<b>Minister to attend the meeting</b>	Yes
<b>SSI drawn to the Parliament's attention by Subordinate Legislation Committee</b>	Yes
<b>Reporting Deadline</b>	24 October 2011

**Purpose**

**The Construction Contracts (Scotland) Exclusion Order 2011 (SSI 2011/draft)**

1. Part II of the Housing Grants, Construction and Regeneration Act 1996 makes provision in relation to the terms of construction contracts. Section 106A of the Act confers power on the Scottish Ministers to exclude descriptions of contracts from the operation of any or all of Part II. This Order excludes a type of contract from the operation of one such provision.

**The Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 (SSI 2011/draft)**

2. These Regulations amend the Scheme of Construction Contracts (Scotland) Regulations 1998, in part to reflect changes made to the relevant primary legislation, the Housing Grants, Construction and Regeneration Act 1996, by the Local Democracy, Economic Development and Construction Act 2009.

**Subordinate Legislation Committee Report**

3. The Subordinate Legislation Committee drew both instruments to the Parliament's attention due to a failure to follow proper drafting practice. See the Subordinate Legislation Committee's report on both instruments at the **Annexe**.

4. A copy of the SSIs and associated documents are included with the papers and linked to the agenda.

### **Procedure**

5. The Infrastructure and Capital Investment Committee has been designated lead committee and is required to report to the Parliament by 24 October 2011.

6. Under Rule 10.6.1 (b), the Orders are subject to affirmative resolution before they can be made. It is for the Infrastructure and Capital Investment Committee to recommend to the Parliament whether the Orders should be approved. The Cabinet Secretary for Infrastructure and Capital Investment has, by motions S4M-00910 and S4M-00913 (set out in the agenda), proposed that the Committee recommends the approval of these Orders. The Cabinet Secretary will attend in order to speak to and move the motions. Procedurally, the debate may last for up to 90 minutes. Ahead of the formal debate, there will be an opportunity for members to ask questions of the Cabinet Secretary and his officials on the background to and requirement for these Orders.

7. At the end of debate, the Committee must decide whether or not to agree the motions and then report to Parliament accordingly. Such a report need only be a short statement of the Committee's recommendation.

Steve Farrell  
Clerk to the Committee  
October 2011

**Construction Contracts (Scotland) Exclusion Order 2011 [draft]**  
*(Infrastructure and Capital Investment Committee)*

4. This draft Order is subject to the affirmative procedure. It disapplies section 110(1A) of the Housing Grants, Construction and Regeneration Act 1996 ("the 1996 Act") in relation to certain Private Finance Initiative ("PFI") sub-contracts.

5. Section 110 is within Part II of the 1996 Act which makes provision about construction contracts, and in particular provides for access to adjudication (a type of dispute resolution) and for payment mechanisms.

6. Construction contracts are required to provide an adequate mechanism for determining payments due under the contract. However, section 142 of the Local Democracy, Economic Development and Construction Act 2009 ("the 2009 Act") inserts a new section 110(1A) of the 1996 Act which provides that this requirement is not satisfied if the contract makes payment conditional on obligations under another contract being performed.

7. Section 106A enables the Scottish Ministers to make an order disapplying all or part of Part II of the 1996 Act in relation to specified types of construction contract. The Construction Contracts (Scotland) Exclusion Order 1998 already excludes PFI contracts from the whole of Part II. The new section 110(1A) would prevent the present payment structure in relation to PFI sub-contracts, as typically staged payments are not due under those contracts until a technical adviser certifies that a stage of construction has been completed. It is intended that this system be preserved for PFI sub-contracts, and so this Order excludes them from the operation of section 110(1A).

8. On 19 July 2011 the Committee commented to the Scottish Government on the instrument, highlighting two particular concerns with the drafting. Correspondence between the Committee and the Government is reproduced at [Appendix 1](#).

9. Firstly, it was noted that the usual style had not been followed in the headnote in that the words "resolution of" had been omitted from the phrase "for approval by *resolution of* the Scottish Parliament." The Scottish Ministers accepted that these words had been omitted in error.

10. Secondly, it was highlighted that the Order contained an unnecessary extent provision. The Scottish Ministers accepted that this provision was unnecessary.

11. While recognising these errors, the Scottish Government did not consider that the errors affected the validity of the instrument and as such did not consider it necessary to amend it.

**12. The Committee considers there has been a failure to follow proper drafting practice with regard to the headnote and the extent provision and as such the Committee draws the order to the attention of the Parliament on the general reporting ground.**

**Scheme for Construction Contracts (Scotland) Amendment Regulations 2011 [draft]** *(Infrastructure and Capital Investment Committee)*

13. These draft Regulations are subject to the affirmative procedure. They amend the Scheme for Construction Contracts (Scotland) Regulations 1998 (“the principal Regulations”) so as to ensure consistency with Part II of the Housing Grants, Construction and Regeneration Act 1996 (“the 1996 Act”) as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”).

14. As previously noted, Part II of the 1996 Act makes provision about construction contracts, and in particular provides for access to adjudication (a type of dispute resolution) and for payment mechanisms. It also requires Ministers to make a statutory scheme in relation to those matters, and that scheme applies when parties have failed to make provision for them in their construction contract.

15. Part II of the 1996 Act is amended by Part 8 of the 2009 Act. The principal Regulations accordingly fall to be updated to reflect those amendments.

16. On 19 July 2011 the Committee commented to the Scottish Government on the instrument, highlighting four specific concerns with the drafting. Correspondence between the Committee and the Government is reproduced at [Appendix 2](#).

17. Firstly, as in relation to the Construction Contracts (Scotland) Exclusion Order 2011 [draft], it was noted that the words “resolution of” had been omitted from the headnote. The Scottish Ministers accepted that these words had been omitted in error.

18. Secondly, and again like the Construction Contracts (Scotland) Exclusion Order 2011 [draft], it was highlighted that an unnecessary extent provision is contained within the Regulations. The Scottish Ministers accepted that this provision was unnecessary.

19. Thirdly, in regulation 2, the word “In” has been omitted immediately before the words “Regulation 4(b)”. The Scottish Ministers accepted that the word “In” had been omitted, but took the view that the omission was minor and did create any ambiguity or uncertainty in interpreting the provision.

20. Finally, the instrument and its Explanatory Note both contain a definition of “the Scheme”. However, these definitions differ from each other. The Scottish Ministers accepted that the definitions differed, but considered that as the readers of the instrument would be those in the construction industry who were familiar with the use of the term and as such, they were not concerned that the conflicting definitions might create any confusion.

**21. The Committee observes that the draft Regulations contain four points at which they have failed to follow proper drafting practice. With these failures in mind, the Committee draws the Regulations to the attention of the Parliament on the general reporting ground.**

**Infrastructure and Capital Investment Committee**

**5th Meeting, 2011 (Session 4), Wednesday, 5 October 2011**

**Subordinate Legislation Cover Note**

<b>Title of Instruments</b>	The Property Factors (Scotland) Act 2011 (Commencement No. 1) Order 2011 (SSI 2011/328 (C.28))  The Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 3) (Scotland) Order 2011 (SSI 2011/337 (C. 30))
<b>Type of Instruments</b>	Commencement Orders – these are not subject to any Parliamentary procedure
<b>Laid Date</b>	12 September 2011 20 September 2011
<b>Circulated to Members</b>	30 September 2011
<b>Meeting Date</b>	5 October 2011
<b>Minister to attend the meeting</b>	No
<b>SSI drawn to the Parliament's attention by Subordinate Legislation Committee</b>	No
<b>Reporting Deadline</b>	<b>31 October 2011</b> <b>7 November 2011</b>

**Procedure**

1. These instruments were laid before the Parliament, but are not subject to any Parliamentary procedure. Under the new regime introduced by the Interpretation and Legislative Reform (Scotland) Act 2010, Scottish statutory instruments previously not laid now require to be laid before the Parliament. Under Rule 10.1.3, any instrument laid before the Parliament is to be referred to a lead committee for consideration. Therefore, instruments laid only but not subject to any parliamentary procedure are also now referred to lead committees for consideration.

2. The requirement on lead committees to consider these instruments is an unintended consequence of the recent rule changes, brought into affect by the ILR Act. It is proposed that this requirement be removed in the next round of minor rule changes. Therefore, the requirement to note this type of instrument on the agenda is expected to be a temporary measure.



## **Purpose**

### **The Property Factors (Scotland) Act 2011 (Commencement No. 1) Order 2011 (SSI 2011/328 (C.28))**

3. The instrument brings section 138 of Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”) into force in relation to Scotland on 24 June 2011.

### **The Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 3) (Scotland) Order 2011 (SSI 2011/337 (C. 30))**

4. This Order brings Part 5 of Schedule 7 (construction contracts) to the Local Democracy, Economic Development and Construction Act 2009 into force on 1st November 2011.

## **Subordinate Legislation Committee**

5. The Subordinate Legislation Committee considered SSI 2011/328 at its meeting on 20 September 2011 and SSI 2011/337 at its meeting on 27 September and agreed it did not need to draw attention to either Order.

## **Instruments and accompanying documents**

6. The SSIs and accompanying documents are available on the OPSI website: <http://www.legislation.gov.uk/ssi/2011> and are linked to the agenda.

## **Recommendation**

7. **The Committee is invited to take note of these instruments.**

Steve Farrell  
Clerk to the Committee  
October 2011

**Infrastructure and Capital Investment Committee**

**5th Meeting, 2011 (Session 4), Wednesday, 5 October 2011**

PETITION PE1390

**Introduction**

1. The Public Petitions Committee (PPC) has referred the following petition, which was lodged on 11 May 2011, to the Committee for further consideration:

*Petition by Neil Kay calling on the Scottish Parliament to urge the Scottish Government to support the setting up of an independent expert group to consider and recommend institutional and regulatory options for issues relating to the provision of competitively tendered Scottish ferry services under EC law.*

**Background**

*Consideration by the PPC*

2. The PPC considered the petition at its meeting on 28 June 2011 and agreed to write to the Scottish Government seeking responses to points raised in the petition and during the discussion.

3. The Scottish Government responded to this request for information on 14 July 2011, providing details of the timescale of the Scottish Ferries review and the issues involved in the review that related to the petition. The letter also included an annexe setting out the Government's response to all the specific questions raised by the petitioner, including information on; Public Service Contracts(PSC) and Public Service Obligations (PSO), an 'Operator of Last Resort' for ferry services, the possibility of an Independent Ferry Regulator being created and the 'Altmark Decision'. The full response is attached as an annexe.

4. The PPC then reconsidered the petition at its meeting on 6 September 2011 and agreed to refer the petition to the Infrastructure and Capital Investment Committee, under Rule 15.6.2, for further consideration of the issues raised in the petition as part of that Committee's subject remit.

*Scottish Government Ferries Review*

5. In 2008, the Committee's predecessor conducted an inquiry into ferry services in Scotland. Subsequently, the Scottish Government launched a consultation as part of a Ferries Review. The 2008 Committee considered that the review could have a significant impact on the future approach to provision of ferry services and recommended that its successor question the relevant Scottish Minister on the outcome of the review.

6. It is understood that the Scottish Government will announce the outcome of its Ferries Review, which is expected to result in a long-term plan for ferry services to 2022, later in 2011.

7. As part of its work programme, the Committee has agreed to invite the Minister for Housing and Transport to give evidence to the Committee on the Government's plans for ferry services in Scotland, once the Review has been published.

### **Further Information**

8. The Official Reports from the PPC meetings at which the petition was considered, a SPICe briefing on the subject and the written submissions received from the petitioner and the Scottish Government, are available at the below link:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/40067.aspx>

### **Recommended Action**

9. The Committee is invited to consider what, if any, action it wishes to take in relation to this petition.

10. Members will be aware that the Scottish Government intends to publish its Ferries Review later in 2011, and that the Committee has agreed to scrutinise the Review once it has been published.

**11. It is suggested that the issues raised in the petition could be raised with the Minister for Housing and Transport when he appears before the Committee to discuss the Ferries Review later in the year. The Committee would then consider the petition again after that point.**

Steve Farrell  
Clerk to the Committee  
October 2011

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Alison Wilson  
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Dear Ms Wilson

### **Consideration of Petition PE1390**

Thank you for your letter of 29 June seeking a written response to the specific points raised in Petition PE1390 and the specific questions the Committee has asked. Your letter was addressed to Carron Pollock, Transport Scotland but I am responding as the Policy lead for ferries issues.

The Petition by Neil Kay calls on the Scottish Parliament to urge the Scottish Government to support the setting up of an independent expert group to consider and recommend institutional and regulatory options for issues relating to the provision of competitively tendered Scottish ferry services under EC law.

I have provided in the attached Annex a response to each of the detailed points raised by the Petitioner. I have also provided below details of the specific questions the Committee has asked, along with our answer:

Q. What are your views on the issues raised in the petition?

A. We have provided a detailed response to each of the points raised in the Petition in the attached Annex.

Q. In what ways, if any, does the current review on Scottish Ferries cover the issues raised in the petition? Can you provide us with details on the timescales you are working to in relation to the review?

A. The Scottish Ferries Review is currently considering and developing the long-term strategy for ferry services in Scotland and addresses many of the issues raised in this Petition. The Review is considering how ferries should be funded and procured, on what basis fares should be set, what kind of services should be supported with public money and who should be responsible for providing these services. The Scottish Government will now also consider the case for a Ferry Regulator as part of the Review. The Review will not however include consideration of the points the petitioner raises about the need to tender or the imposition of PSOs or PSCs in relation to subsidised ferry services. These issues have already been fully considered. In 2005 the Scottish Executive published a comprehensive document "Clyde & Hebrides Lifeline

Ferry Services - Scottish Executive's Consideration of the Requirement to Tender" setting out the case in relation to the alternatives to tendering that had been suggested. In 2006 a number of Parliamentary Questions were answered which provided a detailed explanation as to why the Scottish Government has sought to conclude PSCs rather than PSOs.

On the timetable for the Review, following on from an initial informal consultation in 2009 and a full public consultation in 2010 it is the Scottish Government's intention to issue a draft Ferries Plan, for further consultation before the end of 2011. This draft Ferries Plan will be accompanied by a Strategic Environmental Assessment. An Equalities Impact Assessment for the draft Ferries Plan will also be published.

Yours sincerely

**GRAHAM M LAIDLAW**  
**Head of Ferries Unit**

## Annexe

**CONSIDERATION OF PETITION PE1390: NEIL KAY****Public Service Contracts (PSC) and Public Service Obligations (PSO)**

1. A definitive answer in relation to the imposition of PSOs and PSCs in subsidised ferry services is provided in response to S2W-28960 which is available on the Scottish Parliament website. The Scottish Government consider this to be a comprehensive response that requires no further clarification here.

2. The requirement to tender the Clyde & Hebrides ferry services was considered in significant detail as far back as 2004/5 by the then Scottish Executive and by the Scottish Parliament. The conclusion of this endeavour was two full debates, and two votes, on the matter in the Scottish Parliament. The Scottish Executive and the Scottish Parliament concluded at that time that tendering these services was a requirement.

3. On 16 April 2008 the Commission decided to initiate a formal investigation procedure in respect of support for ferry services in Scotland. On 15 December 2009, following the conclusion of that investigation, the Commission published its Decision. A copy of that Decision is accessible at:

[http://ec.europa.eu/energy/coallstate\\_aid/doc/decisions/2008/2008\\_0016\\_uk\\_c.pdf](http://ec.europa.eu/energy/coallstate_aid/doc/decisions/2008/2008_0016_uk_c.pdf)

4. In that Decision, the Commission determined that:

- the relevant public service obligations within the Northern Isles 2002- 2006 and 2006-2012 contracts and the ongoing Clyde and Hebrides contract had been correctly defined and clearly entrusted to the operator concerned, with no over-compensation, anti-competitive behaviour or undue distortion of competition;
- the State aid paid under those three contracts was compliant with the EC Treaty;
- as far as the Gourock-Dunoon ferry service is concerned, the Commission accepted the Scottish Government's commitment to take appropriate measures to launch a public tender for the operation of the route before the end of 2009. The Scottish Government subsequently launched an open and transparent tender for the Gourock-Dunoon ferry service, and a contract for a passenger ferry service was awarded to Argyll Ferries on 7 June 2011.

5. The Commission's Decision provides extremely clear and detailed explanations of its conclusions. The Scottish Government accepts the Commission's decision and has complied with all aspects of that Decision recognising that it provides legal certainty. Accordingly, it is the Scottish Government's view that its arrangements for the support and provision of lifeline ferry services in Scotland are now fully compliant with the terms of the Commission's Decision and fully compliant with European Law.

**Operator of Last Resort**

6. During 2005, around the time when the tender for the 2007-13 Clyde & Hebrides ferry services (CHFS) tender was being developed, there was much discussion around the possibility of including an arrangement for an "operator of last resort" in respect of these services. The purpose of such an arrangement is to ensure that there is another operator available and in a position to take over the provision of a service in the event

of termination of contract, breakdown of contract, or similar event. Such arrangements are common in respect of rail services.

However, the contracts for the Northern Isles and Clyde & Hebrides ferry services provide for careful management and monitoring of the operator's performance and contain resolution procedures, which negate the need for the services of an "operator of last resort".

7. In the event that Argyll Ferries Ltd was unable to fulfil its contractual obligations in respect of the new Gourock-Dunoon ferry service, responsibility would pass to its parent company, David MacBrayne Ltd. This arrangement is assured by means of a Parent Company Guarantee signed by David MacBrayne Ltd. Independent Ferry Regulator.

8. Currently there is no Ferry Regulator in Scotland, nor broader regulation in place, besides the contractual controls that exist in the various ferry service contracts and the statutory controls (e.g. safety and environment) overseen by the Maritime Coastguard Agency (MCA) and SEPA respectively. In addition there is no legislative framework to put in place the powers necessary to set up a Ferry Regulator. The possibility of introducing a Ferry Regulator has been considered before on several occasions.

9. To introduce a Ferry Regulator and associated regulation would require primary legislation at Holyrood and almost certainly Westminster, but that would be determined by the powers being sought and where legislative competence lay.

10. Nevertheless, the previous Transport Minister, Stewart Stevenson MSP, requested that serious consideration of a Ferry Regulator be carried out. The Scottish Government's position on this was clarified by Alex Neil, Cabinet Secretary for Infrastructure and Capital Investment. At the time of the appointment of the preferred bidder for the Gourock-Dunoon ferry service tender, on 25 May 2011, Mr Neil said:

"As part of the Scottish Ferries Review, the Scottish Government will also consider the possibility of a Ferry Regulator to monitor the service of non government and non local authority ferry operators. This will aim to improve services across Scotland, as well as ensure a continued value for money approach. "

### **The Altmark Decision**

11. To make clear its views. In 2005 the Scottish Executive published a comprehensive document setting out the case in relation to the alternatives to tendering, including Altmark, that had been suggested. A copy can be found at [CLYDE AND HEBRIDES LIFELINE FERRY SERVICES - SCOTTISH EXECUTIVE'S CONSIDERATION OF THE REQUIREMENT TO TENDER.](#)

12. The Commission uses the "Altmark test" (a legal precedent which relates to a 2003 ECJ ruling in respect of subsidy of a bus service in Germany) to assess whether the funding of a public service constitutes State aid or not. The basis of this assessment concerns whether an advantage is conferred on one operator over another that could unduly distort competition. In its Decision in relation to Scottish Ferry Services, the Commission was unable to establish with certainty whether the Altmark criteria had

been met. It therefore proceeded on the assumption that subsidies paid to CalMac and Northlink 1 and 2 constituted State aid. However, the Commission ultimately determined that the State aid present was compatible with the Treaty on the Functioning of the European Union ("the TFEU") since the services of general economic interest in question had been clearly defined, explicitly entrusted and supervised, and that the subsidies paid were proportionate to the aim pursued - with no unnecessary distortions of competition.

13. If the Commission had deemed the Altmark criteria to be met, there would have been no aid as such, and so compatibility with the TFEU would not need to have been assessed. However, even if the Commission had made such a 'no aid' finding on the basis of Altmark, the Scottish Government is clear that the Maritime Cabotage Regulations would still apply. The Scottish Government would therefore still be required to tender these services in order to comply with the relevant sectoral law.

14. The Scottish Government accepts the Commission's Decision and is confident that the support and provision of lifeline ferry services in Scotland are now fully compliant with the terms of the Commission's Decision and fully compliant with European Law. Developing a solution.

15. The ongoing Scottish Ferries Review will provide a framework for how ferry services in Scotland will be delivered in future. The Review will look at how ferries should be funded and procured, on what basis fares should be set, what kind of services should be supported with public money and who should be responsible for providing these services. A draft Ferries Plan will issue for a further period of consultation later this year before a final Ferries plan is developed and published.

16. The Scottish Ferries Review is an inclusive process. The Scottish Government is leading the Review but has had significant input from key stakeholders via a Stakeholders group, a Council group and an Operators group. Besides the Scottish Government the organisations represented on these groups include ferry operators, ferry asset companies, Regional Transport Partnerships, local Councils, the Scottish Trades Union Congress, the Mobility and Access Committee Scotland and the Maritime Coastguard Agency. A first round of consultation on the Ferries Review was carried out during the spring and summer of 2009 and was supplemented with an extensive data collection exercise, including a household survey. A further formal round of consultation took place between 10 June 2010 and 30 September 2010. The public consultation included over 40 events across the Highlands and Islands, including a series of public meetings and a consultation document. Neil Kay attended one of these public meeting in Dunoon on 23 August 2010. 600 responses from both organisations and individuals were received. An analysis of consultation responses was published along with details of the next steps in the process on 9 March 2011 Scottish Ferries Review Analysis of Written Responses. A report on the household survey was published on 22 March 2011 Analysis of the Household Survey.

17. Our view is that we should not rely on a small number of experts to make decisions about the way forward for ferries. We should continue as part of the Review process to engage with all of the communities affected and with all of our key stakeholders.

July 2011