



## **REPORT**

**To:**           Infrastructure Committee  
              Services Committee  
              Executive Committee

**27 November 2007**  
**29 November 2007**  
**4 December 2007**

**From:**       Head of Finance  
              Executive Services Department

**Report No: F-033-F**

### **GENERAL FUND REVENUE MANAGEMENT ACCOUNTS 2007/08 FOR THE PERIOD 1 APRIL 2007 TO 30 SEPTEMBER 2007**

#### **1. Introduction**

- 1.1 The purpose of this report is to advise Members of the financial position on the Council's general fund revenue accounts including support and recharged ledgers for the first six months of 2007/08.

#### **2. Links to Corporate Priorities**

- 2.1 This report links to the Council's corporate priorities, defined in its Corporate Plan, specifically in relation to reviewing financial performance relative to the Council's financial policies.

#### **3. Background**

- 3.1 The general fund revenue management accounts are presented to Executive Management Team (EMT) on a monthly basis to enable EMT to monitor the Council's overall financial position.
- 3.2 This is the half-year monitoring report to Members for 2007/08 and covers the period 1 April 2007 to 30 September 2007. Only controllable items of expenditure are included, on the basis that recharges for central services and financing costs and income are not controllable in terms of spending decisions. Thus expenditure items include employee costs, property costs, transport, grants and other running costs, and income comprises of fees and charges, grants and rents.
- 3.3 For information, all appendices show the Annual Budget, Year to Date Budget, Actual and Variance. It is the Year to Date variances, which are referred to within this report, the Year to Date figures include income and expenditure from 1 April 2007 to 30 September 2007. An estimation of when spending will occur or income is to be received is made on each

budget and a spend profile is set which determines the Year to Date Budget, i.e. for salaries an equal charge each month is expected so the budget will show in this report 6/12ths of the Annual budget in the Year to Date budget, for other items this is not so straightforward and these will either be based on past spending patterns or on a 1/12<sup>th</sup> basis across the year. The Year to Date Variance shows how actual activity has varied from the planned budget. Appendix 1 shows expenditure and income by service area and by type. Appendices 2 shows the same data by cost centre activity.

#### **4. Overall Financial position on General Fund revenue (including support and recharged ledgers) at 30 September 2007**

4.1 The General Fund revenue management accounts is £0.706 million more than budget (see Appendix 1). This is after savings of £2.7m have been built into the 2007/08 budgets to reach the approved draw on Reserves of £5 million and a large profiling error on Community Care. Removing this error the General Fund would be £0.950m underspent. Attached, as Appendix 2 is a more detailed cost centre listing of spend to date for information grouped by Education and Social Care (Appendix 2a), Infrastructure Services (Appendix 2b) and Executive Services (Appendix 2c).

#### **5. Analysis of Education and Social Care Service Activity as at 30 September 2007**

5.1 The Education and Social Care Department spent £1.095m more than expected for the period. This includes a large profiling error on Community Care income of £1.656m, once that is removed there is an underspend of £0.561m. Some significant differences over planned activity are set out below.

##### **5.1.1 Additional Funding**

There are profiling errors on additional funding grants which require to be sorted amounting to £0.317m across the schools service.

##### **5.1.2 Schools**

Overall spend on schools is running under budget £0.287m, primary schools are under by £0.252m, secondary schools under by £0.110m.

##### **5.1.3 Community Care**

Overall net spend is £0.326m over the approved budget. The service has a target deficit budget by £1.3M for the year, which the Council expected to secure through vacant posts. On current activity, the service is on target to meet the deficit set by the Council.

##### **5.1.4 Children's Services**

Underspending on grants and salaries has resulted in Children's Services under budget by £0.242m.

##### **5.1.5 Social Care Training**

The social care training programme has not been progresses as fast as was originally intended leading to an underspend of £0.370m.

#### 5.1.6 SCOFÉ

The College has an adverse variance due the timing of the receipt of external funding not matching the budget profile.

### 6. **Analysis of Infrastructure Service Activity as at 30 September 2007**

6.1 The Infrastructure Department spent £0.634m less than expected for the period. Some significant differences over planned activity are set out below.

#### 6.1.1 Environmental Rova Head Disposal

Higher than anticipated income £0.248m received from additional waste flows and drill cuttings. This is offset by reduced Processing Shed income due to waste flows being passed through landfill.

#### 6.1.2 Environmental Health Repairs Notice

This is an accrual on expenditure £0.243m for which income will be received in 2007/08 which will net this expenditure to zero. This is not a real variance.

#### 6.1.3 Transport

Ferries transport is underspent on Fuel £0.108m and the Shetland Transport Partnership is underspent on External Consultants £0.099m.

### 7. **Analysis of Executive Service Activity as at 30 September 2007**

7.1 The Executive Department is over the budget by £0.283m than expected for the period after corporate savings of £1.3m have been included. Some significant differences over planned activity are set out below.

#### 7.1.1 Savings Required Across the Council

Part of the £2.7m savings mentioned in paragraph 4.1 lies on a Finance cost centre (£1.3m), this still has to be met from savings across the Council either from general underspending on activities and vacancies.

#### 7.1.2 Housing Rent Rebate Income and Expenditure

There is a timing difference between the receipt of income and the payment of rebates which has resulted in an underspend of £0.145m.

#### 7.1.2 Asset Services

Property costs are below budget by £0.240m mainly on electricity and maintenance due to outstanding bills.

## **8. Action Plan to resolve budget variances**

- 8.1 Budget Responsible Officers (BRO's) have been actively encouraged to review the profiles on their budgets, identify and deal with any miscodings and action appropriate virements so that period variances do not obscure the real financial position. Management Accountancy will continue to provide advice and training to assist BROs to manage their budgets.

## **9. Financial Implications**

- 9.1 The general fund revenue management accounts for the first half of 2007/08 (including support and recharges) is £0.706m over the budget for that period. This is after savings of £2.7m, which have been taken into account in the budget for the first 6 months. To ensure that the savings are achieved by the end of the year there is a need for Budget Responsible Officers to carefully manage their budgets.
- 9.2 Any underspend against budget will reduce the draw on reserves, conversely, any overspend will increase the draw on reserves, which will reduce the amount available for use in future years.

## **10. Policy & Delegated Authority**

- 10.1 This report is being presented to the Services and Infrastructure for information and comment and Executive Committee in terms of its remit for financial policy and monitoring. The Committees may make comment to Council where necessary but the report is presented to Council for information.

## **11. Recommendation**

- 11.1 The Services, Infrastructure and Executive Committees are asked to consider this report and make comment to Council where necessary. Thereafter, I recommend that the Council note the report and any comments from the Committees.

Report No: F-033-F  
Ref: Accountancy/HKT

Date: 16 November 2007



## **REPORT**

**To:**           Infrastructure Committee  
              Services Committee  
              Executive Committee

**27 November 2007**  
**29 November 2007**  
**4 December 2007**

**From:**       Head of Finance  
              Executive Services Department

**Report No: F-034-F**

**HOUSING REVENUE ACCOUNT/HARBOUR ACCOUNT/RESERVE FUND  
REVENUE MANAGEMENT ACCOUNTS 2007/08  
FOR THE PERIOD 1 APRIL 2007 TO 30 SEPTEMBER 2007**

### **1. Introduction**

- 1.1 The purpose of this report is to advise Members of the financial position on the Council's Housing Revenue Account, Harbour Account and Reserve Fund for the first 6 months of 2007/08.

### **2. Links to Corporate Priorities**

- 2.1 This report links to the Council's corporate priorities, defined in its Corporate Plan, specifically in relation to reviewing financial performance relative to the Council's financial policies.

### **3. Background**

- 3.1 The revenue management accounts for funds other than the General Fund are presented to Executive Management Team (EMT) on a quarterly basis to enable EMT to monitor the Council's overall financial position.
- 3.2 This is the second monitoring report to Members for 2007/08 and covers the period 1 April 2007 to 30 September 2007. Only controllable items of expenditure are included, on the basis that recharges for central services and financing costs are not controllable in terms of spending decisions. Thus expenditure items include employee costs, property costs, transport, grants and other running costs, and income comprises of fees and charges, grants and rents.

3.3 For information, all appendices shows the Annual Budget, Year to Date Budget, Actual and Variance. It is the Year to Date variances, which are referred to within this report, the Year to Date figures include income and expenditure from 1 April 2007 to 30 September 2007. An estimation of when spending will occur or income is to be received is made on each budget and a spend profile is set which determines the Year to Date Budget, i.e. for salaries an equal charge each month is expected so the budget will show in this report 6/12ths of the Annual budget in the Year to Date budget, for other items this is not so straightforward and these will either be based on past spending patterns or on a 1/12th basis across the year. The Year to Date Variance shows how actual activity has varied from the planned budget. Appendices 1, 3 and 5 show expenditure and income by service area and by type. Appendices 2, 4 and 6 shows the same data by cost centre activity.

#### **4. Housing Revenue Account Financial Position at 30 September 2007 (SERVICES COMMITTEE)**

4.1 The Housing Revenue Account (HRA) revenue for the first six months is over budget by £0.036m (see Appendix 1). Attached, as Appendix 2 is a more detailed cost centre listing of spend to date for information. There are two main areas where variances are occurring.

4.2 Firstly income, there are two areas where income is less than anticipated. Rents (£0.240m) is less than budgeted for the period due to the timing of the rents fortnight not matching the management accounts period end. This will even out over the year. Supporting People funding is no longer to be allocated to the Ladies Drive Hostel on the HRA (£0.055m) but is now to be used for Outreach Services on the General Fund.

4.3 Secondly, property costs is underspent by £0.255m, this is mainly due underspends on maintenance budgets £0.162m due to the timing difference between the budget profile, the completion of works and the charging by the Housing DLO to the HRA. The other main variance is an underspend on void rents (£0.070m).

4.4 The outturn on the HRA is expected to be within budget.

#### **5. Harbour Account Financial Position at 30 September 2007 (COUNCIL)**

5.1 The Harbour Account (P&H) revenue for the first six months is over budget by £0.370m for the six months (see Appendix 3). Attached, as Appendix 4 is a more detailed cost centre listing of spend to date for information. There are two main areas where variances are occurring.

- 5.2 The most significant variance is on towage dues at Sullom Voe (£0.486m) and Harbour Dues (£0.098m), which have not been realised. The other main variance is on jetties and spur booms (£0.277m) where expenditure has been incurred at a faster than budgeted rate under the maintenance contract. This contract is wholly funded by BP and will have no impact at the year-end.
- 5.3 It is difficult to predict the outturn on the Harbour Account at this stage, as the oil throughput is outwith the control of the Council. However, the latest prediction is that the outturn on the Harbour Account will be within the budget with careful management.

## **6. Reserve Fund Financial position at 30 September 2007 (INFRASTRUCTURE & EXECUTIVE COMMITTEE)**

- 6.1 The Reserve Fund for the first six months is over budget by £0.005m (see Appendix 5). Attached, as Appendix 6 is a more detailed cost centre listing of spend to date for information. There are two main areas where variances are occurring.
- 6.2 The most significant variance under Environmental Services is an outstanding accrual for income £0.478m in relation to Private Sector Housing Grant income which has yet to be received but once it has been will net off the variance to zero. Under Finance Services the graduate placement and modern apprentice schemes were underspent due to a change in how they were recharged, profiles have now been amended, this is not a real underspend. Under Asset Service, the variance on the NAFC is due to an underspend on maintenance where it is difficult to predict the exact timing of spending. The underspend on Economic Development Unit is mainly on grants which are demand led (£0.485m). The main projects are Renewable Energy, Economic and Tourism Infrastructure.
- 6.3 It is anticipated that the outturn on the Reserve Fund will be under budget.

## **7. Action Plan to resolve budget variances**

- 7.1 Budget Responsible Officers (BRO's) have been actively encouraged to review the profiles on their budgets, identify and deal with any miscodings and action appropriate virements so that period variances do not obscure the real financial position. Management Accountancy will continue to provide advice and training to assist BROs to manage their budgets.

## **8. Financial Implications**

- 8.1 It is expected that the Housing Revenue Account and Reserve Fund will be within the budget set for 2007/08. On the Harbour Account this is more difficult to predict as it depends on the level of throughput at

Sullom Voe which is outwith the Council's control. At this stage it is predicted that it will be within the budget with careful management.

- 8.2 Any underspend against budget will reduce the draw on reserves, conversely, any overspend will increase the draw on reserves, which will reduce the amount available for use in future years.

## **9. Policy & Delegated Authority**

- 9.1 This report is being presented to the Services and Infrastructure for information and comment; and Executive Committee in terms of its remit for financial policy and monitoring. The Committees may make comment to Council where necessary but the report is presented to Council for information.

## **10. Recommendation**

- 10.1 The Services, Infrastructure and Executive Committees are asked to consider this report and make comment to Council where necessary. Thereafter, I recommend that the Council note the report and any comments from the Committees.

Report No: F-034-F

Ref: Accountancy/HKT

Date: 16 November 2007





## **REPORT**

**To: Executive Committee**

**4 December 2007**

**From: European Officer**

### **REPORT NO: DV051-F UPDATE ON EUROPEAN ACTIVITIES**

#### **1.0 Introduction**

- 1.1 The purpose of this report is to update Members on current EU issues and activities.

#### **2.0 Link to Council Priorities**

- 2.1 Engaging in activities of a European nature is a key component of achieving the Priority of 'Sustainable Economic Development' as contained within Shetland Island Council's Corporate Plan 2004-2008.

#### **3.0 European Structural Funds**

##### **3.1 Highlands & Islands Convergence Programme 2007-2013**

The first application round for the new ERDF and ESF programmes closed on 26 October. It is understood that there are two ESF applications from Shetland forward for assistance. Decisions on funding will be announced after the Programme Monitoring Committee meeting on 30 January 2008. Councillor Alastair Cooper is the Council's representative on the Programme Monitoring Committee.

### 3.2 LEADER Programme 2007-2013

LEADER is an EU funding initiative which aims to promote community and economic development in rural areas based on a 'bottom up' approach. LEADER represents Axis 4 of the Scottish Rural Development Programme 2007-2013. At its meeting on 4 September 2007, this Committee agreed to the Council, via the Economic Development Unit, taking on the role of Lead Partner for a Shetland LEADER programme for the period 2007-2013.

To receive a share of LEADER funds, a Rural Development Strategy and Business Plan for Shetland had to be prepared and submitted to the Scottish Government by 14 November 2007. Along with a bid for LEADER funds, H&I'S LEADER Groups were also invited to bid for a share of the £19 million 'convergence' funding. This is additional European funding granted to the H&I's region under the Scottish Rural Development Programme in view of its special circumstances which will be delivered through LEADER. The Scottish Government anticipate making decisions on LEADER and convergence funds allocations during December 2007 and it is expected that the Shetland programme will be up and running in the first quarter of 2008.

### 3.3 European Fisheries Fund (EFF) 2007-2013

According to the latest information received, there has been no progress on the apportionment of EFF resources between the UK programmes. Until funds are agreed for each programme area, there can be no consultation on the detail of the Operational Programmes including what measures will be funded. This is causing considerable delay for the local industry in accessing funds for projects.

The matter was highlighted at the Executive Committee meeting on 23 October and it was agreed that a letter should be sent from the Council to Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment, stressing the urgency of getting the programmes up and running.

## 4.0 **State Aid**

### 4.1 State Aid Lobbying

A report was presented to the Executive Committee meeting on 23 October giving an update on recent lobbying meetings in Brussels with EU officials and Scottish MEPs. Members will be aware that the Commission has now issued negative decisions on three of the four outstanding fisheries cases:

First Time Shareholders Scheme  
Fish Factory Improvement Scheme  
Fishing Vessel Modernisation Scheme

The Commission are requesting that recipients repay the funds granted to them by the Council.

## 5.0 Proposed EU Maritime Policy

- 5.1 Following a year long consultation period on proposals for an EU Maritime Policy, the European Commission issued its next steps via a Communication and accompanying Action Plan on 10 October. The Action Plan lists a range of actions to be launched by the Commission between now and the end of 2009.

This was briefly discussed at the Executive Committee meeting on 23 October and it was agreed that the Council should examine the proposals carefully and assess those areas of significance to Shetland. Once this has been done, a working group of interested parties will discuss the most appropriate way forward. There is a need to ensure co-ordination in any activities we embark on with the various marine and maritime initiatives currently being undertaken by the Scottish Government and also with any CPMR maritime initiatives we may be involved in.

## 6.0 CPMR Activities

### 6.1 CPMR General Assembly

The CPMR held its Annual General Assembly in Florence from 17-19 October. The main points of discussion and highlights were as follows:

- **European Maritime Policy:** Much of the focus of this year's assembly was on the European Maritime Policy proposals recently issued by the Commission. Joe Borg, EU Commissioner with responsibility for Fisheries and Maritime Affairs, was present and gave an overview of the Commission's ambitions in this field. Councillor Angus had the opportunity to address Commissioner Borg and highlighted the negative impact of the Common Fisheries Policy measures on communities such as Shetland. He stressed that a maritime policy needed to be flexible to take into account the issues relevant in peripheral and island communities. The Islands Commission expressed disappointment that the proposals make very little reference to islands and there is no mention of the establishment of an 'Islands' Policy Unit' within the Commission which is something the CPMR has been lobbying for. The CPMR will form a working group to scrutinise the proposals and we hope to take part in that group. Other regions expressed opinions on a lack of reference to ports and how a flexible state aid policy was required to take account of island handicaps.
- **Renewable energy:** The Commission is due to publish a package of measures relating to renewable energy on 5 December 2007.

- **New EU Treaty:** The CPMR, in particular, the Islands Commission was pleased to note that Article 158 of the draft reform Treaty in relation to territorial cohesion was amended to better reflect islands and areas which suffer from permanent, natural or demographic handicaps.
- **Agriculture and rural development:** The future of the Common Agricultural Policy post 2014 will be considered alongside the EU budget review during 2008/09. There were discussions and opinions on how closely agriculture should be linked with EU cohesion/regional policy.
- **UK Representation on CPMR Political Bureau:** Councillor Angus was successfully elected to serve as the Alternate Member representing UK interests on the Political Bureau. The Political Bureau is responsible for the overall strategic direction of the CPMR.

## 6.2 North Sea Commission (NSC)

At a meeting of the NSC Executive Committee on 2 November, Councillor Josie Simpson was elected as Vice-Chairman of the Marine Resources Group. This group focuses on fisheries and marine issues within the North Sea region. In his role as Vice-Chairman, Councillor Simpson will have the opportunity to ensure closer integration with the activities of the wider CPMR Fisheries Intercom Group which he chairs.

A main focus of the work of the NSC over the next year will be EU's maritime policy proposals. The NSC is keen to promote itself as a pilot area for a maritime policy project and Councillor Cluness, in his capacity as NSC Vice-President, is tasked with taking this forward.

## 6.3 Islands Commission

At the time of writing this report, preparations are underway for Shetland to host a day and a half workshop from 22-23 November on island transport issues. The workshop will examine EU air and sea transport legislation and, in particular, the use of PSOs on island routes. Those participating include officers and politicians from Orkney, Western Isles, Argyll & Bute, Bornholm, Estonia, Corsica, Gotland, Azores, and also a representative from CalMac. A report on the workshop will be provided in the next European update to this Committee.

#### **6.4 CPMR Fisheries Intercom Group (FIG)**

This Group, chaired by Councillor Josie Simpson, met in Brussels on 19 September with representation from Aberdeenshire, Galicia, Andalucia, Brittany, Scottish Borders, and Sweden, including Gotland. It was agreed that the FIG should pursue representation on the Regional Advisory Councils (RACs) in order to feed in to the work of the RACs. The Chairman will attend the Inter-RAC meeting on 10 December and express an interest in having Observer status. The Inter-RAC Committee comprises representation from all the RACs. In June 2007, the European Commission gave the RACs permanent status.

The FIG also agreed to consider the Commission's latest communication and proposals for an EU Maritime Policy with a view to becoming involved in projects, while also following the Commission's proposals for an EU aquaculture strategy.

### **7.0 Financial Implications**

- 7.1 The financial implications arising from this report are potential travel and subsistence costs associated with attending forthcoming meetings. These costs can be met from existing budgets.

### **8.0 Policy & Delegated Authority**

- 8.1 The Executive Committee has delegated authority to make decisions on all matters within its remit, and as described in Section 10.0 of the Council's Scheme of Delegations approved by the Council on 28 March 2007 (Min Ref 54/07).
- 8.2 As this is an information report, there is no requirement for a decision to be made.

### **9.0 Conclusion**

- 9.1 This report provides an update of current EU issues and activities.

### **10.0 Recommendation**

- 10.1 Members are asked to note the contents of this report.

Our Ref: SJS/R4/10/6  
Date: 26 November 2007

Report No: DV051-F





## **REPORT**

**To: Executive Committee**

**04 December 2007**

**From: Interim Head of Economic Development**

**REPORT NO: DV053-F**  
**EUROPEAN COMMISSION STATE AID DECISIONS**

### **1.0 Introduction**

- 1.1 The purpose of this report is to inform Members of the recent negative decisions of the European Commission relating to state aid, the actions currently being taken and the impacts that these decisions are likely to have within Shetland.

### **2.0 Link to Council Priorities**

- 2.1 In order to achieve the Priority of 'Sustainable Economic Development' as contained within Shetland Island Council's Corporate Plan 2004-2008, all economic development activities must comply with European state aid legislation.

### **3.0 Background**

- 3.1 In August 2004, the European Commission intimated to the UK Authorities that it had received an anonymous complaint from a "citizen of the UK" concerning (a) payments made by SIC to various producer organisations and their member companies for marketing purposes and (b) expenditure by SIC on developing a "Shetland" brand which payments, it was alleged were illegal state aid.
- 3.2 As a consequence of this complaint and following correspondence with the Commission, the Commission identified in total 8 schemes operated by the SIC which it wished to investigate.
- 3.3 On 13 September 2006 the Commission issued notices in respect of these schemes. The Commission found that 4 of the schemes were compatible with the relevant Guidelines applicable at the time and accordingly the aid granted was deemed to be compatible with the common market.

3.4 However the Commission issued Notices initiating further investigation proceedings under Article 88(2) of the EC treaty in respect of the following schemes:

- First time shareholders scheme
- Fishing vessel modernisation scheme
- Fish Factory improvement scheme
- Loan assistance scheme

#### 4.0 European Commission Decision

4.1 After further investigation the Commission issued its decisions on the 13 November 2007, to the effect that 3 of the above 4 schemes amounted to state aid. No decision was given on the “Loan assistance scheme” which is still being investigated.

4.2 The Commission has addressed its decision to the UK, and obliges the UK to recover the monies, plus compound interest due, from the beneficiaries within 4 months of the decision. The number of beneficiaries who may be effected by these decisions are tabulated in Table 1 below:

4.3 The Commission has limited its investigation to a period of 10 years prior to the complaint being upheld i.e. from August 1994.

**Table 1**

	Number of beneficiaries	Typical grant value	Total estimated value of repayments including compound interest
First time shareholders scheme	78	£7,500	£1.0 million
Fishing vessel modernisation scheme	20	£5,000	£0.1 million
Fish Factory improvement scheme	1	N/A	£0.1 million
			<b>£1.2 million</b>

#### 5.0 Recovery of Funds

5.1 The Commission’s decisions are stark in that they compel the UK Government, within two months of the decision (dated 13/11/2007), to provide the following information:

5.1.1 a detailed description of the measures already taken and planned to comply with the decision; and

5.1.2 documents demonstrating that the beneficiaries have been **ordered** to repay the aid.



- 5.2 There are considerable repercussions of such a decision within the timescales indicated particularly related to the numbers of individuals affected and the varying circumstances around each.
- 5.3 The mechanism of recovery is as yet not clear to us and has not been communicated to us at the time of writing this report. So far as we are aware, there have not been previous proceedings for recovery of state aids in Scotland. Therefore this is new ground. Commission guidance indicates that although the decision is trusted to the member state, it is also binding on the state entities i.e. it is binding on the SIC and SDT. These points will be used by the Commission to execute recovery.
- 5.4 Legal advice so far obtained, indicates that it is the UK government that is responsible for recovery and that this will most likely be devolved through the Scottish Ministers to ensure compliance. It can be anticipated that the Scottish Ministers may well expect Shetland Islands Council to take these recovery proceedings if there is default in any recovery the Commission will take enforcement action against the UK Government and not SIC/SDT.

## **6.0 Appeal Process**

- 6.1 There is an automatic entitlement for the UK government to appeal the decision which it would need to exercise within two months of the decision date. We are seeking, from UK government information regarding their intentions in this regard. At the time of writing this report we have not received a response.
- 6.2 Failing an appeal being launched by the UK government there could be a case made, although this is not automatically granted, which entitles Shetland Islands Council to appeal directly to the European Court of Justice. Such an approach will require additional specialist QC input to establish the standing to be granted such an appeal.

## **7.0 Observations**

- 7.1 Prior to the Commission's decision on the fishing quota case in June 2003 the Commission concluded that Shetland had legitimate expectation to regard the Charitable Trust/SLAP as private and therefore not under the auspices of state aid. On that basis earlier cases found to infringe state aid regulations, particularly in relation to Fish Quota and Fish Processing investments did not come with a penalty of recovery.
- 7.2 The schemes now found to breach state aid regulations were funded by the Reserve Fund which directly receives its income from profits at the Sullom Voe and external investments made. The powers to deploy these funds lies within the ZCC (1974) Act, for the benefit of Shetland and its inhabitants. We have for a considerable period been arguing that due to the origin of and the scope provided to us to deploy these funds that they fall outside the definition of EU state aid. However, these schemes have been notified to the Commission since

their inception and state aid returns had been provided on each of the schemes on an annual basis, via the Scottish Executive and UK Government. At no time, until the complaint was made and investigation launched, had these schemes been questioned by the involved authorities. It is now therefore disappointing that the Commission has concluded that the argument of legitimate expectation as it applies to utilisation of these Reserve Fund schemes is not valid.

- 7.3 In October this year a delegation of Members and officials from the SIC attended meetings with European Commission state aid officials, Fisheries Commissioner Joe Borg's cabinet, and Scottish MEPs. The delegation was supported by officials from the Scottish Government and the Agriculture and Fisheries Attaché from UK Rep (UK Permanent Representative to the EU). At these meetings the delegation was advised that the new increased levels of fisheries *de minimis* aid (i.e. permissible state aid which is deemed not to distort competition) of 30,000 Euro/3years could be applied retrospectively for the cases being discussed. However on the basis of the Commission decisions there appears after all to be very limited scope for use of *de minimis* in this way.
- 7.4 Compound interest at the European Reference Rate applied over this period has the effect of doubling the value of the funds to which the claw back refers.
- 7.5 Members will be aware that the state aid cases discussed in this report are only part of a series of complaints made to the European Commission, since 1999, which have resulted in a total of 14 investigations by the Commission. This is the first time however that repayment has been ordered.
- 7.6 We are currently assessing the individual impacts that this decision will have and individual hardship that is likely to be incurred. We will once this is fully documented seek to have discussions with UK and EU officials regarding this with a view of seeking an acceptable solution to all parties.

## **8.0 Financial Implications**

- 8.1 It is anticipated that recoveries of grant aid would be to the Reserve Fund.

## **9.0 Policy & Delegated Authority**

- 9.1 The Executive Committee has delegated authority to make decisions on all matters within its remit, and as described in Section 10.0 of the Council's Scheme of Delegations approved by the Council on 28 March 2007.
- 9.2 As this is an information report, there is no requirement for a decision to be made.

## **10.0 Conclusion**

10.1 If the decisions of the Commission to recover funds are implemented in full the effect on the businesses and individuals involved, and for Shetland as a whole are likely to be considerable.

## **11.0 Recommendation**

11.1 Members are asked to note the contents of this report and the actions being pursued in relation to dealing with this situation.

Our Ref: NRJG/JJ E01a  
Date: 29 November 2007

Report No: DV053-f