



Zetland Transport Partnership

Agenda Item

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Meeting(s):	Zetland Transport Partnership	22 February 2018
Report Title:	Zetland Transport Partnership – Management Accounts 2017/18 – Projected Outturn at Quarter 3	
Reference Number:	ZTP-05-18-F	
Author / Job Title:	Jonathan Belford – Proper Officer for Finance	

1.0 Decisions / Action required:

- 1.1 The Zetland Transport Partnership RESOLVE to review the Management Accounts showing the projected outturn position for ZetTrans at Quarter 3.

2.0 High Level Summary:

- 2.1 The purpose of this report is to enable the Zetland Transport Partnership to note its financial performance of ZetTrans for the 2017/18 financial year.
- 2.2 On 21 February 2017, (ZTP Min Ref: 10/17) the Zetland Transport Partnership approved its 2017/18 revenue budgets. It is vital to the economic wellbeing of the Partnership and its stakeholders that the financial resources are managed effectively and expenditure and income is delivered in line with the approved budget.
- 2.3 On 2 November 2017, (ZTP Min Ref: 23/17) the Zetland Transport Partnership noted a report on functional responsibility for securing the provision of public passenger transport services. Changes noted in that report will be reflected in future monitoring reports, once all appropriate actions have been taken.
- 2.4 This report forms part of the financial governance and stewardship framework, which ensures that the financial position of the Partnership is acknowledged, understood and quantified on a regular basis. It provides assurance to the members that resources are being managed effectively and allows corrective action to be taken where necessary.
- 2.5 It is essential that budgets are delivered by the year-end, as any overspend is required to be met by an increased contribution from Shetland Islands Council.

3.0 Key Issues:

- 3.1 This report presents the projected outturn position for 2017/18 as at the end of the third quarter. The forecasts have been determined by Shetland Islands Council Finance Services after consultation with the Lead Officer.
- 3.2 The projected outturn position for ZetTrans is equal to the budget set for Core Services and the Public Bus Service, though underspending in both areas is projected to require £106k less funding from the SIC.

3.3 See appendix 1 for detailed information on the outturn position.

4.0 Exempt and/or confidential information:

4.1 None.

5.0 Implications :

5.1 Service Users, Patients and Communities:

None.

5.2 Human Resources and Organisational Development:

None.

5.3 Equality, Diversity and Human Rights:

None.

5.4 Legal:

The Zetland Transport Partnership was established by and exists in accordance with legislation made under the Transport (Scotland) Act 2005. Under The Transfer of Functions to the Shetland Transport Partnership Order 2006 certain functions relating to public transport were transferred from the Council to ZetTrans. These include the duties of the Council under section 63 of the Transport Act 1985 namely:

- to secure the provision of such public passenger transport services as the Council consider it appropriate to secure to meet any public transport requirements within their area which would not in their view be met apart from any action taken by them for that purpose; and
- to formulate from time to time general policies as to the descriptions of services they propose to secure. ZetTrans are, specifically, not responsible for the Council's transport functions insofar as they refer to educational or social work purposes.

By Minute of Agreement between the Council and ZetTrans the parties agreed that certain administrative and, where requested, professional services be provided to ZetTrans. In the provision of such services the Council acts as agent of ZetTrans and Council officers have the authority to enter into contracts on behalf of ZetTrans.

5.5 Finance:	<p>In accordance with Section 3 of the Transport (Scotland) Act 2005, the net expenses of ZetTrans for each financial year shall be paid by the Council, however the main financial objective for ZetTrans shall be to ensure that the financial outturn achieved in 2017/18 is within the approved resource budget, in line with that allocated by Scottish Ministers.</p> <p>The projected revenue outturn position for ZetTrans is to meet its budget on Core Services and Public Bus Services. It is projected to require £106k less financial support from the Council to do so.</p>	
5.6 Assets and Property:	None.	
5.7 ICT and new technologies:	None.	
5.8 Environmental:	None.	
5.9 Risk Management:	<p>There are numerous risks involved in the delivery of services and the awareness of these risks is critical to successful financial management.</p> <p>From a financial perspective, risks are an integral part of planning for the future, as assumptions are required to be made. These assumptions can be affected by many internal and external factors, such as supply and demand, which may have a detrimental financial impact.</p> <p>The main financial risks for ZetTrans are:</p> <ul style="list-style-type: none"> • security of public bus fare income. 	
5.10 Policy and Delegated Authority:	<p>The Partnership has authority to take decisions and monitor performance in terms of its statutory obligations in relation to its delegated functions.</p> <p>This report provides information and assurance, to the Partnership, in respect of service provision in relation to approved budgets.</p>	
5.11 Previously considered by:	Not Applicable.	

Contact Details:

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Appendices:

Appendix 1 – Zetland Transport Partnership – Projected Revenue Outturn Position
2017/18 Financial Year

Zetland Transport Partnership

1.0 - Projected Revenue Outturn Position 2017/18 Financial Year

Proj. Outturn Variance Q2 (Adv) / Pos £000	ZetTrans - Quarter 3 - 2017/18	Annual Budget 2017/18 £000	Projected Outturn Quarter 3 2017/18 £000	Proj. Outturn Variance Quarter 3 (Adv) / Pos £000
	<u>CORE SERVICES</u>			
6	Support Services	161	149	12
0	Consultants	0	0	0
0	External Audit Fees	11	10	1
0	Grants to Organisations	5	5	0
6	Total Core Expenditure	177	164	13
0	Regional Transport Funding	(132)	(132)	0
(6)	SIC Match Funding	(44)	(31)	(13)
0	Bank Interest	(1)	(1)	(0)
(6)	Total Core Funding Income	(177)	(164)	(13)
0	Core Services Variance	0	(0)	(0)
	<u>PUBLIC BUS SERVICES</u>			
89	Contracts	2,633	2,541	93
89	Total Public Bus Service Expenditure	2,633	2,541	93
34	Concession Income	(104)	(146)	42
(20)	Public Bus Service Income	(609)	(589)	(20)
(103)	Public Bus Service Contribution (SIC)	(1,920)	(1,806)	(115)
(89)	Total Public Bus Service Income	(2,633)	(2,541)	(93)
0	Public Bus Services Variance	0	0	0
0	ZetTrans Surplus/(deficit)	0	(0)	(0)

Included in the above table are the projected variances presented as at Quarter 2 for comparison.

Explanations of the main variances at Quarter 3 are set out below:

1.1 Core Services, Support Services – Projected Underspend £12k (7%)

There is no significant variance in this area.

1.2 Core Services, SIC Match Funding - Projected Shortfall £13k (30%)

There is no significant variance in this area. This shortfall reflects the underspend in point 1.1 above.

1.3 Public Bus Services, Contracts – Projected Underspend £93k (4%)

The main variances in this area are the result of:

- Inflation being lower than expected, which has resulted in lower than budgeted contract costs across all services. £48k; and
- Savings associated with re-contracting services, particularly in relation to repair and maintenance costs, £45k.

1.4 Public Bus Services, Contribution (SIC) – Projected Shortfall (£115k) (6%)

Due to the savings detailed at 1.3 above, the contribution from the Council is lower than budgeted.



Zetland Transport Partnership

Agenda Item

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Meeting(s):	Zetland Transport Partnership	21 February 2018
Report Title:	Annual Audit Plan 2017/18	
Reference Number:	ZTP-01-18-F	
Author / Job Title:	Proper Officer for Finance	

1.0	Decisions / Action required:
1.1	The Partnership is asked to NOTE the contents of the Audit Plan 2017/18 for Zetland Transport Partnership (Appendix 1) from external auditors, Deloitte LLP.
2.0	High Level Summary:
2.1	The Annual Audit Plan detailed at Appendix 1 provides information on the work that external auditors will undertake to review and assess the governance and performance of the Zetland Transport Partnership in 2017/18.
3.0	Corporate Priorities and Joint Working:
3.1	The audit process plays a key role in helping the Partnership to maintain good governance, accountability and provides assurance around financial stewardship.
4.0	Key Issues:
4.1	<p>The Annual Audit Plans present the planned audit work for the 2017/18 financial year by the Partnership's external auditors, Deloitte LLP, for the 2017/18 financial year; the second year of a five-year appointment. Their core audit work includes:</p> <ul style="list-style-type: none"> • providing the Independent Auditor's Report on the annual accounts (and any assurance statement on whole of government accounts); • providing the annual report on the audit addressed to the Partnership and the Controller of Audit; • communicating audit plans to those charged with governance; • providing reports to management, as appropriate, in respect of the auditor's corporate governance responsibilities in the Code; • preparing and submitting fraud returns to Audit Scotland, where appropriate; • identifying significant matters arising from the audit, alert the Controller of Audit and support Audit Scotland in producing statutory reports as required; and • undertaking work requested by Audit Scotland or local performance audit work.
5.0	Exempt and/or confidential information:
5.1	None.

6.0 Implications :		
6.1 Service Users, Patients and Communities:	None arising from this report.	
6.2 Human Resources and Organisational Development:	None arising from this report.	
6.3 Equality, Diversity and Human Rights:	None arising from this report.	
6.4 Legal:	The Zetland Transport Partnership is required to prepare accounts in accordance with the Local Government (Scotland) Act 1973 and the Code of Practice on Local Authority Accounting 2017/18.	
6.5 Finance:	The audit fee for 2017/18 is £9,913, which will be met from existing budget.	
6.6 Assets and Property:	None arising from this report.	
6.7 ICT and new technologies:	None arising from this report.	
6.8 Environmental:	None arising from this report.	
6.9 Risk Management:	The annual audit work is focused on identifying and assessing the key challenges and risks to the Zetland Transport Partnership in order to mitigate future risk.	
6.10 Policy and Delegated Authority:	The Partnership has authority to take decisions and monitor performance in terms of its statutory obligations.	
6.11 Previously considered by:	n/a	n/a

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21 February 2018

Appendices:

Appendix 1 – Zetland Transport Partnership Annual Audit Plan for 2017/18



Zetland Transport Partnership

Planning report to the Partnership
on the 2017/18 audit

22 February 2018

Deloitte Confidential: Public Sector

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Planning report



Director introduction

The key messages in this report:

Audit quality is our number one priority. We plan our audit to focus on audit quality and have set the following audit quality objectives for this audit:

- A robust challenge of the key judgements taken in the preparation of the financial statements.
- A strong understanding of your internal control environment.
- A well planned and delivered audit that raises findings early with those charged with governance.

We have pleasure in presenting our draft planning report to Zetland Transport Partnership ('ZetTrans', 'the Partnership') for the year ending 31 March 2018 audit. We would like to draw your attention to the key messages of this draft audit plan:

Audit Plan

We have updated our understanding of the Partnership including discussion with management and review of relevant documentation as well as Audit Scotland performance reports published during the year.

Based on these procedures, we have developed this plan in collaboration with the Partnership to ensure that we provide an effective audit service that meets your expectations and focuses on the most significant areas of importance and risk to the Partnership.

Key Risks

We have taken an initial view as to the significant audit risks the Partnership faces. These are presented as a summary dashboard on page 13.

- As with all public sector bodies, the Partnership continues to face significant financial challenges and without sufficient funding the delivery of priorities would be impeded.

- The Partnership approved the budget strategy for 2017/18 on the 21 of February 2017. In agreeing to this, it was determined that the Partnership's main objective is to ensure that it delivers within its approved budget for 17/18.
- ZetTrans is an organisation that is unable to retain reserves or meet unplanned expenditure – in the event that the level of fare income does not meet contractual expectations action would be required by ZetTrans to secure funding or address expenditure levels. The achievement of a breakeven position will be a key focus of our audit.
- In accordance with auditing standards, we have identified a significant risk associated with income. This risk is pinpointed to the completeness and accuracy of the fare based income received from Shetland Islands Council.
- In accordance with auditing standards, management override of controls has also been identified as a potential significant audit risk.

Director introduction (continued)

The key messages in this report (continued):

Audit Dimensions

The 2016 Code of Audit Practice sets our four audit dimensions which set a common framework for all public sector audits in Scotland. These are financial sustainability, financial management, governance and transparency and value for money. Due to the relative size and scale of the functions delivered by the Partnership, we have concluded that the full wider scope of audit is not appropriate. In accordance with paragraph 53 of the Code, our work in this area will therefore be restricted to concluding on:

- The appropriateness of the disclosures in the governance statement; and
- The financial sustainability of the Partnership and the services that it delivers over the medium to longer term.

The potential audit risks associated with the wider scope, below, are detailed further on page 16.

- The governance statement is not consistent with the wider disclosure of the accounts or compliant with the CIPFA guidance note.
- A lack of forward financial planning, leading to Partnership's projects being delayed or cancelled.
- Insufficient review of savings plans could impact on achievement of its corporate priorities.

Other wider scope work

In accordance with Audit Scotland guidance, we will be requested to provide information to support national performance audits on Digital.

Regulatory Change

There are limited changes this year affecting the audit, through the Code of practice on local authority accounting or statutory guidance.

We would highlight that new accounting standards on financial instruments will apply from 2018/19 and it is important that the Partnership considers the impact ahead of implementation. See page 23 for more details.

Our Commitment to Quality

We are committed to providing the highest quality audit, with input from our market leading specialists, sophisticated data analytics and our wealth of experience.

Adding value

Our aim is to add value to the Partnership through our external audit work by being constructive and forward looking, by identifying areas of improvement and by recommending and encouraging good practice. In this way, we aim to help the Partnership promote improved standards of governance, better management and decision making and more effective use of resources.

Pat Kenny
Audit Director

Responsibilities of the Partnership

Helping you fulfil your responsibilities

The primary purpose of the Auditor's interaction with the Partnership:

- Clearly communicate the planned scope of the financial statements audit
- Provide timely observations arising from the audit that are significant and relevant to the Partnership's responsibility to oversee the financial reporting process
- In addition, we seek to provide the Partnership with additional information to help fulfil your broader responsibilities

As a result of regulatory change in recent years, the role of the Audit Committee, which is part of the role of the Partnership, has significantly expanded. We set out here a summary of the core areas of Partnership responsibility to provide a reference in respect of these broader responsibilities and highlight throughout the document where there is key information which helps the Partnership in fulfilling its remit.

- At the start of each annual audit cycle, ensure that the scope of the external audit is appropriate.

- Implement a policy on use of the external auditor for non-audit services and approve if arise.

Oversight of external audit

Integrity of reporting

- Review the internal control and risk management systems.

- Explain what actions have been, or are being taken to remedy any significant failings or weaknesses.

-Oversee the work of the Partnership's local counter fraud service.

Internal controls and risks

Oversight of internal audit

Whistle-blowing and fraud

- Ensure that appropriate arrangements are in place for the proportionate and independent investigation of any concerns that are raised by staff in connection with improprieties.

- Make an impact assessment of key judgements and the level of management challenge.

- Review the external audit findings, key judgements and level of misstatements.

- Assess the quality and capacity of the internal team and their incentives.

- Assess the completeness of disclosures, including consistency with disclosures on business model and strategy and, where requested by the Partnership, provide advice in respect of the fair, balanced and understandable statement.

- Consider annually whether the scope of the internal audit programme is adequate.

- Monitor and review the effectiveness of the internal audit activities.

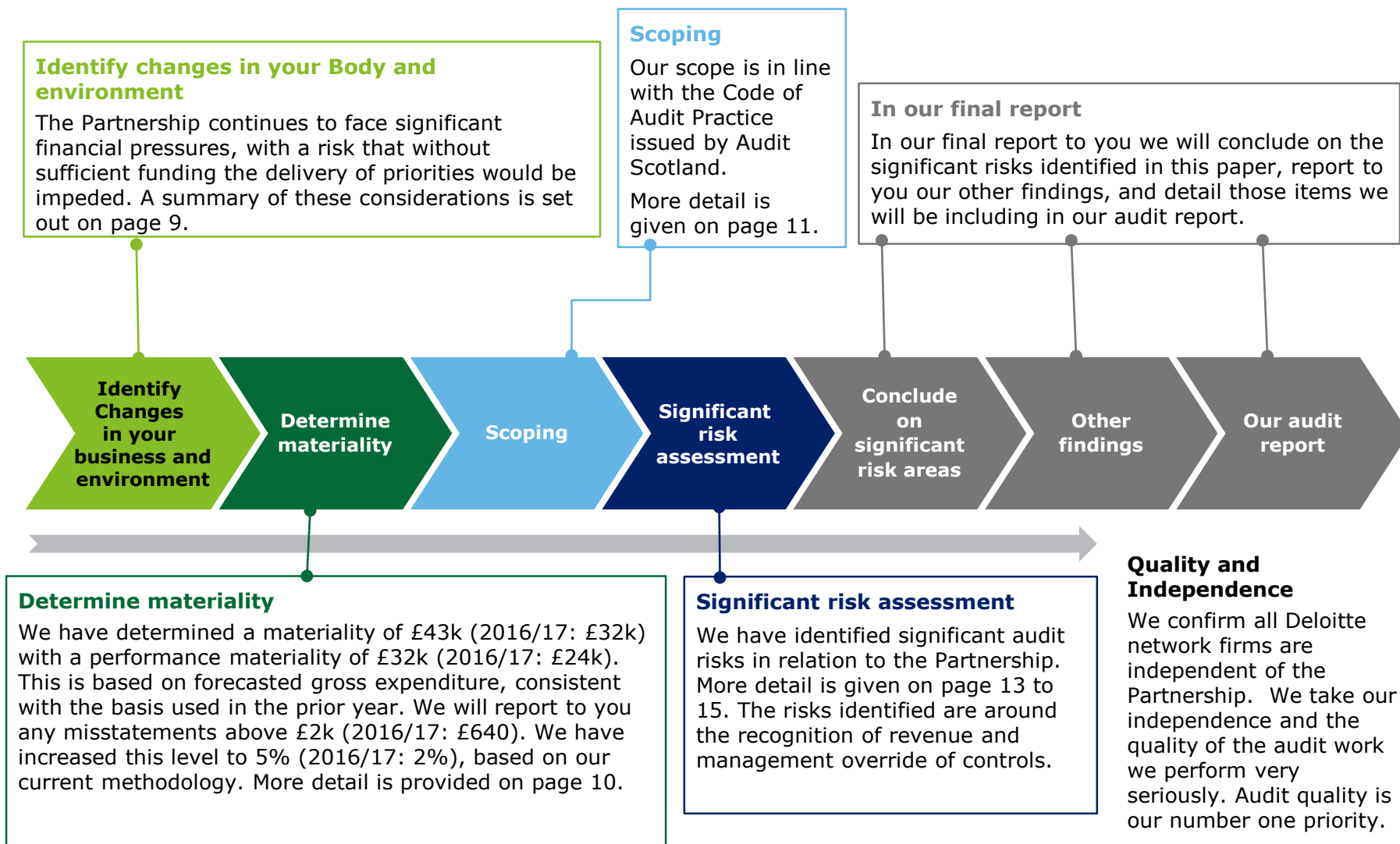


Target icons throughout the document highlights key information which should be a focus of interest for the Partnership.



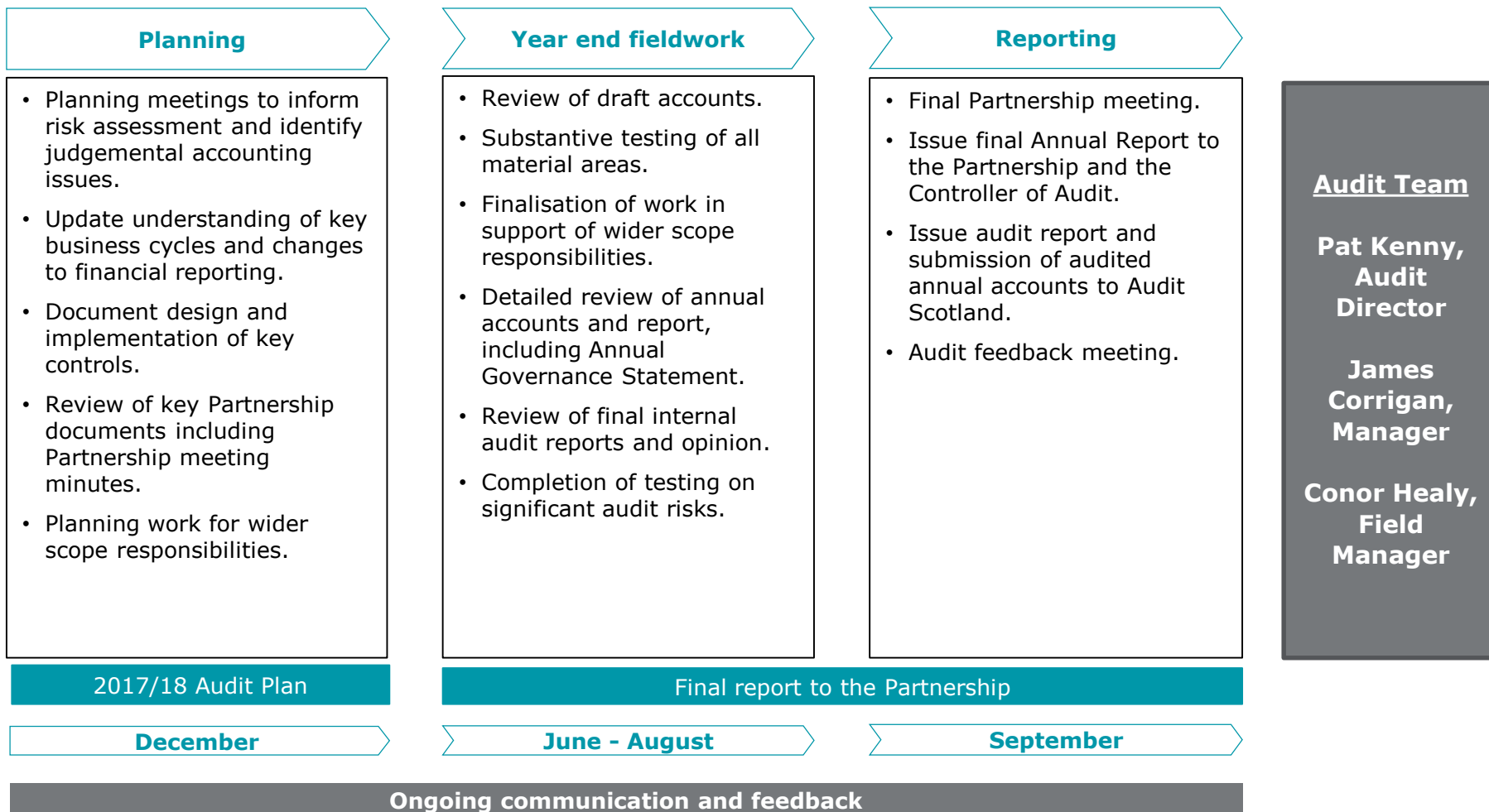
Our audit explained

We tailor our audit to your Partnership and your strategy




Continuous communication and reporting

Planned timing of the audit



An audit tailored to you

Focusing on your business and strategy

Description	Impact on our audit
Future financial sustainability	<div data-bbox="318 328 376 392"></div> <p>As with all public sector bodies, the Partnership continues to face significant financial challenges. Deloitte have noted that as at 30 September 2017, the Partnership is forecasting an underspend of £95k and is thus expecting to fall within budget and deliver its responsibilities, although this will be offset by the consequently lower Council funding. The position will be considered again at the year-end.</p> <p>ZetTrans must continue to look at how it can reduce costs to meet the challenge of making savings per year or secure additional longer term funding. We will consider the Partnership's financial sustainability in the medium to longer term and consider whether it is planning effectively to continue to deliver its services on a sustainable basis. In our prior year report, we recommended that the Partnership looks to the medium to longer term to identify any funding gaps and efficiency savings required and we will review any progress in this regard.</p>



New significant risk



Continuing significant risk



Considered as part of wider scope audit requirements

Materiality

Our approach to materiality

Basis of our materiality benchmark

- The Audit Director has determined materiality as £43k (2016/17: £32k) and a performance materiality of £32k (2016/17: £24k), based on professional judgement and risk factors specific to the Partnership, the requirement of auditing standards and the financial measures most relevant to users of the annual accounts.
- We have used 1.6% of forecasted gross expenditure as the benchmark for determining materiality.
- This approach is consistent with our prior year materiality calculation.

Reporting to those charged with governance

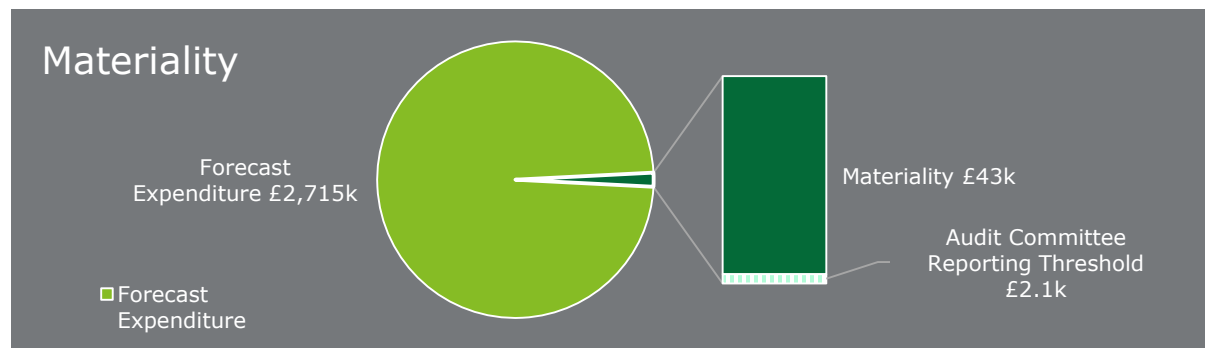
- We will report to you all misstatements found in excess of £2k (2016/17: £640).
- We have increased this level to 5% (2016/17: 2%) of materiality based on our current methodology.
- We will report to you misstatements below this threshold if we consider them to be material by nature.

- Our approach to determining the materiality benchmark is consistent with Audit Scotland guidance which states that the threshold for clearly trivial above which we should accumulate misstatements for reporting and correction to audit committees must not exceed £250k.

Our annual audit report

We will:

- Report the materiality benchmark applied in the audit of the Partnership;
- Provide comparative data and explain any changes in materiality, compared to prior year, if appropriate; and
- Explain any normalised or adjusted benchmarks we use, if appropriate.



Although materiality is the judgement of the audit director, the Partnership must satisfy themselves that the level of materiality chosen is appropriate for the scope of the audit.



Scope of work and approach

Our key areas of responsibility under the Code of Audit Practice

Core audit

Our core audit work as defined by Audit Scotland comprises:

- Providing the **Independent Auditor's Report** on the annual accounts (and any assurance statement on consolidation packs);
- Providing the **annual report** on the audit addressed to the Partnership and the Controller of Audit ;
- Communicating **audit plans** to those charged with governance;
- Providing **reports to management**, as appropriate, in respect of the auditor's corporate governance responsibilities in the Code;
- Preparing and submitting **fraud returns**, including nil returns, to Audit Scotland where appropriate;
- Identifying significant matters arising from the audit, alert the Controller of Audit and support Audit Scotland in producing statutory reports as required; and
- Undertaking work requested by Audit Scotland or local performance audit work.

Wider scope requirements

The Code of Audit Practice sets out four audit dimensions which set a common framework for all public sector audits in Scotland:

- **Financial sustainability** – Looking forward to the medium and longer term to consider whether the body is planning effectively to continue to deliver its services or the way in which they should be delivered.
- **Financial management** – Financial capacity, sound budgetary processes and whether the control environment and internal controls are operating effectively.
- **Governance and transparency** – The effectiveness of scrutiny and governance arrangements, leadership and decision making, and transparent reporting of financial and performance information.
- **Value for money** - Using resources effectively and continually improving services.

Due to the relative size and scale of the functions delivered by the Partnership, we have concluded that the full wider scope of audit is not appropriate. In accordance with paragraph 53 of the Code, our work in this area will therefore be restricted to concluding on:

- The appropriateness of the disclosures in the governance statement; and
- The financial sustainability of the Partnership and the services that it delivers over the medium to longer term.

Scope of work and approach (continued)

Our approach

Liaison with internal audit

The Auditing Standards Board's version of ISA (UK) 610 "Using the work of internal auditors" prohibits use of internal audit to provide "direct assistance" to the audit. Our approach to the use of the work of Internal Audit has been designed to be compatible with these requirements.

The Partnership uses the corporate financial systems of Shetland Island Council as well as the Council's internal audit function. We will review their reports and meet with them to discuss their work. We will discuss the work plan for internal audit, and where they have identified specific material deficiencies in the control environment we consider adjusting our testing so that the audit risk is covered by our work.

Using these discussions to inform our risk assessment, we can work together with internal audit to develop an approach that avoids inefficiencies and overlaps, therefore avoiding any unnecessary duplication of audit requirements on the Partnership and Council's staff.

Approach to controls testing

Our risk assessment procedures will include obtaining an understanding of controls considered to be 'relevant to the audit'. This involves evaluating the design of the controls and determining whether they have been implemented ("D&I").

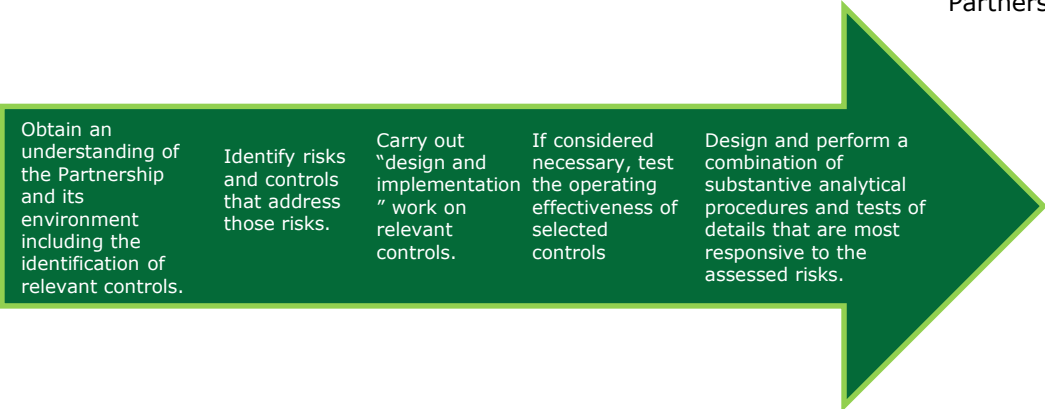
The results of our work in obtaining an understanding of controls and any subsequent testing of the operational effectiveness of controls will be collated and the impact on the extent of substantive audit testing required will be considered.

Promoting high quality reporting to stakeholders

We view the audit role as going beyond reactively checking compliance with requirements: we seek to provide advice on evolving good practice to promote high quality reporting.

We will utilise the Code of Practice on Local Authority Accounting in the UK Disclosure Checklist to support the Partnership in preparing high quality drafts of the Annual Report and annual accounts, which we would recommend the Partnership complete during drafting.

The Disclosure Checklist reflects the cutting clutter agenda and includes a "not material" column. We would encourage the Partnership to exclude disclosure if the information is not material.



Obtain an understanding of the Partnership and its environment including the identification of relevant controls.	Identify risks and controls that address those risks.	Carry out "design and implementation" work on relevant controls.	If considered necessary, test the operating effectiveness of selected controls	Design and perform a combination of substantive analytical procedures and tests of details that are most responsive to the assessed risks.
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Significant risks Dashboard



Risk	Material	Fraud risk	Planned approach to controls testing	Level of management judgement	Page no.
Completeness and accuracy of income			Design and implementation		14
Management override of controls			Design and implementation		15



Some degree of management judgement



Limited management judgement

Significant risks (continued)

Risk 1 – Completeness and accuracy of income

Risk identified	<p>ISA 240 states that when identifying and assessing the risks of material misstatement due to fraud, the auditor shall, based on a presumption that there are risks of fraud in income recognition, evaluate which types of income, income transactions or assertions give rise to such risks.</p> <p>The main component of income for the Partnership is income received from Shetland Islands Council, which is a deficit funding arrangement based on fare income. The significant risk is pinpointed to the recognition of this income, being completeness and accuracy of income received from the Council given the reliance of the Partnership on this income and the high volume of transactions involved.</p>
Our response	<p>We will perform the following:</p> <ul style="list-style-type: none">• Test the income to ensure that the correct amounts have been input and received in accordance with that agreed as part of budget process;• Test the reconciliations performed by the Partnership at 31 March 2018 to confirm all income is correctly recorded in the ledger;• Compare income recorded with expectations, based on amounts agreed as part of budget process;• Confirm that the reconciliations performed during 2017/18 have been reviewed on a regular basis; and• Assess management’s controls around recognition of income received from the Council.
Deloitte Comment	<p>No issues were identified with regards to income in the prior year audit. In the current year, we have completed our design & implementation over controls around income and have not identified any issues. We identified no issues which would affect the recognition of income during our planning work.</p>

Significant risks (continued)

Risk 2 – Management override of controls

We will use computer assisted audit techniques to support our work on the risk of management override

Risk identified	<p>In accordance with ISA 240 (UK and Ireland) management override is a significant risk. This risk area includes the potential for management to use their judgement to influence the annual accounts as well as the potential to override the Partnership's controls for specific transactions.</p> <p>The key judgments in the annual accounts are those which we have selected to be the significant audit risk around expenditure recognition. This is inherently the areas in which management has the potential to use their judgment to influence the annual accounts.</p>
Planned audit challenge	<p>In considering the risk of management override, we plan to perform the following audit procedures that directly address this risk:</p> <ul style="list-style-type: none">• We will test journals, using our data analytics tool, to focus our testing on higher risk journals;• We will review accounting estimates for bias that could result in material misstatements due to fraud;• We will obtain an understanding of the business rationale of significant transactions that we become aware of that are outside of the normal course of business for the entity, or that otherwise appear to be unusual, given our understanding of the entity and its environment.
Deloitte Comment	<p>We did not identify in our prior year audit work any transactions which appeared unusual or outside the normal course of business. In addition, we have completed design & implementation work in this area for the current year audit and have not identified any issues.</p>

Wider scope requirements

Audit dimensions

The Code of Audit Practice sets our four audit dimensions which set a common framework for all public sector audits in Scotland. These are financial sustainability, financial management, governance and transparency and value for money. Due to the relative size and scale of the functions delivered by the Partnership, we have concluded that the full wider scope of audit is not appropriate. In accordance with paragraph 53 of the Code, our work in this area will therefore be restricted to concluding following:

Audit dimension	Areas to be considered	Impact on the 2017/18 Audit
The appropriateness of the disclosures in the governance statement .	<ul style="list-style-type: none"> The completeness of the disclosures in meeting the requirements of the new guidance note issued by CIPFA <i>Delivering good governance in local government: framework 2016</i>. Inconsistencies between the disclosures or information that is materially incorrect and audit knowledge. 	<p>We will review the draft governance statement and assess whether there are any inconsistencies or omissions based on other audit evidence obtained throughout the audit. Our work in 2016/17 triggered a review of the statutory powers transferred to the Partnership from the Council. The outcome of this work will be followed up as part of our 2017/18 audit work.</p> <p>Audit Risk: The governance statement is not consistent with the wider disclosure of the accounts or compliant with the CIPFA guidance note.</p>
Financial sustainability looks forward to the medium and longer term to consider whether the body is planning effectively to continue to deliver its services or the way in which they should be delivered.	<ul style="list-style-type: none"> The financial planning systems in place across the shorter and longer terms. The arrangements to address any identified funding gaps. The affordability and effectiveness of funding and investment decisions made. 	<p>We will monitor the Partnership's actions in respect of its short and medium term financial plans, including progress towards outcome based planning/ budgeting. From our work performed in 2016/17, we noted that there was no medium or long term financial plan in place. We are monitoring the partnership's work on this and will continue to do so as part of our 17/18 audit.</p> <p>Audit Risk: A lack of forward financial planning, leading to Partnership's projects being delayed or cancelled.</p> <p>We will monitor the Partnership's savings plans to assess whether the impact has been fully identified, mitigated and planned for.</p> <p>Audit Risk: Insufficient review of savings plans could impact on achievement of its corporate priorities.</p>

Wider scope requirements (continued)

Specific risks

As part of the 2017/18 planning guidance, Audit Scotland have identified the following areas as significant risks faced by the public sector. While we have not identified any specific risks in relation to these areas for the Partnership, we will continue to monitor these areas as part of our audit work.

Risk	
EU withdrawal	<p>There remains significant uncertainty about the detailed implications of EU withdrawal. Nonetheless, given the potential timetables involved, it is critical public sector bodies are working to understand, assess and prepare for the impact on their business. Key aspects of this are likely to include three broad areas:</p> <ul style="list-style-type: none">- Workforce- Funding- Regulation
New Financial Powers	<p>The provisions of the 2012 and 2016 Scotland Acts and the accompanying Fiscal Framework agreement are leading to fundamental changes to the Scottish public finances. New tax raising, borrowing and social security powers provide the Scottish Parliament with more policy choice, but also mean the Scottish budget is subject to greater volatility, uncertainty and complexity. There is also a stronger link between the performance of the Scottish economy (relative to the rest of the UK) and available funding.</p> <p>The changes are likely to impact across public sector bodies to varying degrees, both directly (for example where an organisation's activities include additional responsibilities as a result of the new powers) and indirectly (for example as a result of potential changes to the way the Scottish Government manages its overall budget).</p>

Wider scope requirements (continued)

Specific risks (continued)

Risk	
Ending of public sector pay cap	<p>Pay increases in the public sector have been frozen and then capped at 1% for seven years. Politicians in both Westminster and Holyrood are talking about ending the public sector pay cap.</p> <p>When introducing the Programme for Government 2017-18, the First Minister confirmed that the Scottish Government will lift the 1% public sector pay cap. It remains unclear which public sector workers will benefit from lifting the cap, when the increases will take effect, and how such increases will be funded.</p> <p>All public bodies need to consider the potential impact of the ending the pay cap as they prepare their budgets and consider their financial sustainability.</p>
Response to cyber security risks	<p>Audit Scotland will issue further guidance in relation to this risk, setting out the risk context for public bodies, the new cyber resilience requirements being introduced by the Scottish Government and questions that auditors can pose to bodies to understand the risk and mitigating action in a local context. We will share this with management when this is available.</p>
Openness and transparency	<p>There are signals of changing and more challenging expectations for openness and transparency in public business. In view of this direction of travel, Audit Scotland noted that 2016/17 annual audit reports highlighted the need for public bodies to keep this area under review and to consider whether there is scope to enhance transparency.</p>

Wider scope requirements (continued)

Performance audits

Performance Audit	
In accordance with Audit Scotland planning guidance, we will be requested to provide information to support performance audits on the following subjects during the year:	
Performance audit title	Appointed auditor input
Digital – cross cutting	No formal return. Audit Scotland will provide information and guidance on current issues and risks to consider as part of planning process.

Audit Quality

Our commitment to audit quality



Our objective is to deliver a distinctive, quality audit to you. Every member of the engagement team will contribute, to achieve the highest standard of professional excellence.

In particular, for your audit, we consider that the following steps will contribute to the overall quality:

We will apply professional scepticism on material issues and significant judgements identified, by using our expertise in the central government sector and elsewhere to provide robust challenge to management.

We have obtained a deep understanding of your business, its environment and of your processes in income recognition and expenditure enabling us to develop a risk-focused approach tailored to the Partnership.

Our engagement team is selected to ensure that we have the right subject matter expertise and industry knowledge. We will involve specialists to support the audit team in our work.

In order to deliver a quality audit to you, each member of the core audit team has received tailored learning to develop their expertise in audit skills, delivered by Pat Kenny, Audit Director. This is a Director led programme encouraging teams from across our practice to engage and discuss current sector and audit issues, sharing best practice and expertise. This is in addition to a practice wide local government training day held prior to the end of the financial year to share key issues from across the country, to update on regulatory changes and provide early warning of issues other teams may have faced at the interim testing phase.



Engagement Quality Control Review

We have developed a tailored Engagement Quality Control approach. Our dedicated Professional Standards Review (PSR) function will provide a 'hot' review before any audit or other opinion is signed. PSR is operationally independent of the audit team, and supports our high standards of professional scepticism and audit quality by providing a rigorous independent challenge.

Purpose of our report and responsibility statement

Our report is designed to help you meet your governance duties

What we report

Our report is designed to establish our respective responsibilities in relation to the financial statements audit, to agree our audit plan and to take the opportunity to ask you questions at the planning stage of our audit. Our report includes:

- Our audit plan, including key audit judgements and the planned scope;
- Key regulatory and corporate governance updates, relevant to you.

What we don't report

As you will be aware, our audit is not designed to identify all matters that may be relevant to the Partnership.

Also, there will be further information you need to discharge your governance responsibilities, such as matters reported on by management or by other specialist advisers.

Finally, the views on internal controls and business risk assessment in our final report should not be taken as comprehensive or as an opinion on effectiveness since they will be based solely on the audit procedures performed in the audit of the financial statements and the other procedures performed in fulfilling our audit plan.

Other relevant communications

We will update you if there are any significant changes to the audit plan.

This report has been prepared for the Partnership, as a body, and we therefore accept responsibility to you alone for its contents. We accept no duty, responsibility or liability to any other parties, since this report has not been prepared, and is not intended, for any other purpose. Except where required by law or regulation, it should not be made available to any other parties without our prior written consent.

We welcome the opportunity to discuss our report with you and receive your feedback.



Pat Kenny, CPFA

for and on behalf of Deloitte LLP

Glasgow

25 January 2018

Technical update

Information on sector developments



IFRS 9 *Financial Instruments*

In a nutshell

- In July 2014, the IASB published a final version of IFRS 9. This version supersedes all previous versions.
- IFRS 9 *Financial Instruments* will replace IAS 39 *Financial Instruments: Recognition and Measurement*, and has three main impacts
 - *Classification and measurement* - introduces new approach for the classification of financial assets driven by cash flow characteristics and the business model in which an asset is held. This classification determines how financial assets are accounted for in the annual accounts and, in particular, how they are measured on an ongoing basis.
 - *Amortised cost and impairment of financial assets* – introduces an “expected losses” impairment model where entities are required to account for expected credit losses from when financial instruments are first recognised.
 - *Hedge accounting* - introduces new general hedge accounting model that aligns the accounting treatment with risk management activities and allows for better reflection of the hedging activities in the annual accounts.
- The key practical change in IFRS 9 for most bodies is the introduction of a new approach to recognising impairments of debtors and other financial instruments.
- CIPFA/ LASAAC has advised that representatives from central and devolved governments, including the Scottish Government, have confirmed that they would be willing to consider representations from local authorities for a statutory mitigation.

Potential impact on the Partnership

IFRS 9 is expected to have relatively limited impact, but will at least affect the process of assessing impairment of debtors and other financial assets. As part of the process of adoption, the Partnership will need to consider the impact on policies, processes, systems and people.

Effective date

The Standard has a mandatory effective date for annual periods beginning on or after 1 January 2018, with earlier application permitted. CIPFA/ LASAAC has confirmed that it has approved the full adoption of IFRS9 into the accounting code and therefore will apply to local authority annual accounts from 2018/19.



Find out more on our
website UK Accounting
Plus
[https://www.iasplus.com
/en-gb/standards](https://www.iasplus.com/en-gb/standards)

General Data Protection Regulation

The EU GDPR will come into effect from 25 May 2018, and will effectively supercede the existing Data Protection Act.

Issue

The EU General Data Protection Regulation ("GDPR") will come into effect in 2018, replacing the Directive that formed the basis for the Data Protection Act. The GDPR is expected to remain in effect for the foreseeable future, notwithstanding Brexit.

The key new concept is of "accountability" – being able to **demonstrate** compliance, with specific actions required with an evidence trail.

- Data Protection Impact Assessments are required for high risk processing of data, and there are specific requirements for transparency and fair processing of data. There are tighter rules where consent is the basis for processing data.
- There are requirements to keep records of data processing activities, with the removal of most charges for providing copies of records to patients or staff who request them.
- Penalties for breaches of the regulation are significantly higher than existing arrangements (up to €10m for data breaches and up to €20m for breaches of the principles), and apply to any breach of the regulation, not just data breaches.
- All public authorities are required to appoint a suitably qualified and experienced Data Protection Officer.
- There is a legal requirement to notify security breaches to the Information Commissioner within 72 hours.

Getting ready to comply with the GDPR can start with reducing the risk of the data breaches – and reducing that risk doesn't need to be complicated. The biggest causes of data breaches can be avoided by making sure the basics are in place: keep all operating systems and software up to date, implement encryption for sensitive data, and educate all employees about the risk of phishing and other social engineering attacks.

Your organisation might also consider the [Cyber Essentials scheme](#) and the [10 Steps to Cyber Security](#), both developed by Government to ensure any organisation can protect themselves from common cyber-attacks.

The Information Commissioner's Office has also developed a useful [12 step guide](#) to help organisations consider their current data protection activities and what needs to be done to comply with the new regulations. They will be developing guidance over the coming months so keep an eye on [their website](#) for more information.

Deloitte View

Privacy as a concept is broad and far-reaching. The GDPR impacts many areas of an organisation, and is not just a legal/compliance issue. The GDPR brings specific rights to the public, including the "right to be forgotten" and data portability.

The emphasis on organisational accountability will require proactive, robust privacy governance. A key challenge is the need to identify a suitably qualified Data Protection Officer, with an estimated need for 28,000 DPOs across Europe.

The requirements will change how information technologies are designed and managed, with a requirement for documented privacy risk assessments when implementing major new systems, with "Privacy by Design" now enshrined in law.

The requirement to notify security breaches within 72 hours will require new or enhanced incident response procedures.

Teams tasked with information management will need to provide clearer oversight on data storage, journeys and lineage. Greater clarity on what data is collected and where it is stored will make it easier to comply with the new data subject rights.

Next steps

The Partnership should consider how it is obtaining assurance over the adequacy of the Partnership's action plans to ensure compliance with the GDPR.

Appendices



Prior year audit adjustments

Uncorrected and disclosure misstatements

Uncorrected misstatements

There were no uncorrected misstatements identified during the course of our prior year audit

Disclosure misstatements

There were no uncorrected disclosure misstatements identified during the course of our prior year audit

Fraud responsibilities and representations

Responsibilities explained



Your Responsibilities:

The primary responsibility for the prevention and detection of fraud rests with management and those charged with governance, including establishing and maintaining internal controls over the reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations.



Our responsibilities:

- We are required to obtain representations from your management regarding internal controls, assessment of risk and any known or suspected fraud or misstatement.
- As auditors, we obtain reasonable, but not absolute, assurance that the annual accounts as a whole are free from material misstatement, whether caused by fraud or error.
- As set out in the significant risks section of this document, we have identified the risk of fraud in revenue recognition, the accuracy of accrued income, and management override of controls as a key audit risk for your organisation.



Fraud Characteristics:

- Misstatements in the annual accounts can arise from either fraud or error. The distinguishing factor between fraud and error is whether the underlying action that results in the misstatement of the annual accounts is intentional or unintentional.
- Two types of intentional misstatements are relevant to us as auditors – misstatements resulting from fraudulent financial reporting and misstatements resulting from misappropriation of assets.

We will request the following to be stated in the representation letter signed on behalf of the Partnership:

- We acknowledge our responsibilities for the design, implementation and maintenance of internal control to prevent and detect fraud and error.
- We have disclosed to you the results of our assessment of the risk that the annual accounts may be materially misstated as a result of fraud.
- We are not aware of any fraud or suspected fraud that affects the entity or group and involves:
 - (i) management;
 - (ii) employees who have significant roles in internal control; or
 - (iii) others where the fraud could have a material effect on the annual accounts.
- We have disclosed to you all information in relation to allegations of fraud, or suspected fraud, affecting the entity's annual accounts communicated by employees, former employees, analysts, regulators or others.



Fraud responsibilities and representations

Inquiries

We will make the following inquiries regarding fraud:



Management:

- Management's assessment of the risk that the annual accounts may be materially misstated due to fraud, including the nature, extent and frequency of such assessments.
- Management's process for identifying and responding to the risks of fraud in the entity.
- Management's communication, if any, to those charged with governance regarding its processes for identifying and responding to the risks of fraud in the entity.
- Management's communication, if any, to employees regarding its views on business practices and ethical behaviour.
- Whether management has knowledge of any actual, suspected or alleged fraud affecting the entity.

Internal audit and Local Counter Fraud Specialist

- Whether internal audit and the Partnership's local counter fraud specialist has knowledge of any actual, suspected or alleged fraud affecting the entity, and to obtain its views about the risks of fraud.



Those charged with governance

- How those charged with governance exercise oversight of management's processes for identifying and responding to the risks of fraud in the entity and the internal control that management has established to mitigate these risks.
- Whether those charged with governance have knowledge of any actual, suspected or alleged fraud affecting the entity.
- The views of those charged with governance on the most significant fraud risk factors affecting the entity.



Independence and fees



As part of our obligations under International Standards on Auditing (UK and Ireland), we are required to report to you on the matters listed below:

Independence confirmation

We confirm the audit engagement team, and others in the firm as appropriate, Deloitte LLP and, where applicable, all Deloitte network firms are independent of the Partnership and will reconfirm our independence and objectivity to the Partnership for the year ending 31 March 2018 in our final report to the Partnership.

Fees

The audit fee for 2017/18, in line with the fee range provided by Audit Scotland, is £9,913 as analysed below.

	2017/18 £	2016/17 £
Auditor remuneration	8,663	8,987
<i>Audit Scotland fixed charges:</i>		
Pooled costs	730	719
Audit support costs	520	490
Total Fee	9,913	10,187

Details of all non-audit services fees for the period will be presented in our final report.

Non-audit services

We continue to review our independence and ensure that appropriate safeguards are in place in relation to any non-audit services provided including, but not limited to, the rotation of senior partners and professional staff and the involvement of additional partners and professional staff to carry out reviews of the work performed and to otherwise advise as necessary.

Relationships

We have no other relationships with the Partnership, its directors, senior managers and affiliates, and have not supplied any services to other known connected parties.

Our approach to quality

AQR team report and findings



We maintain a relentless focus on quality and our quality control procedures and continue to invest in and enhance our overall firm Audit Quality Monitoring and Measuring programme.

In June 2017 the Financial Reporting Council ("FRC") issued individual reports on each of the six largest firms, including Deloitte, on Audit Quality Inspections which provides a summary of the findings of its Audit Quality Review ("AQR") team for the 2016/17 cycle of reviews.

The review performed by the AQR forms an important part of our overall inspection process. We perform causal factor analysis on each significant finding arising from both our own internal quality review and those of our regulators to identify the underlying cause. This provides insight which drives the developments in our quality agenda.

18 of the audits reviewed by the AQR were performed to a good standard with limited improvements required. We were disappointed that, despite the high standards we set and many areas of improvement in our quality record, the percentage of audits rated as requiring more than limited improvements has remained broadly similar to the previous year and that two reviews were identified as requiring significant improvement.

We have taken swift and decisive action to respond to the matters identified and will continue to monitor the implementation of these. We are firmly committed to achieving, and indeed exceeding, the FRC's objective that by 2019 90% of FTSE 350 audits reviewed will be assessed as requiring no more than limited improvements.

All the AQR public reports are available on its website.

The AQR's 2016/17 Audit Quality Inspection Report on Deloitte LLP

"We reviewed selected aspects of 23 individual audits in 2016/17. In selecting which aspects of an audit to inspect, we took account of those areas identified to be of higher risk by the auditors and Audit Committees, our knowledge and experience of audits of similar entities and the significance of an area in the context of the audited financial statements. The communications with the Audit Committee and the audit of revenue were reviewed on nearly all of these audits..."

"The firm has taken the actions they committed to take following our last inspection. Some of the issues driving more adverse quality assessments this year are in similar areas to those reported last year, although some audits reviewed were undertaken before these actions had been carried out. Our main concern continues to be the adequacy of audit teams' challenge of management in key areas of judgment (particularly goodwill impairment) and further immediate action is required to improve audit quality in this area.

The firm has enhanced its policies and procedures in the following areas:

- Strengthened the evidence of the Engagement Quality Control Review ("EQCR") partner and audit technical reviewer involvement.
- Updated Deloitte's audit methodology to include additional focus on risk assessment and the related audit response (effective from 31 December 2016 year-end audits).
- Introduced more focused coaching for audit teams throughout the audit process.
- Issued more timely and focused guidance and reminders to the audit practice on key audit matters, to facilitate appropriate consideration by audit teams at the key stages of the audit.
- Increased mandatory technical training for qualified staff through to partner level

Our key findings in the current year requiring action by the firm, which are elaborated further in section 2 together with the firm's actions to address them, are that the firm should:

- Improve the extent of challenge of management in key areas of judgment, in particular impairment reviews and valuation of acquired intangible assets.
- Strengthen the firm's audit of income recognition.
- Make further improvements to the audit of defined benefit pension scheme balances in corporate entities.
- Continue to seek to improve the consistency of the quality of communications with Audit Committees."

Our approach to quality

Areas identified for particular attention	How we have addressed these as a firm	How addressed in our audit
Strengthen the firm's audit of income recognition.	<p>A key theme of the enhancements to our methodology in 2016, (deployed after these engagements reviewed by the AQR were complete), was to enhance our risk assessment procedures and, as a result, encourage our auditors to develop more robust responses to the largest most critical account balances, with a natural focus on revenue.</p> <p>This included the removal of capped sample sizes for very large balances and facilitation of a combination of test of details and substantive analytical procedures to enable more comprehensive audit responses to be designed.</p> <p>This theme has continued in 2017 when our Summer Technical Training showcased our investment in analytic tools applied to the audit of revenue, as well as training on the accounting and auditing of revenue as we prepare to audit the implementation of the new revenue standard IFRS 15 'Revenue from Contracts with Customers' which is effective for periods beginning on or after 1 January 2018.</p>	This is a significant audit risk and is addressed in page 14 of this paper.
Continue to seek to improve the consistency of the quality of communications with Audit Committees.	<p>We take our responsibilities for reporting to the Audit Committee very seriously. There is a natural follow on that if there is a failure in the underlying audit work we will inevitably fall short in our reporting on those areas. The majority of issues noted in the report linked directly to the review findings.</p> <p>We continue to stress the critical importance of reporting matters to the Audit Committee in the training we deliver and in the enhanced procedures we have established, in particular around key management estimates and judgments. We have issued refreshed Audit Committee reporting templates to the practice reflecting the observations of the reviews to ensure audit practitioners continue to focus on this critical aspect of our role.</p>	<p>We have reported to you in page 11 and 12 of this paper the scope of work and the planned approach to the audit.</p> <p>We would welcome any feedback on our approach to communicating with you.</p>



Our approach to quality

Areas identified for particular attention	How we have addressed these as a firm	How addressed in our audit
Improve the extent of challenge of management in key areas of judgment, in particular impairment reviews and valuation of acquired intangible assets.	<p>We have developed an Impairment Centre of Excellence and have mandated its involvement in all public interest entity audits with a material goodwill or intangibles balance for years ending on or after 15 December 2016. The specialists within the Impairment Centre of Excellence, in addition to having significant experience auditing complex impairment issues, have had specialist training to be able to identify and respond to the issues raised in the AQR report.</p> <p>Our Summer Technical Training in 2017 included interactive workshops on this area including sharing anonymised findings from internal and external review to illustrate the types of challenge and extent of audit evidence that teams should seek to achieve in this area.</p>	The Partnership does not have a goodwill balance or a material intangible asset balance, and so this is not applicable for the Partnership's audit.
Make further improvements to the audit of defined benefit pension scheme balances in corporate entities.	<p>We have improved our procedures to ensure confirmations are obtained from asset custodians where appropriate. In December 2015 we introduced a detailed practice aid dedicated to all areas of corporate pension balance auditing together with increased training.</p> <p>We have also mandated consultation with our Pension Audit Centre of Excellence for years ending on or after 15 December 2016 and refreshed the practice aid. This ensures our audit teams have access to our experts in the audit of pension balances.</p>	The Partnership does not have an on balance sheet pension scheme, and so this is not applicable for the audit.





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Zetland Transport Partnership

Agenda Item

3

Meeting(s):	Zetland Transport Partnership	22 February 2018
Report Title:	2018/19 Proposed Revenue Budget – ZetTrans	
Reference Number:	ZTP-04-18-F	
Author / Job Title:	Jonathan Belford – Proper Officer for Finance	

1.0 Decisions / Action required:

That the Zetland Transport Partnership RESOLVE to:

- 1.1 Approve the budget proposals for 2018/19 included in this report;
- 1.2 Approve the updated Schedule of Charges (Appendix 1); and
- 1.3 Delegate authority to the Lead Officer, or his nominee, to award grants in line with the approved Shetland Bike Project and within the budget proposed.

2.0 High Level Summary:

- 2.1 The purpose of this report is to enable the Zetland Transport Partnership to consider the budget proposals and related schedule of charges for 2018/19.
- 2.2 The proposed budget for 2018/19 now includes Air Services and some Ferry Services, in line with the Transfer of Functions to the Shetland Transport Partnership Order 2006, approved by ZetTrans on 2 November 2017 (Min. Ref. 25/17). The addition of these budgets ensures that financial arrangements fully reflect the Transport Order. Full details are provided at section 3.2 below.
- 2.3 The budget includes a contribution of £3m from Shetland Islands Council.
- 2.4 There is no proposal to increase Public Bus Fares in 2018/19, as these charges usually increase in 10p increments to facilitate income collection, and therefore cannot be increased every year, without moving significantly ahead of inflation.

3.0 Key Issues:

- 3.1 The budget outlined in this report forms the basis of the financial governance and stewardship framework which ensures that the financial position of ZetTrans is acknowledged, understood and quantified on a regular basis throughout the year. Setting the budget allows for effective monitoring, providing assurance that resources are being applied and managed effectively and allowing corrective action to be taken where necessary.

3.2 A summary of the proposed ZetTrans budget for 2018/19 is provided below:

Description	2017/18 Budget £000	2018/19 Budget £000	Variance (Adv) / Pos £000
Support Services	161	213	(51)
Consultants		2	(2)
External Audit Fees	11	11	
Grants to Organisations	5	5	
Total Core Expenditure	177	230	(53)
Regional Transport Funding	-132	-132	
SIC Match Funding	-44	-97	53
Bank Interest			
Total Core Income	-177	-230	53
CORE SERVICES			
Transport Services - Air		880	(880)
Transport Services - Bus	2,633	2,561	72
Transport Services - Ferry		315	(315)
Total Transport Services Expenditure	2,633	3,756	(1,123)
Transport Services - Fares	-713	-712	(1)
Transport Services - Contribution (SIC)	-1,920	-3,044	1,124
Total Transport Services Income	-2,633	-3,756	1,123
TRANSPORT SERVICES			
Total ZetTrans Expenditure	2,810	3,986	(1,176)
Total ZetTrans Income	-2,810	-3,986	1,176

3.3 The total proposed revenue budget for ZetTrans in 2018/19 is £4m, of which £0.2m is for core funding and the implementation of Regional Transport Strategy; and £3.8m is for scheduled Passenger Transport Services in Shetland.

3.4 The core running costs and implementation of the Regional Transport Strategy work is part funded by a grant of £0.13m from the Scottish Government.

3.5 The budget for Public Bus Service expenditure has been reduced in line with actual indexation for 2017/18, and savings achieved on contracting out the Westside Mainline.

3.6 Air and Ferry Services expenditure has been included in line with the Transfer of Functions to the Shetland Transport Partnership Order 2006.

4.0 Exempt and/or confidential information:

4.1 None

5.0 Implications :

5.1
Service Users,
Patients and
Communities:

None.

5.2

None.

Human Resources and Organisational Development:	
5.3 Equality, Diversity and Human Rights:	None.
5.4 Legal:	<p>The Zetland Transport Partnership was established by and exists in accordance with legislation made under the Transport (Scotland) Act 2005. Under The Transfer of Functions to the Shetland Transport Partnership Order 2006 certain functions relating to public transport were transferred from the Council to ZetTrans. These include the duties of the Council under section 63 of the Transport Act 1985 namely:</p> <ul style="list-style-type: none"> • to secure the provision of such public passenger transport services as the Council consider it appropriate to secure to meet any public transport requirements within their area which would not in their view be met apart from any action taken by them for that purpose; and • to formulate from time to time general policies as to the descriptions of services they propose to secure. ZetTrans are, specifically, not responsible for the Council's transport functions insofar as they refer to educational or social work purposes. <p>By Minute of Agreement between the Council and ZetTrans the parties agreed that certain administrative and, where requested, professional services be provided to ZetTrans. In the provision of such services the Council acts as agent of ZetTrans and Council officers have the authority to enter into contracts on behalf of ZetTrans.</p>
5.5 Finance:	<p>In accordance with Section 3 of the Transport (Scotland) Act 2005, the net expenses of ZetTrans for each financial year shall be paid by the Shetland Islands Council, however the main financial objective for ZetTrans shall be to ensure that it delivers its approved budget in 2018/19.</p> <p>The proposed 2018/19 ZetTrans expenditure budget of £4m will be funded by: Regional Transport Authority - £0.13m; Fares - £0.71m; and Shetland Islands Council - £3.14m. The contribution of £3.14m from Shetland Islands Council has been provided for in their approved budgets (SIC Min Ref: 5/18).</p> <p>The Shetland Islands Council Finance Service assists ZetTrans with the financial management and accounting support.</p> <p>Any decision to recommend changes to the proposals in this report will require a formal amendment and must be fully quantified in the Partnerships decision.</p>
5.6	

Assets and Property:	None.	
5.7 ICT and new technologies:	None.	
5.8 Environmental:	None.	
5.9 Risk Management:	<p>As an organisation that is unable to retain reserves or meet unplanned expenditure, in the event that the level of fares income does not meet the contractual expectations, action would be required by ZetTrans to secure funding or address expenditure levels.</p> <p>Officers continue to review and validate fares income levels to ensure that revenue security is assured and that proposed fares income budgets are realistic and achievable.</p> <p>There are numerous risks involved in the delivery of services and the awareness of these risks is critical to successful financial management.</p> <p>From a financial perspective, risks are an integral part of planning for the future, as assumptions are required to be made. These assumptions can be affected by many internal and external factors, such as supply and demand, which may have a detrimental financial impact.</p> <p>There are no currently identified financial risks for services reporting to ZetTrans.</p>	
5.10 Policy and Delegated Authority:	<p>The Partnership has the authority to take decisions and monitor its performance in terms of its statutory obligations in relation to its delegated functions.</p> <p>This report provides information and assurance to the Partnership, in respect of the resources available to provide its remit in the financial year 2018/19.</p>	
5.11 Previously considered by:	n/a	n/a

Contact Details:

Janice Thomason, Management Accountant, janice.thomason@shetland.gov.uk, 15 February 2018

Appendices:

Appendix 1 – Schedule of Charges.

2018/19 Schedule of Charges

All charges are exclusive of VAT where applicable.

Directorate	Service	Activity	Charge	Unit	2017/18 Charge £	2018/19 Charge £	Variance %
Development	Transport Planning	Inter-Island Air Services (all air fares are subject to further appraisal by Zettrans as part of the current budget setting process)	Lerwick - Fair Isle (Non Resident Adult, 25yrs +)	Single fare	44.00	46.20	5.00
Development	Transport Planning		Lerwick - Fair Isle (Non Resident Adult, 25yrs +)	Return fare	83.85	88.00	4.95
Development	Transport Planning		Lerwick - Fair Isle (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Single fare	29.75	30.50	2.52
Development	Transport Planning		Lerwick - Fair Isle (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Return fare	56.25	58.10	3.29
Development	Transport Planning		Lerwick - Fair Isle (Non Resident Child, 2 - 11yrs)	Single fare	22.00	23.10	5.00
Development	Transport Planning		Lerwick - Fair Isle (Non Resident Child, 2 - 11yrs)	Return fare	41.50	44.00	6.02
Development	Transport Planning		Lerwick - Fair Isle - (Island Resident, 12yrs +)	Return fare	41.00	43.05	5.00
Development	Transport Planning		Lerwick - Fair Isle - (Island Resident, 2 - 11 yrs) or (Pupil attending AHS)	Return fare	26.50	28.40	7.17
Development	Transport Planning		Lerwick - Foula (Non Resident Adult, 25yrs +)	Single fare	41.50	43.60	5.06
Development	Transport Planning		Lerwick - Foula (Non Resident Adult, 25yrs +)	Return fare	79.00	83.00	5.06
Development	Transport Planning		Lerwick - Foula (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Single fare	27.60	28.75	4.17
Development	Transport Planning		Lerwick - Foula (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Return fare	52.00	54.75	5.29
Development	Transport Planning		Lerwick - Foula (Non Resident Child, 2 - 11yrs)	Single fare	18.00	21.80	21.11
Development	Transport Planning		Lerwick - Foula (Non Resident Child, 2 - 11yrs)	Return fare	33.00	41.50	25.76
Development	Transport Planning		Lerwick - Foula - (Island Resident, 12yrs +)	Return fare	41.00	43.05	5.00
Development	Transport Planning		Lerwick - Foula - (Island Resident, 2 - 11 yrs) or (Pupil attending AHS)	Return fare	26.50	28.40	7.17
Development	Transport Planning		Lerwick - Papa Stour (Non Resident Adult, 25yrs +)	Single fare	36.00	37.80	5.00
Development	Transport Planning		Lerwick - Papa Stour (Non Resident Adult, 25yrs +)	Return fare	69.00	72.45	5.00
Development	Transport Planning		Lerwick - Papa Stour (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Single fare	19.00	24.95	31.32
Development	Transport Planning		Lerwick - Papa Stour (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Return fare	35.00	47.80	36.57
Development	Transport Planning		Lerwick - Papa Stour (Non Resident Child, 2 - 11yrs)	Single fare	12.75	18.90	48.24
Development	Transport Planning		Lerwick - Papa Stour (Non Resident Child, 2 - 11yrs)	Return fare	24.40	36.20	48.36
Development	Transport Planning		Lerwick - Papa Stour - (Island Resident, 12yrs +)	Return fare	28.00	29.40	5.00
Development	Transport Planning		Lerwick - Papa Stour - (Island Resident, 2 - 11 yrs) or (Pupil attending AHS)	Return fare	16.75	19.40	15.82
Development	Transport Planning		Sumburgh - Fair Isle (Non Resident Adult, 25yrs +)	Single fare	41.95	46.20	10.13
Development	Transport Planning		Sumburgh - Fair Isle (Non Resident Adult, 25yrs +)	Return fare	79.30	88.00	10.97
Development	Transport Planning		Sumburgh - Fair Isle (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Single fare	29.75	30.50	2.52
Development	Transport Planning		Sumburgh - Fair Isle (Non Resident Youth, 12 - 24) or (Non Resident Senior Citizen, 60yrs +)	Return fare	56.25	58.10	3.29
Development	Transport Planning		Sumburgh - Fair Isle (Non Resident Child, 2 - 11yrs)	Single fare	21.00	23.10	10.00
Development	Transport Planning		Sumburgh - Fair Isle (Non Resident Child, 2 - 11yrs)	Return fare	39.80	44.00	10.55

Directorate	Service	Activity	Charge	Unit	2017/18 Charge £	2018/19 Charge £	Variance %
Development	Transport Planning		Sumburgh - Fair Isle - (Island Resident, 12yrs +)	Return fare	42.45	43.05	1.41
	Transport Planning		Sumburgh - Fair Isle - (Island Resident, 2 - 11 yrs) or (Pupil attending AHS)	Return fare	26.50	28.40	7.17
Development	Transport Planning	Bus Services	To Sumburgh Airport	Per ticket	2.90	2.90	0.00
Development	Transport Planning		To Sumburgh	Per ticket	2.90	2.90	0.00
Development	Transport Planning		To Sandwich	Per ticket	2.30	2.30	0.00
Development	Transport Planning		To Cunningsburgh	Per ticket	2.00	2.00	0.00
Development	Transport Planning		To Walls	Per ticket	2.90	2.90	0.00
Development	Transport Planning		To Bixter	Per ticket	2.60	2.60	0.00
Development	Transport Planning		To Weisdale	Per ticket	2.30	2.30	0.00
Development	Transport Planning		To Hillswick	Per ticket	3.80	3.80	0.00
Development	Transport Planning		To Mossbank	Per ticket	3.20	3.20	0.00
Development	Transport Planning		To Toft	Per ticket	3.20	3.20	0.00
Development	Transport Planning		To Brae	Per ticket	2.90	2.90	0.00
Development	Transport Planning		To Scalloway	Per ticket	1.80	1.80	0.00
Development	Transport Planning		To Lerwick Town Service	Per ticket	1.20	1.20	0.00
Development	Transport Planning	Bus Services	NOTE: discounted multi travel tickets are available offering 20% reduction on fares. The National Concessionary Travel scheme provides Scotland-wide free bus travel for elderly and disabled persons. Also, young persons 16 to 18 years old receive one third off full adult fare on all Scotland-wide bus services. Half fares are payable to children aged between 5 and 16 years old. Under fives travel for free.				N/A



Zetland Transport Partnership

Agenda Item

4

Meeting:	ZetTrans	21 February 2018
Report Title:	Appointment of Advisers	
Reference Number:	ZTP-02-18-F	
Author / Job Title:	Secretary for ZetTrans	

1.0 Decisions / Action required:

That the Partnership:

- 1.1 Appoint Mr Mathieson, Island Manager, VisitScotland, Shetland as an Adviser for a further period of 4 years to 22 February 2022; and
- 1.2 Agree that the appointment of advisers will be considered, as part of the ZetTrans Governance Review, and reported to ZetTrans by the end of June 2018.

- 2.1 The purpose of this report is to update Members on the expiry of the term of office for two Advisers of ZetTrans.
- 2.2 Mr Steven and Mr Mathieson's 4 year term comes to an end on 22 February 2018.

3.0 Corporate Priorities and Joint Working:

- 3.1 The Scottish Ministers decided that Regional Transport Partnerships ("RTPs") should include Advisers/Observers invited, in light of the role/experience they hold.
- 3.2 The Partnership's Administrative Regulations state that the partnership may invite any such number of Advisers as they consider appropriate to ZetTrans. Advisers may participate in proceedings of ZetTrans in the same manner as Councillor Members and other Members but may not hold office in it or participate in its decisions.

4.0 Key Issues:

Advisers

The duration and termination of membership is set out in Section 2 of the ZetTrans Administrative Regulations.

- 4.1 Mr Mathieson was invited as an Adviser to the Partnership for his role as the Islands Manager, VisitScotland, in Shetland in 2010 which has covered two 4-year terms. He has actively participated in the business of the Partnership over the last

8 years and it is proposed that Mr Mathieson be reappointed for a further term of 4 years to 22 February 2022.	
4.2	Mr Steven's appointment will cease on 22 February 2018 and, as the role in which Mr Steven was originally appointed no longer applies, it is therefore intended that the appointment of advisers will be considered as part of the ZetTrans Governance Review, and reported to ZetTrans by the end of June 2018.
4.3	The Partnership currently have a further two Advisers in place, Ms S Laurenson, Chief Executive, Lerwick Port Authority (appointed until 12 June 2019) and Mr J Smith, Sumburgh Airport Consultative Committee (appointed until 18 February 2020).
5.0 Exempt and/or confidential information:	
5.1	This report contains no exempt information.
6.0 Implications :	
6.1 Service Users, Patients and Communities:	The appointment of Advisers to the Partnership ensures public representation continues on the Partnership, therefore there will be no impact on these groups as a result of this report.
6.2 Human Resources and Organisational Development:	There are no Human Resources issues arising from this report
6.3 Equality, Diversity and Human Rights:	An Equalities Impact Assessment is not required.
6.4 Legal:	The appointment of Advisers to the Partnership ensures that it continues to be compliant with the requirements of The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005, and the Partnership's Administrative Regulations, the Partnership.
6.5 Finance:	There are no direct financial implications to the process of appointing an Adviser to the Partnership. However, once appointed the Adviser is entitled to claim expenses as set out in the ZetTrans Administrative Regulations 2007.
6.6 Assets and Property:	There are no Assets and Property issues arising from this report.
6.7 ICT and new technologies:	There are no ICT issues arising from this report.
6.8 Environmental:	There are no environmental issues arising from this report.
6.9 Risk Management:	In line with the requirements of The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005 this report provides notice that the

	<p>current term of two Advisers will come to an end on 22 February 2017.</p> <p>As the Partnership may appoint any such number of Advisers, not reappointing one of the Advisers does not pose a risk to the good governance of the Partnership. It is however proposed that the Partnership consider the appointment of Advisers as part of the Zettrans Governance Review.</p>	
6.10 Policy and Delegated Authority:	<p>The Partnership and/or Scottish Ministers may appoint Advisers to the Partnership. The two Advisers referred to in this report were appointed by the Partnership and are therefore presented for consideration of reappointment.</p>	
6.11 Previously considered by:	<p>This report has not been presented to any other meetings.</p>	

Contact Details:

Mr J Riise, Secretary to ZetTrans, jan.riise@shetland.gov.uk
14 February 2018

Appendices:

None

Background Documents: The Regional Transport Partnerships (Establishment, Constitution and Membership) (Scotland) Order 2005

<http://www.legislation.gov.uk/sdsi/2005/0110697588/contents>

ZetTrans Administrative Regulations <http://www.zettrans.org.uk/aboutus/Membership.asp>



Zetland Transport Partnership

Agenda Item

5

Meeting(s):	Zetland Transport Partnership	21 February 2018
Report Title:	ZetTrans Response to the Consultation on: Shetland's Partnership Plan - Consultative Draft December 2017	
Reference Number:	ZTP-06-18-F	
Author / Job Title:	Peter Mogridge – Transport Policy and Projects Officer	

1.0 Decisions / Action Required:

- 1.1 That the Partnership APPROVE a ZetTrans response to the consultation on Shetland's Partnership Plan – Consultative Draft December 2017; and
- 1.2 Instruct the Lead Officer, or his nominee, to submit the response incorporating any changes requested, in consultation with the Chair.

2.0 High Level Summary:

- 2.1 Shetland's Partnership Plan - Consultative Draft December 2017, formerly the Local Outcomes Improvement Plan, sets out a strategy for "...working together to improve the lives of everyone in Shetland".
- 2.2 The document, contained in Appendix 2, poses 10 questions to be addressed by Shetland's community planning partners.
- 2.3 As a schedule 1 community planning partner, ZetTrans is a statutory respondent and the proposed response to the 10 questions is contained in Appendix 1.

3.0 Corporate Priorities and Joint Working:

- 3.1 ZetTrans' policy is to seek to have in place transport arrangements that are affordable and meet people's needs. To achieve this policy ZetTrans works closely with Shetland Islands Council. Shetland Islands Council's "Our Plan 2016 to 2020" states: 'There will be transport arrangements in place that meet people's needs and that we can afford to maintain in the medium term'.
- 3.2 As a schedule 1 community planning partner, ZetTrans is a member of the Shetland Partnership, a statutory consultee and a statutory delivery agent.

4.0 Key Issues:

- 4.1 The document in Appendix 1 contains the proposed response from the Partnership to be submitted by the 28 February 2018 deadline.
- 4.2 The response given is in line with ZetTrans Vision, Strategic Objectives and Main Issues. It also encompasses ZetTrans dual strategic and operational roles.

4.3	Based on discussions with Shetland's Partnership Plan team, and as a schedule 1 partner, a key element of ZetTrans response centres on the need to align Shetland's FINAL Partnership Plan and ZetTrans Shetland Transport Strategy Refresh.
4.4	The consultation exercise relates to the draft priorities and partnership working proposals. Once the consultation and revision process has been completed, the Shetland Partnership will work together to develop and agree specific targets and a delivery plan.
4.5	The authors of Shetland's Partnership Plan recognise that transport relates to all of its priorities.
5.0 Exempt and/or Confidential Information	
5.1	None.
6.0 Implications :	
6.1 Service Users, Patients and Communities:	Shetland's Partnership Plan expressly seeks to address the needs of the whole community. It therefore addresses, by definition, the needs of all these groups.
6.2 Human Resources and Organisational Development:	None.
6.3 Equality, Diversity and Human Rights:	Shetland's Partnership Plan expressly seeks to address the needs of the whole community. It expressly ensures that the Shetland Partnership's activity complies with all equality, diversity and human rights legislation.
6.4 Legal:	The Community Empowerment (Scotland) Act 2015 lists Regional Transport Partnerships as Statutory Community Planning Partners. In this capacity, ZetTrans has specific legal responsibilities including carrying out community planning with other persons with the same obligations, for the purpose of improvement in the achievement of outcomes resulting from the provision of services.
6.5 Finance:	None
6.6 Assets and Property:	None
6.7 ICT and New Technologies:	None

6.8 Environmental:	Shetland's Partnership Plan does not have a specific environmental priority but does require environmental impacts to be considered across all its proposed activity.	
6.9 Risk Management:	None	
6.10 Policy and Delegated Authority:	ZetTrans has functional responsibility to secure transport services in Shetland under the Transfer of Functions to the Shetland Transport Partnership Order 2006. The Partnership is responsible for engaging with Government and stakeholders on issues relating to transport national policy and strategy.	
6.11 Previously considered by:	Not previously considered	

Contact Details:

Peter Mogridge – Transport Policy and Projects Officer

Phone: 01595 745802

E-mail peter.mogridge@shetland.gov.uk

9 February 2018

Appendices:

Appendix 1 ZetTrans proposed response to Shetland's Partnership Plan - Consultative Draft December 2017

Appendix 2 Shetland's Partnership Plan – Consultative Draft December 2017

Background Documents

The Shetland partnership / Community planning

<http://www.shetland.gov.uk/communityplanning/ShetlandPartnership.asp>

Part 2 of the Community Empowerment (Scotland) Act 2015 -

<http://www.legislation.gov.uk/asp/2015/6/contents/enacted>

Part 2 Community Planning Guidance, December 2016 -

<http://www.gov.scot/Publications/2016/12/8801>

Shetland's Partnership Plan – Consultation

ZetTrans Response – February 21st 2018

1. Do you agree with the way the *draft* Plan is structured?

ZetTrans feels the *draft* plan is well structured. The section on *Locality Planning* however, may be surplus to requirements. There is an inevitable confusion about the various uses of words such as: *community, area, local, locality...* It may be that an explanation of the *locality planning* element could be enhanced by using a diagram to relate it to the overarching LOIP and by naming the localities.

2. Do you agree with the *draft* Plan's vision?

With the exception of any specific mention of money, ZetTrans feels that the *shared vision* rightly and fully encompasses all of the ideas contained in the *shared priorities*. If the priorities change as a result of this consultation however, the *shared vision* should be revisited.

3. Do you agree with the *draft* outcomes ('What will be different for communities in 2028?') and targets for:

a) The *Place* priority?

ZetTrans feels that it has a particularly important role to play in achieving the aims to improve *Place*. ZetTrans would however wish to highlight that a focus on *access* is more meaningful when seeking to identify need and design solutions. Improving access to services, health, education, training and employment can be achieved in many different ways. ZetTrans is ready to work with its community planning partners to identify imaginative solutions and deliver improvements to *access*. Putting on a bus or taxi is likely to be the sustainable solution in a surprisingly small number of cases. In cases where it is the correct solution, the cost must increasingly be seen as a cost to the community as a whole. In short, ZetTrans believes that assessing and addressing *access* needs must be embedded into the activity of all community planning partners.

With regard to the *targets* for *Place*, please see our response to question 10 below.

b) The *People* priority?

The *aims* are general but uncontentious. With regard to the *targets*, the emerging concept of *transport poverty* may be a useful indicator. As such, consideration should be given to collecting data which could inform such an indicator, now or in the future.

c) The *Money* priority?

Please see comments to 3b above. Please also see our general comments on *public transport* in 10 below.

d) The *Participation* priority?

The aims are of particular relevance to ZetTrans in strengthening the need for, and participation in, community consultation and partnership working. ZetTrans welcomes this and has proposed specific interventions to embed community and partner involvement within its own activity. With regard to the target of improving *satisfaction* with public transport, it should be noted that there is no baseline data for this in Shetland. With regard to issues with the term *public transport*, please see our response to question 10.

e) *Locality Planning*?

ZetTrans is not certain that *Locality Planning* represents a *priority*. It is a legal requirement for each community planning partnership to develop a minimum of 1 *locality plan*. Perhaps this important element sits better within *delivery* rather than as a *priority*? (In the *delivery* section, only 4 priorities are mentioned.)

With regard to the *targets*, there may be a danger of the *targets* being too interdependent – and therefore a need to be more specific, non-comparative and statistically discrete. If all *areas* improve as planned, will the difference between them not remain the same? If one *community* is targeted for additional help, how will this inter-relate to measured improvement in and between other *areas, communities, localities*?

Generally, and almost inevitably, there are problems with terminology in this section. Once settled on which terms to use, a glossary covering *locality, community, area* etc. might be of use.

4. Which of the priority areas do you feel your organisation would be particularly able to contribute to?

ZetTrans believes that the transport of people and goods has a role to play across all of the priorities identified in the draft document.

5. Does your organisation work with (or are you aware of) any community bodies (groups of people, whether or not formally constituted, established for purposes of promoting or improving the interests of the community they represent) that could help to deliver the priorities outlined above?

ZetTrans is a statutory community planning partner and is happy and able to liaise with partners to identify, and share knowledge of, such individuals, groups and bodies.

6. Do you agree with the proposed Delivery and Governance approach?

ZetTrans will endeavour to work with Shetland's community planning partners to ensure that the *Shetland Transport Strategy* aligns with *Shetland's Partnership Plan*. As other community planning partners do the same with their own key policies, strategies and plans, ZetTrans views this as the most effective way of aligning visions, objectives and targets across the Shetland Partnership's member organisations.

7. Do you have arrangements in place for your organisation to support the delivery of the Plan, once it is agreed?

By closely aligning the *Plan* with the refreshed *Shetland Transport Strategy*, all relevant ZetTrans activity should be in line with the *Partnership Plan*.

8. Have you decided on the steps you will take to align your organisation's activities with the priorities of the Plan? If so, what are these steps?

ZetTrans is in the process of refreshing its *Shetland Transport Strategy* and it has specifically delayed the timescale for doing this to ensure alignment with Shetland's *Partnership* priorities.

9. Have you decided on the steps you will take to raise awareness of the priorities of the Plan inside your organisation? If so, what are these steps?

It is anticipated that dissemination will occur via publicity surrounding the final refreshed *Shetland Transport Strategy*, ZetTrans ongoing participation in community planning and via members of ZetTrans.

10. Please provide any additional views or ideas for improving the draft Plan.

ZetTrans believes that care should be taken in using the Place Standard outputs as a baseline measure. There is no guarantee that a future Place Standard exercise will EITHER elicit the same level of participation OR deliver statistically robust comparators. It should further be noted that the Place Standard specifically seeks views on what needs to *improve* across 14 themes; it does not seek to measure *satisfaction* with those 14 themes. This is a subtle but important difference, unfortunately. You can be perfectly satisfied with something but still identify room for improvement. You can also be entirely dissatisfied with something but recognise that there is actually no room for improvement. Where there is no room for improvement, there is – almost by definition - a need to maintain. In such cases therefore, an assumption that no action is required would be misplaced.

ZetTrans is concerned that the term *transport* is interpreted differently between people and within organisations. For many, *public transport* is trains and buses. In the Shetland context however, inter-island ferries and planes are a vital part of our *public transport* network. For Shetland, the waters are further muddled by reference to *lifeline transport* – ferry and air services to and from Shetland. This too is *public transport*. The latter are particularly important in relation to the wider economy; the former are particularly important for individuals accessing services, training and employment. ZetTrans believes that special care must be given to ensuring clarity when speaking about, assessing and collecting data relating to *transport*.

As a final, but important note, ZetTrans also wishes to highlight that the transportation of goods and produce must not be forgotten. The ease and cost of importing goods and exporting Shetland's produce are an important and essential element in the whole equation when *working together to improve the lives of everyone in Shetland*.

Shetland's Partnership Plan 2018-2028

*Working together to improve the lives of
everyone in Shetland*

Consultative Draft - December 2017



Participation



Place



Money



People

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Supporting Documents available online or by contacting us directly:

- Appendix 1 – Community Planning Partners
- Appendix 2 – Fit with National Outcomes
- Integrated Impact Assessment
- Environmental Report

www.shetland.gov.uk/community_planning_dev/

Contact:



Shetland Partnership, c/o Community Planning & Development, Solarhus, 3
North Ness Business Park, Lerwick, Shetland, ZE1 0LZ



ShetlandPartnership@shetland.gov.uk



01595 744940



People



Participation



Place



Money

Our shared vision

“Shetland is a place where everyone is able to thrive; living well in strong, resilient communities; and where people and communities are able to help plan and deliver solutions to future challenges”

Our shared priorities



People

Individuals and families can thrive and reach their full potential



Participation

People can participate and influence decisions on services and use of resources



Place

Shetland is an attractive place to live, work, study and invest



Money

All households can afford to have a good standard of living



People



Participation



Place



Money

Shetland's Partnership Plan

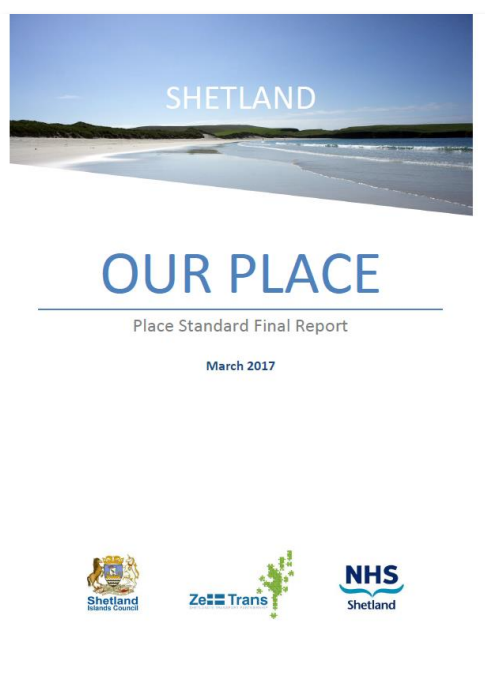
Shetland's Partnership Plan is a plan for all partners and communities in Shetland. It is about working together to improve the lives of everyone in Shetland.

The key focus of the Plan is to reduce inequality of outcome in Shetland – how we will tackle the issues that mean some people and groups have a poorer quality of life than others.

The Shetland Partnership

The Shetland Partnership is made up of a wide range of partners and community bodies who work together to deliver our collective ambitions for the future. It is the Community Planning Partnership for Shetland (see *Appendix 1*).

The Partnership and key partners within it have a statutory duty to both produce this plan and ensure it is delivered and resourced.



Effective community planning focuses on where partners' collective efforts can add most value for their local communities, with particular emphasis on reducing inequalities.

The Community Planning Partnership (CPP) should have a clear and ambitious vision for its local area.

This focuses community planning on a small number of local priorities where the CPP will add most value as a partnership – in particular by improving outcomes for its most vulnerable communities and moderating future demand for crisis services.

Community Planning Guidance, Scottish Government, 2016

Developing the Draft Plan

The Shetland Partnership started with the evidence. We reviewed what the community said about Shetland in the 2016 Place Standard survey. We then looked at data and research about the population, our health, crime rates, our income, the cost of living, poverty, education, employment, economy and much, much more.

This helped us to identify what we think our shared priorities should be and what we hope to achieve together over the next ten years.

The priorities and ambitions have been assessed to identify any potential socio, economic, environmental, equality and rural proofing impacts and adapted accordingly.

Before agreeing these as our priorities, we are now asking partners and communities to help us refine these and make sure they are the right ones.

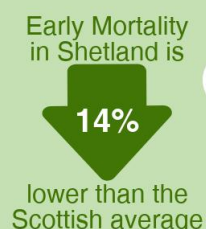
People



Health and Well-being



Emergency admissions to hospital in Shetland are **11%** lower than the Scottish average



health, well-being and life expectancy in Shetland are generally better than the Scottish average



of households in Shetland

do not earn enough to live well

of households in Shetland spend over 10% of their household income on energy bills - the figure for Shetland has been increasing whilst the Scottish average has fallen



of children in Shetland live in low income families - this figure has remained fairly static over the past decade whilst the Scottish average has fallen

poverty rates in Scotland continue to improve whilst the rates in Shetland remain static or are worsening, alcohol misuse is also a clear issue for Shetland



of people are 'problem drinkers', compared to 17.8% for Scotland



the number of child protection cases involving alcohol & drug misuse is 3 times the national average



15.5% of children in Primary 1 are NOT a 'healthy weight' - slightly more than the Scottish average

SOURCES: Scottish Public Health Observatory 2014, Public Health Information for Scotland 2013, Living Well in a High Cost Economy, Ipsos Mori/SIC, 2017, SHCS, ONS 2015, SIC 2017, NHS 2015, NRS 2013

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People



Participation



Place



Money



People

Individuals and families can thrive and reach their full potential

Our Shared Priority

This priority is aimed at helping everyone in Shetland to have as good an experience of life as possible – improving health, reducing poverty and making sure that people are connected to their communities.

Whilst Shetland overall is a fairly safe, prosperous and happy community, we think we can improve the lives of people who perhaps don't have such positive experiences.

This will be achieved by working in partnership with the families and households who can benefit most from a different approach to public service delivery.

This priority will involve helping to stop intergenerational cycles of negative experiences and to find permanent and sustainable solutions to the causes of these poor outcomes.

What will be different for communities by 2028?



The number of vulnerable people and households in Shetland will be considerably reduced as a result of people being enabled and empowered to address the issues they face and helping others to thrive in the same way



A closer partnership approach - working with families and communities to develop prevention-based solutions - will be widespread throughout Shetland



Shetland will continue to be a safe and happy place, with more people feeling connected to their communities



Targets

- The percentage of children living in low income families will have fallen to 5% in 2021 and to 3.3% in 2028 (currently 6.6%)
- The number of people relying on foodbanks will have reduced by 30% in 2021 and by 90% in 2028 (currently 718 people per annum)
- The percentage of households in fuel poverty will have fallen to 35% in 2021 and 27% in 2028 (currently 53%)
- 98% of school leavers will be participating in learning, training or work in 2021 rising to 100% by 2028 (currently 97.4%)
- The proportion of child protection cases involving alcohol and drug misuse will have reduced by a third by 2021 and by 2028 will be in line with the Scottish average (currently 3x National average)
- 90% of people will feel that they are part of their community in 2021 rising to 95% by 2028 (currently 88%)
- 85% of people will feel that they could turn to friends or relatives in their community for advice or support in 2021, rising to 96% in 2028 (currently 79%)



People



Participation



Place

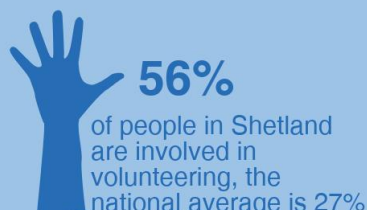
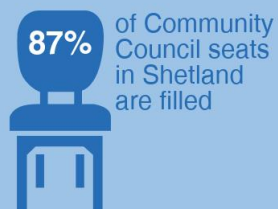


Money

Participation



Getting involved



in 2014
volunteering in
Shetland contributed

**£15.5
million**

to the local
economy



**we have a strong sense of
community and a high level of
volunteering**



939 people

responded to the Place
Standard consultation
telling us what they think
is important for Shetland



there are **101**
social enterprises in
Shetland, the highest
rate per head of
population in Scotland



11 'Participatory Budgeting'
events have been run in
Shetland since 2010, enabling
the community to influence
how public money is spent in
their area

What the Community think



41%
of people in Shetland
want to be more involved
in decision making about
their area, the national
average is 34%



79%
of people in
Shetland
strongly feel
that they could
turn to friends
or relatives in
their community
for advice or
support



27%
of people in Shetland
say they feel they can
influence decisions
affecting their local
area

**people in Shetland want to be
more involved and influence
decisions that affect them**



59%
of people in
Shetland are
satisfied with local
services (health care,
schools and public
transport)

88%

of people in Shetland feel
that they are a part of their
community, the national
average is 77%

SOURCES: Scottish Household Survey, 2015; Census on Social Enterprise, 2017; Shetland Islands Council, 2017; Scottish Government Survey of Local Authority Community Councils, 2012; Volunteer Scotland 2014

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People



Participation



Place



Money



Participation

People can participate and influence decisions on services and use of resources

Our Shared Priority

The Shetland Partnership wants to help communities to actively participate in improving the lives of people in Shetland in partnership with public service providers. We will do this by changing the way we work.

There is a need to change the way we work as a result of legislative change, reducing public sector resources, and because people in Shetland tell us they would like more involvement in the decisions that affect them (Scottish Household Survey, 2016).

Challenges have also been identified in some communities with the ways that services are currently planned and delivered. The Shetland Partnership wants to allow people in these communities to be more closely involved in shaping the future of their communities.

What will be different for communities by 2028?



The Shetland Partnership will be a true partnership between public agencies and with communities and Shetland will be a place with a strong culture of community participation



Communities will feel empowered and the majority of people in Shetland will feel more able to influence the decisions that affect them and have a strong understanding of how and why decisions are taken



Staff from across the Shetland Partnership will be actively seeking to involve communities in decision making and service delivery



Targets

- 35% of people in Shetland feel they can influence decisions affecting their local area in 2021 rising to 50% in 2028 (currently 27%)
- 35% of people in Shetland want to be more involved in decision making about their area in 2021 falling to 25% in 2028 (currently 41%)
- 65% of people are satisfied with local services (health care, schools and public transport) in 2021 rising to 75% in 2028 (currently 59%)
- 10% of Community Council seats are contested in 2021 rising to 50% in 2028 (currently none are contested)
- By 2021 reporting by Schedule 1 Community Planning Partners will clearly demonstrate community participation in decision making and how that participation has improved the outcome, by 2028 this will include all Community Planning Partners



People



Participation



Place



Money

Place



Population



23,230

people live in Shetland



The population has been increasing steadily since 2001 but showing a slight fall in recent years - particularly in some rural areas



Top priorities according to Shetland Communities:

1. Public Transport
2. Work & Local Economy
3. Housing & Community



18% of our population is over 65 years old.....



more than a decade ago



our population is ageing at a faster rate than the rest of Scotland



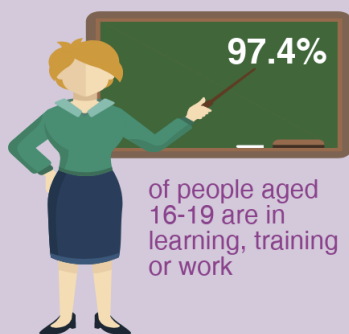
35% of our population is aged 30 and under...



less than a decade ago



Work and local economy



97.4% of people aged 16-19 are in learning, training or work

97.4%

of people aged 16-74 are in employment or full time education



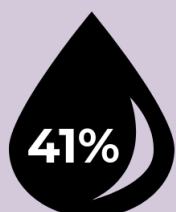
20%

of businesses struggle to fill vacancies due to a lack of local labour

we have low unemployment, a labour and skills shortage, and we are heavily reliant on a few key sectors and locations



Carbon emissions in Shetland are 73% higher than the Scottish average



41% of businesses are dependent (to a greater or lesser extent) on the oil and gas industry



46% of businesses are dependent (to a greater or lesser extent) on fisheries



there are 29% fewer Full Time Equivalent jobs in Public Administration in Shetland than in 2011

SOURCES: Mid-year Population estimates 2013, NRS; Participation Measure for 16-19 Year Olds 2016, DECC, Skills Development Scotland; 2011 Census,; Shetland Employment Survey 2017, SIC; Place Standard 2016, SIC, ONS 2015



People



Participation



Place



Money



Place

Shetland is an attractive place to live, work, study and invest

Our Shared Priority

This priority is aimed at halting de-population in Shetland, increasing the working age population, and diversifying the economy.

Shetland has a strong local economy, low unemployment and high educational attainment. The population grew steadily from 2001-2011 but has fallen slightly since then.

We are now seeing evidence of some rural depopulation and our working age population is in decline. Some businesses are struggling to recruit due to a shortage of skilled labour and access to employment, services and opportunities can vary depending on where people live.

We need to ensure that distance and circumstance is not a barrier to opportunity and that all communities have sufficient people and resources to deliver the services they require.

What will be different for communities by 2028?



People will be accessing employment, education and services in new and innovative ways designed to minimise the barriers to involvement such as distance, childcare availability, and digital capability and capacity



Shetland will be attracting and retaining the people needed to sustain our economy, communities and services



The economy will be diversifying and growing with an increase in the working age population throughout Shetland and innovative approaches to developing a low carbon economy, skills, technology, and community capacity



Communities will be actively involved in shaping their own future resilience through sustainable and innovative approaches to service delivery and development



Targets

- Place Standard Average Scores* have improved for:
 - Public Transport - increase from 3.6 (baseline) to 5
 - Work & Local Economy – Increase from 4 (baseline) to 5
 - Housing & Community – increase from 4 (baseline) to 5
 *(7 = less improvement needed, 1 = more improvement needed)
- 95% of premises have access to fibre broadband in 2021 and 100% by 2028 (currently 83%)
- 15% of businesses are struggling to fill vacancies due to a lack of local labour in 2021 and none in 2028 (currently 20%)
- 18% of the population is aged 16-29 in 2021 and 20% in 2028 (currently 16%)
- 250 new private sector jobs in 2021 and 700 by 2028
- Grow the FTE student population by 5% by 2021 and by 20% by 2028 (currently 178 FE & HE students)
- 35% of people feel they can influence decisions affecting their local area in 2021 rising to 50% in 2028 (currently 27%)
- Carbon emissions are reducing faster than the Scottish average by 2021 and within 20% of the Scottish average by 2028



People



Participation



Place



Money

Money



Income

97.4%

of people aged 16-74 are in employment or full time education



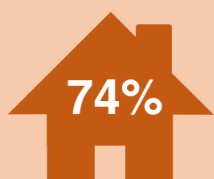
Overall, the average annual income in Shetland is 11% higher than the Scottish average

11%

The average income in Shetland varies by area



some areas earn, on average, up to 13% less than the Scottish average and others up to 29% more



74%

of households in Shetland have at least one working adult, 12% more compared to Scotland

we have low unemployment and high average earnings - but this is not the case in all areas

Cost of living



the cost of living in Shetland is

20% - 60% higher

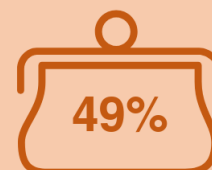
than the UK average



6.6%

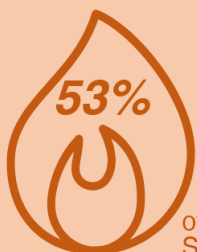
of children in Shetland are living in low income families... the high cost of living in Shetland means that many more may be in financial hardship

the cost of living in Shetland is very high and despite our relatively high average incomes, many people do not earn enough to have an acceptable standard of living



49%

of households in Shetland do not earn enough to live well



53%

of households in Shetland spend over 10% of their household income on energy bills



11%

of households in Shetland receive support with housing costs

SOURCES: ONS 2015; Living Well in a High Cost Economy, Ipsos Mori/SIC, 2017; SHCS 2014; SIC 2017; CACI 2016, HMRC 2014



People



Participation



Place



Money



Money

All households can afford to have a good standard of living

Our Shared Priority

This priority is aimed at reducing the number of people experiencing poverty in Shetland.

Shetland has a low unemployment rate and relatively high incomes compared to the rest of Scotland. The cost of living in Shetland is high, however, and as such even those people who are in work and earning a reasonable income can experience poverty.

We need to find innovative ways to help people reduce their outgoings. Energy bills in Shetland are high and for many the cost of these bills - along with transport costs - take up a large proportion of their income.

The cost of living and amount you earn varies depending on where in Shetland you live. We need to help everyone in Shetland to maximise their incomes through positive employment, and, where necessary, welfare payments that take into account the higher cost of living in Shetland.

What will be different for communities by 2028?



Everyone will be supported to maximise their income potential through innovative, flexible and entrepreneurial employment opportunities throughout Shetland



Households will be supported to minimise their outgoings with low income households benefitting from reduced bills including food, energy and travel



National governments will understand the additional costs for essential items for householders in Shetland reflecting this in welfare payments and other relevant schemes



Communities will be empowered to provide innovative solutions and support to help people maximise their incomes, minimise their outgoings and benefit from the support available



Targets

- The percentage of households in Shetland who do not earn enough to have an acceptable standard of living will have fallen to 35% in 2021 and 25% in 2028 (currently 49%)
- The percentage of households in fuel poverty will have fallen to 35% in 2021 and 27% in 2028 (currently 53%)
- The percentage of children living in low income families will have fallen to 5% in 2021 and 3.3% in 2021 (currently 6.6%)
- The number of people relying on foodbanks will have reduced by 30% in 2021 and 90% by 2028 (currently 718 people per annum)



People



Participation



Place



Money

Locality Planning



Locality Planning

Locality planning enables communities and partners to find innovative solutions to key local challenges

Our Shared Priority

In some areas of Shetland people experience different outcomes than others. For example, in some areas the cost of living is higher than in others and the incomes are lower. In some areas there are more children living in low income families than in others or the population is ageing faster than elsewhere.

Locality Planning is an opportunity to identify these areas and work with the communities to find solutions to key local challenges. The resulting Locality Plans will be a document that belongs to the community, is signed up to by partners, and is delivered together.

A Locality Plan could be undertaken for any area in Shetland or for any community of interest – a group of people with shared characteristics e.g. young

people. Locality planning will be taken forward by the Shetland Partnership where there is clear evidence that an area or group would benefit from the approach.

What will be different for communities by 2028?



Communities are more able to influence the decisions that affect them and have a strong understanding of why the decisions were taken



The Shetland Partnership will be actively seeking to involve communities in strategic planning designed specifically to meet the needs of localities



Locality specific outcomes to be developed with communities



Targets

- By 2028 inequality of outcome between areas will have reduced as a result of locality planning
- By 2021 Locality Planning will be delivering improved outcomes in at least one community
- By 2021 data will have been reviewed to identify any further localities or communities of interest who would benefit from the locality planning approach



People



Participation



Place



Money

Delivering Shetland's Partnership Plan

Delivery Plans

Shetland's Partnership Plan is a ten year plan for the period 2018-2028 with a three-yearly review process. The first step in delivering the Plan will be for the Shetland Partnership to work with partners and communities to develop a further understanding of the key issues and agree our collective approach to addressing these.

For each of the four priorities identified, we will produce a delivery plan, prioritising the activity to be undertaken to help us deliver our targets. These will be reviewed and refreshed every three years throughout the lifetime of the Plan. These delivery plans will include resource commitment from partners to support delivery.

Partners' Strategic Plans

In the first year, partner agencies will be working to align existing plans, strategies and partnerships with the priorities in this plan. This will ensure that their mainstream activity is directed to achieving our shared local priorities. The action plans of our communities, the voluntary sector and wider partners can also contribute to achieving our shared vision for Shetland.

Measuring and reporting

Shetland's Partnership Plan will be the principal strategic planning document for delivery of public services in Shetland. It will be supported by comprehensive governance, scrutiny and accountability arrangements. The Partnership will undertake evaluation of its own performance annually as well as on delivery of the Plan. Reporting on this performance will be transparent and publicly available.

Partners should contribute resource for each priority in line with the extent to which their organisation has responsibility for improving outcomes covered by the priority. This should include investment in prevention where appropriate. A partner should be willing to invest in preventative activity by other partners in order to moderate demand for its own crisis intervention services.

Community Planning Guidance, Scottish Government, 2016

Governance

Project Delivery groups will be established for each priority to lead on development, delivery and monitoring of the four priorities and locality planning. These groups will report to an Operational Board who will take overall responsibility for delivering Shetland's Partnership Plan. A Strategic Leadership Group will provide leadership and scrutiny for the Partnership, working to maximise the resources available collectively and individually to make our vision for Shetland a reality.



People



Participation



Place



Money

Shetland's Partnership Plan – Consultation

The Plan is currently being developed and we would like to hear from you about the priorities that have been identified and how we might work together to deliver the plan. The focus of this consultation document is on partners and how we work together, we will also be engaging more widely with community bodies.

Have your say

The consultation is open from **Thursday 14 December 2017 to 5pm Wednesday 23 February 2018.**

We are keen to hear your views on the following:

1. Do you agree with the way the *draft* Plan is structured?
2. Do you agree with the *draft* Plan's vision?
3. Do you agree with the *draft* outcomes (*'What will be different for communities in 2028?'*) and targets for:
 - a) The *Place* priority?
 - b) The *People* priority?
 - c) The *Money* priority?
 - d) The *Participation* priority?
 - e) *Locality Planning*?
4. Which of the priority areas do you feel your organisation would be particularly able to contribute to?
5. Does your organisation work with (or are you aware of) any community bodies (groups of people, whether or not formally constituted, established for purposes of promoting or improving the interests of the community they represent) that could help to deliver the priorities outlined above?
6. Do you agree with the proposed Delivery and Governance approach?
7. Do you have arrangements in place for your organisation to support the delivery of the Plan, once it is agreed?
8. Have you decided on the steps you will take to align your organisation's activities with the priorities of the Plan? If so, what are these steps?
9. Have you decided on the steps you will take to raise awareness of the priorities of the Plan inside your organisation? If so, what are these steps?
10. Please provide any additional views or ideas for improving the draft Plan.

Please remember to include your contact details, who you are, and the organisation you represent so that we can keep you up to date with progress.

Please submit your response using the online form at:

<https://www.smartsurvey.co.uk/s/7NQFI/>

We can email you a copy of your response on request. If you do not have online access, please contact us – see details on Page 2 of this document.



People



Participation



Place



Money



Zetland Transport Partnership

Agenda Item

6

Meeting(s):	Zetland Transport Partnership	21 February 2018
Report Title:	Scottish Government Ferry Procurement Policy Review	
Reference Number:	ZTP-07-18-F	
Author / Job Title:	Michael Craigie – Lead Officer	

1.0 Decisions / Action Required:

- 1.1 That the Partnership **RESOLVES** to:
- 1.1.1 Consider the content of this report and provide views to be included in a response to the Minister for Transport and Islands' invitation of 31 January 2018 to respond to the latest round of consultation on Ferry Procurement Policy.
 - 1.1.2 Instruct the Lead Officer, or his nominee, to draft and send a response to the Minister for Transport and Islands' letter of 31 January 2018 incorporating any views expressed to be agreed with the Chairman of the Partnership.

2.0 High Level Summary:

- 2.1 On 2 February 2017 the Minister for Transport and Islands made a statement to Parliament that a policy review was to be undertaken on the future approach to Scottish Government's three contracted services: the Clyde and Hebrides, Northern Isles and Gourock Dunoon.
- 2.2 The main point of the review is to determine whether it would be possible to make direct awards to an in-house operator in the future, potentially removing the need for competitive tendering procedures.
- 2.3 The work to date has culminated in an interim report published on 20 December 2017 presenting the emerging findings of the work.
- 2.4 Scottish Government is now undertaking a further round of engagement with stakeholders and agencies on the Northern Isles on the basis that previous engagement in the Northern Isles did not reach a conclusive view on future procurement policy.
- 2.5 The remainder of this report sets out the principal issues to be considered by the Partnership in the course of establishing views on the future ferries procurement policy.

3.0	Corporate Priorities and Joint Working:
3.1	ZetTrans' overarching policy is to have in place transport arrangements that are affordable and meet people's needs within available resources. To achieve this ZetTrans works closely with its member bodies of Shetland Islands Council, NHS Shetland and Highlands and Islands Enterprise.
4.0	Key Issues:
4.1	Appendix 1 to this report contains a letter from the Minister for Transport and Islands inviting ZetTrans' views on the future of ferry services procurement policy in Shetland.
4.2	Appendix 2 to this report contains the interim report of the ferry services procurement policy review.
4.3	<p>The report is summarised below in the following five specific areas: -</p> <ol style="list-style-type: none"> 1. Legal Framework 2. Stakeholder Engagement 3. Value for Money 4. Future Operating Models for Ferry Companies Owned by the Scottish Ministers 5. Implications for Ferry Services <p>Legal Framework</p> <p>4.4 The legal framework surrounding the provision of ferry services is very complex. In its simplest terms, ferry services must be tendered in order to comply with EU legislation unless it can be shown that the manner in which services are provided comply with what is known as the Teckal exemption.</p> <p>4.5 There are three tests to demonstrate Teckal compliance. These are the functions test, the control test and the private capital participation test.</p> <p>4.6 Scottish Government is confident that a Scottish Minister owned company (i.e. Calmac) would meet the functions and private capital participation tests.</p> <p>4.7 However, as matters currently stand, there is less certainty that it would pass the control test. To pass the control test the company must be directly accountable to Scottish Ministers and that is not the case at the moment although Calmac is a wholly owned company of Scottish Ministers. The issue is that Calmac is governed by a Board which may not be sufficient in terms of direct control by Scottish Ministers. This area needs further research.</p> <p>4.8 There are further legal issues to be considered also which means more time is required to establish a robust policy position.</p> <p>Stakeholder Engagement</p> <p>4.9 Local Communities and stakeholders served by the Clyde and Hebrides Calmac services expressed a general preference for a direct award for an in-house operator.</p> <p>4.10 The initial consultation by Transport Scotland in Orkney concluded a clear preference for tendering.</p>

- 4.11 In Shetland the Transport Scotland consultation conclude a more neutral position by some with a proportion of stakeholder expressing a preference for tendering.
- 4.12 Therefore Scottish Government is once more seeking views in Shetland to check whether views have evolved since the first consultation.
- 4.13 Since the first consultation officers, through engagement with stakeholders on other work, have picked up a significantly stronger view that tendering services yields a better outcome for the islands than direct award.

Value for Money

- 4.14 There is some evidence that tendering can present different creative and innovative service solutions. Any direct award to an in-house company would need to include mechanisms to deliver similar levels of continuous innovation and service delivery improvement.
- 4.15 A direct award to an in-house operator, in full compliance with the Teckal doctrine and the State aid rules, is capable of providing similar levels of efficiency and service delivery to that which might otherwise be obtained from tendering.
- 4.16 A direct award to an in-house operator would avoid the high costs of tendering, allowing savings from the tendering process and operator returns to be reinvested in public services.
- 4.17 A direct award would also allow longer-term investment planning.

Future Operating Models for Ferry Companies Owned by the Scottish Ministers

- 4.18 The immediate focus is on the changes required to the current corporate company framework for David MacBrayne Limited and its operating companies in order to satisfy the Teckal control test.
- 4.19 Further consideration can be given to alternative operating models, such as the creation of a new public sector body, or transfer to an Agency of the Scottish Government, once the immediate question of changes required to the current corporate company framework to satisfy the Teckal control test has been addressed.
- 4.20 The costs of any significant restructuring of current company structures, including potential tax liabilities, will have to be assessed against value for money. Further specialist analysis on potential tax implications will inform the costs associated with required changes to the current operating model and any future alternative models.

Implications for Ferry Services (focussing on Northern Isles)

- 4.21 Arrangements are in hand to extend the term of the current Northern Isles ferry services contract until October 2019.
- 4.22 A decision on whether to make a direct award or continue tendering the Northern Isles ferry services will be taken in the Spring of 2018.

- 4.23 The decision to be taken in the Spring of 2018 will consider progress made on the further analysis of the Teckal exemption and the State aid rules. It will also take account of local community views and the remaining timeline in which to complete a competitive tender, should that be required.

Issues to Consider

- 4.24 It is approaching 16 years since the first of the tendered contracts for Northern Isles commenced (October 2002) and over that time there has been two different providers on the network.
- 4.25 Feedback and experience suggests that the main production industries in Shetland (fishing, aquaculture and agriculture), hauliers and leisure travellers feel service quality has improved but service levels have remained at a standstill and are now inadequate to meet the growing demands and opportunities. Any procurement policy should address how this can be resolved.
- 4.26 Although views expressed at formal consultation event in May 2017 concluded a neutral position on tendering vs direct delivery, feedback from stakeholders since then suggests a growing support for tendering as a principle.
- 4.27 The main concerns of exporters and hauliers is a reliable freight link and the capacity of the network as a whole with the growing likelihood of increased volumes in aquaculture and whitefish exports.
- 4.28 The Shetland public is concerned about sufficient vehicle and cabin capacity throughout the summer and at peak periods of the year.
- 4.29 The Shetland Tourist Sector is hopeful of growing tourism with lower fares but has concerns about the limitation of opportunities due to constrained cabin capacity.
- 4.30 There are concerns that investment in vessels and harbours may be some time off and therefore potential growth is stifled.
- 4.31 There are concerns that other supply side responses (e.g. increased frequency) may be some time off.
- 4.32 Future procurement policy must take into account the need to replace vessels and improve infrastructure and thought should be given to how any procurement policy can support this.

5.0 Exempt and/or Confidential Information:

- 5.1 None.

6.0 Implications :

6.1 Service Users, Patients and Communities:	The detail of any future Ferries Procurement Policy could have impacts on the economy and communities of Shetland. There it is important that the Partnership contribute fully to the process of policy development.
6.2 Human Resources and Organisational Development:	There are no implications immediately arising from this report.

6.3 Equality, Diversity and Human Rights:	A key aim of any Scottish Ferry Procurement Policy should be consistency and equality across ferry services. This principle will be articulated within the response to Scottish Government.	
6.4 Legal:	ZetTrans is a statutory consultee in matters of Scottish Ferry Services and is supported by Shetland Islands Council's Governance and Law team.	
6.5 Finance:	There are no financial implications arising directly from this report.	
6.6 Assets and Property:	There are no implications immediately arising from this report.	
6.7 ICT and New technologies:	There are no implications immediately arising from this report.	
6.8 Environmental:	There are no implications immediately arising from this report.	
6.9 Risk Management:	Failure to take the opportunity to provide a response to the Minister for Transport and Islands' letter could result in poorly informed policy development and potentially damaging impacts on Shetland's economic and social wellbeing. This risk is mitigated by considering and providing an appropriate response to Scottish Government.	
6.10 Policy and Delegated Authority:	ZetTrans has functional responsibility to secure transport services in Shetland under the Transfer of Functions to the Shetland Transport Partnership Order 2006. The Partnership is responsible for engaging with Government on issues relating to transport national policy and strategy.	
6.11 Previously Considered by:	Report ZTP-34-17-F – 14 December 2017 Report ZTP-19-17-F – 29 June 2017	

Contact Details:

Michael Craigie – Lead Officer ZetTrans

Phone: 01595 744868; E-mail michael.craigie@shetland.gov.uk

Date: 15 February 2018

Appendices:

Appendix 1 – Letter from Minister for Transport and Islands

Appendix 2 – Scottish Government Ferry Services Procurement Policy Review – Interim Report – Emerging Findings 20 December 2017

Background Documents: None

Appendix 1

Minister for Transport and the Islands
Humza Yousaf MSP



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Councillor Ryan Thomson
Chair of ZetTrans
14 Commercial Rd
Lerwick
Shetland
ZE1 0LX

31 January

Dear Ryan

FERRY PROCUREMENT POLICY REVIEW: FURTHER ENGAGEMENT WITH NORTHERN ISLES COMMUNITIES

You will be aware that I published an [interim report](#) on 20 December 2017, setting out the emerging findings from the ongoing policy review on the future procurement of the Scottish Government's lifeline ferry services. I also set out implications for each of the Scottish Government's three ferry service contracts.

I made clear in the report that arrangements are in hand to extend the current Northern Isles ferry service contract by eighteen months, until October 2019. I also made clear that a decision on the future approach to the procurement of these services will be taken in the spring of 2018.

The interim report indicated that previous engagement with Orkney and Shetland did not reach a conclusive view. Therefore, before reaching a final decision about our future approach to the procurement of the Northern Isles ferry services, I am keen to build a deeper understanding of local community and stakeholder views.

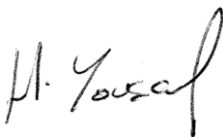
I would, therefore, be grateful if you could write to me with your views by the 28 February 2018. If helpful, I would also be happy to meet with you in Edinburgh to discuss your views. Please contact my diary secretary Catriona Kennedy at TransportMinister@gov.scot to make arrangements.

I should also mention that I intend visiting both Orkney and Shetland in the near future to meet with and hear the views of local stakeholders, including local authorities and transport partnerships, local business and tourism interests, relevant community groups, and the staff and crew from the operator of the current services.



I look forward to receiving your views on this important issue. I am writing in similar terms to local stakeholders listed in the Annex to this letter.

Best wishes

A handwritten signature in black ink, appearing to read 'H. Yousaf'.

HUMZA YOUSAF

FERRY PROCUREMENT POLICY REVIEW: FURTHER ENGAGEMENT WITH NORTHERN ISLES COMMUNITIES

LOCAL STAKEHOLDERS

Local Authority/Regional Transport Partnerships/Community Groups

Orkney Islands Council
Shetland Islands Council
HITRANS
ZEtTRANS
Orkney Community Councils Democratic Services
Association of Shetland Community Councils

Economy/Business/Tourism Groups

National Farmers Union Scotland
Lerwick Port Authority
Scrabster Port Authority
Aberdeen Harbour Board
Stewart Building Group (Transport, haulage and sea food sector)
Visit Scotland (Visit Shetland)
Orkney Tourism Group
Chamber of Commerce



TRANSPORT
SCOTLAND
CÒMHDHAIL ALBA

Scottish Government Ferry Services Procurement Policy Review

Interim Report - Emerging Findings
20 December 2017

Ministerial Foreword



As Minister for Transport and the Islands, one of my responsibilities is to ensure the provision of safe, efficient and reliable ferry services to the island and remote rural communities which rely on them for their economic, social and cultural sustainability. It is a responsibility that I, and this Government, take very seriously. That is why, in my statement to Parliament on 2 February 2017, I announced a policy review on the future approach to the procurement of our three contracted ferry services: the Clyde and Hebrides, Northern Isles and Gourock-Dunoon. The main focus of the review being to determine whether it would be possible to make direct awards to an in-house operator in the future, potentially removing the need for competitive tendering procedures.

In order to consider the possibility of making direct awards to an in-house operator in the future, it is first necessary to establish whether such awards would be capable of satisfying the strict conditions set by European, United Kingdom and Scottish legislation, including the Teckal exemption and the State aid rules. This interim report outlines key emerging findings to date in relation to our future ability to meet those requirements and signposts the way ahead for each of the three ferry services.

The question in hand raises a number of complex legal, policy and financial issues, with a significant amount of detailed investigation and analysis still to be carried out: we need to establish a clear case for making direct awards that would satisfy the Teckal exemption and the State aid rules; follow up on the initial views of local communities; and engage with the European Commission on the final approach we intend to take in relation to the future procurement of the ferry services. We will work closely with key stakeholders on all these issues, with a view to publishing a further progress report in the Spring of 2018.

This government is fully committed to providing the best ferry services possible to our island and remote rural communities, whilst ensuring value for money to taxpayers. This report, and the approach outlined for each of the three ferry service contracts, demonstrates our on-going commitment to the ferry services and the communities which rely on them.

Humza Yousaf MSP

Minister for Transport and the Islands



MV LOCH SHIRA

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1 INTRODUCTION



MV LOCH FYNE

1. The question of whether the Scottish Government may lawfully award ferry service contracts to an in-house operator without first having put the contract out to a competitive tendering procedure has been the subject of sustained public debate over many years. The position of the Scottish Government, and previous administrations, has been that tendering is required in order to comply with Article 4 of the Maritime Cabotage Regulation¹ and to ensure compliance with State aid law. That position was generally vindicated by the European Commission in its decision of 28 October 2009 on the State aid No C 16/2008 implemented by the UK: subsidies to CalMac and NorthLink for maritime transport services in Scotland.²

2. The question was raised again in 2015, when the National Union of Rail and Maritime Transport Workers examined the position further. The Union considered that Regulation (EC) No 1370/2007 (“the Passenger Transport Regulation”) and the Teckal doctrine, which is applicable in the context of EU procurement rules, present the possibility of providing public service contracts through an in-house operator, without the need to put the services out to public tender.

3. Following representation from, and discussion with, the National Union of Rail and Maritime Transport Workers, Derek Mackay MSP, then Minister for Transport and Islands, wrote jointly with the Union to the European Commissioner for Transport on 1 April 2016. The letter (Annex A) sought clarity on whether, as a matter of EU Law, the Scottish Ministers may be exempted from the requirement to proceed with a competitive tender for ferry services through the application of the Teckal exemption, and whether such an arrangement would raise State aid implications. The letter referred specifically to the tendering of the Clyde and Hebrides ferry services, but, in principle, it applied equally to the Northern Isles and Gourock-Dunoon ferry services.

4. The Commissioner’s reply of 22 September 2016 (Annex B) stated:

“..... whereas the Commission can provide some general guidance and advice, it cannot offer legal certainty through its opinions: only the European Courts can provide authentic interpretation of EU law”.

This accords with the Scottish Government’s understanding that only the courts can definitively determine the law and its application to particular factual situations. In the case of the current question, the critical issues have not been tested in court.

5. A note prepared by Commission Services and annexed to the Commissioner’s reply of 22 September, expressed the view that:

“Even though the Cabotage Regulation does not explicitly refer to the direct award of public service contracts, the case law on an in-house operator should be applicable in cases on maritime cabotage as well.”

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992R3577&from=EN>

² http://ec.europa.eu/competition/state_aid/cases/225288/225288_1151646_138_1.pdf

6. The note also referenced that the use of a public procurement procedure may have consequences for compliance with European Union State aid rules, drawing particular attention to the Commission Decision C-16/2008 of 28 October 2009. That decision assessed whether ferries services across Scotland constituted State aid by reference to the four “Altmark” conditions. The note concluded that the fourth Altmark condition can be considered to be met where the undertaking is chosen via a public procurement procedure.

7. In consideration of the potential implications of the European Transport Commissioner’s letter of 22 September, and the prevailing legal framework, the Minister for Transport and the Islands, Humza Yousaf MSP, made a statement to the Scottish Parliament on 2 February 2017.

8. The Minister announced that a policy review would be undertaken to identify and consider in detail the legal, policy and financial implications relevant to the procurement of ferry services, including the possible application of the Teckal exemption. The on-going tender for the next Gourock-Dunoon ferry service contract was paused and the current contract extended by nine months, with further consideration to be given to the implications for the Northern Isles ferry services.

9. Whilst not prejudging the outcome of the review, the Minister announced that:

“.....should the review conclude that it would be possible to apply the Teckal exemption and meet State aid rules, the Government would be minded to provide ferry services through an in-house operator, taking account of the communities that they serve. That would be subject to wider policy and value-for money implications and the views of affected communities”.

10. As noted in the terms of reference for the policy review (Annex C), the primary purpose of the review is to ensure the continued provision of safe, efficient and reliable ferry services that meet the needs of island and remote rural communities. In so doing, it is essential that the future procurement of ferry services provides value for money to the taxpayer.

11. On 20 July 2017, the Minister informed the Scottish Parliament that the policy review would most likely have to be extended beyond its initial timeline of Autumn 2017. This was necessitated by the requirement for further consideration to be given to the application of the State aid rules, specifically the four Altmark criteria.

12. Since the Minister’s announcement of 20 July, Audit Scotland has published its report on Transport Scotland’s ferry services³. The report confirms that the ferry services are performing well and underlines the Scottish Government’s commitment to the ferry networks and the vital services they perform for island and remote communities. The report’s findings will help shape the future approach to the procurement of ferry services,

³ <http://www.audit-scotland.gov.uk/report/transport-scotlands-ferry-services>

including the provision of services which meet the needs of users and provide value for money to the taxpayer.

13. This interim report on the future approach to the procurement of ferry services describes the legal, policy and financial implications that have been considered to date. It outlines emerging findings and the actions that will be taken in the short to medium term in order to ensure the continued provision of safe, efficient and reliable ferry services to the island and rural communities which rely on them.

2 EXECUTIVE SUMMARY



MV LOCHINVAR

This Executive Summary provides an overview of the emerging findings to date. More detailed analysis is provided in Sections 3 to 7.

Legal Framework

- A Teckal compliant award under the procurement regime would be compatible with the Maritime Cabotage Regulation, subject to meeting the strict functions, control and private capital participation tests of the Teckal doctrine.
- A Scottish Minister owned company, as currently constituted, would meet the requirements of the Teckal functions and private capital participation tests.
- Further consideration is required on the governance of a Scottish Minister owned company, as currently constituted, in order to ensure full compliance with the Teckal control test.
- The provision of ferry services, whether undertaken “in house” or not, is an economic activity for the purposes of the State aid rules.
- In order to satisfy the State aid rules, it will be necessary to demonstrate full compliance with the four Altmark criteria.
- The fourth Altmark criterion is particularly challenging. It can be satisfied by means of a public procurement procedure, as highlighted in the European Commission’s letter of 22 September 2016. An alternative would be to undertake detailed benchmarking against typical, well-run and adequately equipped undertakings in the ferry sector.

Stakeholder Engagement

- Local communities and stakeholders in the area currently served by CalMac Ferries Limited in fulfillment of the Clyde and Hebrides ferry services contract expressed a general preference for a direct award to an in-house operator for those services.
- There was a general preference for a direct award to an in-house operator for the Gourock-Dunoon town-centre ferry service. If this cannot include provision for the transport of vehicles, the general preference from the local community was that the service should be tendered to allow the possibility of a vehicle-carrying service being returned to the route.
- Shetland communities and stakeholders adopted a more neutral stance on whether the Northern Isles services should be awarded to an in-house operator or tendered, with many expressing a preference for tendering. In Orkney, the community and stakeholders expressed a clear preference for tendering.
- Further engagement with the local community and stakeholders will be undertaken to inform the final decision on the future approach to the procurement of the Northern Isles and in due course the Clyde and Hebrides ferry services, if required.

Value for Money

- There is some evidence that tendering can present different creative and innovative service solutions. Any direct award to an in-house company would need to include mechanisms to deliver similar levels of continuous innovation and service delivery improvement.
- A direct award to an in-house operator, in full compliance with the Teckal doctrine and the State aid rules, is capable of providing similar levels of efficiency and service delivery to that which might otherwise be obtained from tendering.
- A direct award to an in-house operator would avoid the high costs of tendering, allowing savings from the tendering process and operator returns to be reinvested in public services.
- A direct award would also allow longer-term investment planning.

Future Operating Models for Ferry Companies Owned by the Scottish Ministers

- The immediate focus is on the changes required to the current corporate company framework for David MacBrayne Limited and its operating companies in order to satisfy the Teckal control test.
- Further consideration can be given to alternative operating models, such as the creation of a new public sector body, or transfer to an Agency of the Scottish Government, once the immediate question of changes required to the current corporate company framework to satisfy the Teckal control test has been addressed.
- The costs of any significant restructuring of current company structures, including potential tax liabilities, will have to be assessed against value for money. Further specialist analysis on potential tax implications will inform the costs associated with required changes to the current operating model and any future alternative models.

Implications for Ferry Services

Clyde and Hebrides

- The Clyde and Hebrides ferry services are already provided by a wholly state-owned operator until 2024.
- There is no immediate time pressure in which to consider the full implications of Teckal and the State aid rules in relation to the future approach to be taken to the procurement of the Clyde and Hebrides ferry services.
- We will build a case for making a direct award to an in-house operator for the Clyde and Hebrides services in line with the requirements of Teckal and the State aid rules, particularly the four Altmark criteria.
- A decision on the future approach to procuring the Clyde and Hebrides ferry services will be taken ahead of the current contract ending in 2024.

Northern Isles

- Arrangements are in hand to extend the term of the current Northern Isles ferry services contract until October 2019.
- A decision on whether to make a direct award or continue tendering the Northern Isles ferry services will be taken in the Spring of 2018.
- The decision to be taken in the Spring of 2018 will consider progress made on the further analysis of the Teckal exemption and the State aid rules. It will also take account of local community views and the remaining timeline in which to complete a competitive tender, should that be required.

Gourock-Dunoon

- The current Gourock-Dunoon ferry service contract will be extended to December 2018.
- A direct award for the Gourock-Dunoon service, assuming that such an award could be achieved by reference to the Teckal doctrine and the Altmark criteria, could only be applied to the transport of foot passengers under the terms of the public service obligation.
- Tendering the Gourock-Dunoon ferry service could potentially realise the return of a vehicle-carrying service on the town-centre route.
- The currently paused tender exercise for the Gourock-Dunoon ferry service will therefore be restarted as soon as practicably possible.

3 LEGAL FRAMEWORK



MV ISLE OF LEWIS

1. The Scottish Ministers are required to make decisions on the procurement of ferry services within the context of the prevailing legal framework. That framework is substantially based on European law, and consists of:

- the public procurement regime;
- the Maritime Cabotage Regulation;
- the State aid regime; and
- the Passenger Transport Regulation.

2. The detailed process and timeline for the United Kingdom's withdrawal from the European Union (Brexit) has yet to be determined. Until such time as the outcome of that process is known, it cannot be discounted that the future legal framework may continue to reflect many aspects of the current legislative requirements relevant to the procurement of ferry services.

Public Procurement Regime and Maritime Cabotage

3. In-house awards under the public procurement regime are compliant with the Treaty principle of non-discrimination. The non-discrimination principle is reflected in Article 4 of the Maritime Cabotage Regulation. That being the case, there is no incompatibility between in-house awards and maritime cabotage. A Teckal compliant award under the procurement regime would therefore be compatible with Article 4 of the Maritime Cabotage Regulation.

4. An in-house award under the Teckal doctrine⁴ would require strict compliance with the following tests:

(a) the contracting authority exercises over that person control similar to that which it exercises over its own departments [the control test];

(b) the person carries out more than 80% of its activities in the performance of tasks entrusted to it by the authority or by other persons controlled by that authority [the functions test]; and

(c) no other person has direct private capital participation.

5. A company wholly owned by the Scottish Ministers, as currently constituted, would meet the Teckal functions test and the requirement for no direct private capital participation. However, although the Scottish Ministers would be the sole shareholders of such a company, this does not necessarily extend to the definition of exercising control similar to that exercised over their own departments, as required by the Teckal control test. Further consideration is required to be given to the governance and structure of the company framework before the Scottish Ministers, as the contracting authority, could be deemed to have satisfied the full requirements of the Teckal control test. It is considered that this could be achieved by a relatively limited review of the company's governance arrangements, including Scottish Government representation on the company's Board, with very little or no impact on employees.

⁴ First articulated in Case C-107/98 *Teckal Srl v AGAC*

The State Aid Regime

6. The State aid rules pursue different aims from the procurement regime, although the two are related. It is, therefore, necessary to consider the State aid rules when assessing the possibility of a direct award to an in-house company - even if the in-house company is Teckal compliant. This is clear from the note attached to the Commission's letter of 22 September 2016, as referred to in the Introductory section of this report and set out in Annex B.

7. The State aid rules flow directly from Article 107 of the Treaty on the Functioning of the European Union, which states:

“Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.”

8. It is established law that the State aid rules apply to an economic activity, even if it is integrated into the State administration, and even when the public authorities funding the activity and the public undertaking performing it are, legally, one and the same. It is also clear that the provision of ferry services is an economic activity for the purposes of the State aid rules and it makes no difference whether this activity is undertaken “in house” or not.

9. In order to satisfy the State aid rules, consideration has been given to the application of the Altmark criteria, the 2007 Passenger Transport Regulation and Services of General Economic Interest.

Altmark

10. The European Court of Justice has laid down that there is considered to be no provision of State aid, and therefore the State aid rules would not apply, in the event that an award to an in-house company satisfied all four Altmark criteria⁵:

- first, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;
- secondly, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings;
- thirdly, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;

⁵ First articulated in Case C-280/00 *Altmark*

- fourthly, where the undertaking which is to discharge public service obligations, in a specific case, is not chosen pursuant to a public procurement procedure, the level of compensation to be given must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

11. Compliance with the fourth Altmark criterion requires evidence as to the basis for determining the level of compensation in accordance with the criteria. The fourth criterion can be satisfied by a public procurement procedure, as highlighted in the European Commission's letter of 22 September 2016. An alternative approach would be to undertake detailed benchmarking against typical, well-run and adequately equipped undertakings in the ferry sector. If all four Altmark criteria are satisfied, then State aid does not exist. Whilst there is no legal requirement to notify the European Commission in the absence of any State aid, the Commission's previous interest in Scottish ferries, particularly its 2009 Decision, means that it would, in practice, be appropriate to engage with the Commission concerning any proposals aimed at satisfying the Altmark criteria.

Passenger Transport Regulation

12. The Passenger Transport Regulation does not apply to the transport of freight or commercial vehicles. The substantial freight and commercial vehicle components of both the Clyde and Hebrides and Northern Isles services effectively rule out any application of that Regulation as a means of satisfying the State aid rules.

Services of General Economic Interest

13. Another approach which might satisfy the State aid rules would be to seek the European Commission's approval of the aid scheme as Services of General Economic Interest.

14. The rules on Services of General Economic Interest can be used to provide operating aid for the day-to-day running of ferry services where there is recognition that the services would not otherwise be provided by the market. The rules are sufficiently broad to allow Member States to meet their objectives, provided that the relevant compatibility criteria (including genuine need for the service and compliance with sector-specific legislation) are met.

15. Any proposal for an aid scheme would require a substantial evidence base and a full analysis of the services on a route-by-route basis, and the market more generally, in order to establish that any such scheme did not adversely affect the internal market. It cannot be assumed that a scheme would be approved, particularly in light of the Commission Services' comments during their meeting with Transport Scotland officials on 28 April 2017 (Annex D).

Application of Legal Framework

16. It is clear that in order to secure a direct award to an in-house company for ferry services on the Clyde and Hebrides and Northern Isles network of routes, it will be necessary to demonstrate full compliance with the requirements of the Teckal doctrine and the State aid rules for the immediate and foreseeable future. This will require further detailed consideration of the Teckal control test and benchmarking of a wholly-owned Scottish Minister company against typical, well run and adequately equipped undertakings in the ferry sector, as specifically required by the fourth Altmark criterion.

4 STAKEHOLDER ENGAGEMENT



MV HROSSEY AND MV HJALTLD

1. The Minister for Transport and the Islands announced on 2 February 2017 that the procurement policy review would:

“... liaise closely with key stakeholders including the European Commission, ferry operating companies, local communities and, of course, the trade unions.”

This section summarises the engagement that has taken place to date with each of the key stakeholder groups covered by the Minister’s announcement.

European Commission Services

2. Transport Scotland met with European Commission Services in Brussels on 28 April 2017. A note of the meeting is attached at Annex D.
3. The meeting covered the possible application of the Teckal exemption and the State aid rules to the future provision of the Scottish Government’s three contracted ferry services. European Commission Services confirmed the view expressed in their note attached to the Transport Commissioner’s letter of 22 September 2016 that the Teckal exemption should be capable of being applied to the Maritime Cabotage Regulation. They also expanded on the specific measures that the Scottish Ministers would have to take in order to make a direct award to an in-house company that was fully compliant with the requirements of the Teckal doctrine and the State aid rules.
4. Transport Scotland will continue to engage with European Commission Services as the policy review progresses, most notably on the requirement to satisfy the State aid rules through the application of the Altmark criteria.

Ferry Operating Companies

5. Transport Scotland met with representatives of the ferry operating companies delivering the public service contracts for the Clyde and Hebrides, Gourock-Dunoon and the Northern Isles ferry services. The meetings covered general discussion on the purpose and progress of the policy review. Other meetings involved discussions with Argyll Ferries Limited about an extension to the Gourock to Dunoon ferry services contract, and with Serco NorthLink Ferries Limited about an extension to the Northern Isles ferry services contract.
6. Transport Scotland also engaged with private sector operators providing commercial ferry services on routes similar to those supported by the Scottish Government (i.e. Western Ferries (Clyde) Limited and Pentland Ferries Limited). Discussions covered the purpose and progress of the policy review.

Local Communities

7. Transport Scotland undertook a series of initial engagement events with representatives from local community, ferry user groups, business and tourism stakeholders during the months of May and June 2017. Meetings took place in Lerwick, Kirkwall, Stornoway, Benbecula, Oban and Glasgow. Transport Scotland published information about the events on its website, extending a general invitation to community groups or local stakeholders who may not have been captured by the initial invitation.

8. The meetings provided an opportunity for those in attendance to discuss and express views on the future approach to be taken to the procurement of ferry services.

9. Each meeting addressed two questions:

- The key considerations that would support in-house operation or competitive tendering of the ferry services in future from a local community perspective?
- If Teckal and State aid rules can be satisfied, should the Scottish Ministers make a direct award to an in-house operator, or continue to tender the services?

The views expressed are summarised as follows:

Clyde and Hebrides Ferry Services

10. Although some personal preference was expressed for continuing to tender, there was, by and large, a general preference for making a direct award to an in-house operator for the Clyde and Hebrides ferry services. There was clear affection for and close community affinity with the Caledonian MacBrayne brand, with many stakeholders concerned about the loss of cultural identity should the contract be awarded to a private-sector operator.

11. Other reasons in support of a direct award to an in-house operator for the Clyde and Hebrides ferry services included the benefits to be obtained from a longer term view on future investment in services and vessels, and the positive impact this could have on the future economic development of the islands and prospects for local employment.

12. Whilst expressing a general preference for a direct award to an in-house operator for the Clyde and Hebrides ferry services, there was strong recognition that the 2016 tender had brought about innovation and a number of proposed service improvements. The communities and stakeholders taking part in the events were clear that any direct award to an in-house operator must ensure that the benefits obtained from the 2016 tender are retained and further developed in line with local community and business needs. Any in-house award would therefore have to allow for much higher levels of direct local community and stakeholder involvement in decisions taken about future service delivery, including improved communications and more detailed publication of operational performance levels.

Gourock - Dunoon Ferry Services

13. There was a general preference for a direct award to an in-house operator for the Gourock-Dunoon ferry service. Should it not be possible to include a vehicle-carrying service in any direct award to an in-house operator, the community's preference would switch to tendering in order to maximise the possibility of the market providing a subsidised passenger service, with a vehicle carrying element provided at the operator's commercial risk.

Northern Isles Ferry Services

14. For the Northern Isles routes, there was strong recognition in both Shetland and Orkney of the benefits obtained from past tenders.

15. The general view from Shetland was that Transport Scotland should focus more on the communities' key issues and concerns in relation to the level of services to be delivered and the vessels to be made available to deliver those services, rather than the question of tendering or not.

16. Shetland Islands Council and the Regional Transport Partnership (ZetTrans) emphasised the importance that any approach to the provision of ferry services in future has to be efficient and provide a responsive transport solution that meets the economic and social outcomes necessary to ensure sustainable island communities. They considered that the approach to be taken needs to have the greatest capacity to provide investment in infrastructure and vessels necessary to enable economic growth and equality of access to opportunities for the islands.

17. There was some recognition that a direct award to an in-house operator may provide greater capacity to develop and implement long-term planning and delivery of service and infrastructure improvements, incorporating relevant components of Local Outcomes Improvement Plans into national plans. It was equally recognised that, under continuing public funding pressures, tendering may realise opportunities to secure private sector investment in infrastructure dependent on the structure and length of contracts, in particular private investment in additional or new vessels. These opportunities may be more limited in the event of an in-house delivery scenario.

18. A number of key stakeholders in Shetland were concerned that a direct award to an in-house operator may not be as "fleet of foot" and innovative as a tendered model. Currently, a wide range of service statistics is available which service users (particularly seafood and aquaculture sectors) find worthwhile, informative and of benefit to their business operations. This was considered to be a major benefit that had been obtained from the last tender.

19. There was clear majority support for tendering in Orkney, reflecting the many benefits which the island community considers have been obtained from the current contract. In line with the views expressed across the Clyde and Hebrides, it was recognised that, in the event of a direct award to an in-house operator in future, clear provisions must be made for local decision making. This would ensure that service delivery and operational performance levels meet the needs of local communities and stakeholders, and support the future economic development of the islands.

Further Community and Stakeholder Engagement

20. Previous engagement involved meetings with a range of community stakeholders to obtain a general view on the respective communities' preference for a direct award or whether the services should continue to be tendered. Further engagement will be undertaken across the Northern Isles, and in due course the Clyde and Hebrides, if required, to allow the Scottish Ministers to develop a better understanding of the respective communities' preferences on the future approach to be taken to the procurement of the ferry services.

Trade Unions

21. Transport Scotland officials met with representatives from the STUC and the four trade unions (Nautilus, RMT, Unite and TSSA) with an interest in the ferry services. The Minister for Transport and the Islands also held discussions with representatives from the unions.

22. The STUC prepared a joint-union policy position on the requirement to tender ferry services. The policy position paper is set out in Annex E and summarised as follows:

- the trade unions remain firmly in favour of public ownership and operation of lifeline public ferry services, supported by public investment, as the model to deliver long-term economic and social benefits to workers, passengers, communities and taxpayers;
- the two key Teckal tests centre on the control and functions of the public body being considered for exemption. The analysis of whether CalMac falls within the control and function test clearly concludes that it does;
 - a tightly specified tender process, in which the Scottish Government negotiates in private with all bidders, encourages bids that are based on reducing pay or other terms and conditions of ferry staff. This runs contrary to Fair Work objectives and potential community benefit;
- recent evidence suggests a continuing high level of public support for direct delivery of services and for public ownership more generally;
- it is not possible to base decisions about ferry contracts on assumptions, in particular that EU Regulations and State Aid Guidance will not apply in future or that similar rules will not replace them;
- whilst Brexit alone cannot be used to argue for non-tendered public provision, neither should it be used to argue against it;
- the Scottish Government can make clear, whatever statutory framework emerges as a consequence of Brexit, that it is committed to democratically owned and publicly operated ferry services.

23. The community and stakeholder views gathered to date, and those to be gathered from any future engagement activity, will feed into the overall consideration of the legal, policy and financial implications relevant to the future approach to be taken to the procurement of ferry services. This will ensure that the views of communities and stakeholders are taken into account before the Scottish Government reaches a final decision on the best way to procure the Clyde and Hebrides and Northern Isles services in the future, be that a direct award to an in-house company or a competitive procurement procedure.

5 VALUE FOR MONEY



MV LOCH SEAFORTH

1. Audit Scotland's Report: Transport Scotland's Ferry Services⁶ published on 19 October 2017 confirms that ferry services are performing well. The report also underlines the Scottish Government's commitment to its ferry network and the vital services they perform for island and remote communities. Audit Scotland also reported total annual spending of £209.7 million on ferries for the financial year 2016-2017: £168.7 million of which was attributed to annual subsidies paid to ferry operators, with £41.0 million attributed to capital expenditure. These substantial levels of public funding make it increasingly important that the future approach to the procurement of ferry services, be that a direct award to an in-house operator or a competitive tendering procedure, provides value for money to the taxpayer.

2. The following paragraphs cover some of the issues associated with the question of direct awards to an in-house operator or continued tendering in the context of providing value for money.

Benefits of Tendering

3. The view that opening services to competition increases efficiency is generally supported by the 2016 Clyde and Hebrides tender. The new contract was estimated at £996 million, based on the continuation of the previous contract on the same terms. The successful tender came in at £868, some £128 million lower than the estimated £996 million. The new contract had to be updated prior to commencement to take account of such issues as the impact of planned changes to timetables, the final roll-out of Road Equivalent Tariff and increased pension contributions imposed by the CalMac Pension Fund Trustees. This added a further £107 million to the winning tender bid of £868 million, bringing the final tendered cost of the new contract to £975 million.

4. The successful bidder for the 2016 Clyde and Hebrides tender made 350 service improvement commitments. These commitments will realise wider benefits through the delivery of better quality services over the full term of the contract.

5. It is also important to recognise that a direct award to an in-house operator is also capable of delivering similar levels of operational efficiency, innovation and service improvement to those which might otherwise be obtained from tendering. Section 3 Legal Framework established that a direct award to an in-house company would have to satisfy the State aid rules. This would be achieved through the successful application of the four Altmark criteria, the fourth criterion of which requires the operator to be a typical, well-run and adequately equipped undertaking. In meeting the Altmark criteria, any in-house company would, by definition, have to demonstrate operational efficiency levels equivalent to those which would be provided under ideal market conditions.

Costs of Tendering

6. As well as the potential benefits of tendering, it should be recognised that tendering multi-million-pound ferry service contracts is a highly complicated and expensive procedure. Tendering requires highly qualified and experienced resources to develop complex procurement, legal and financial processes and documents. Resources are also required to assess bidders' submissions and undertake significant levels of legal and financial due

⁶ <http://www.audit-scotland.gov.uk/report/transport-scotlands-ferry-services>

diligence leading to the award of contract and the commencement of the new services. Tendering also requires support from specialist consultants on the development of detailed financial modelling and technical specifications for the provision and use of vessels and harbour infrastructure. All this incurs high levels of costs to be paid for by the public purse.

7. The Scottish Government has previously published information on the costs of tendering ferry services since 1999⁷, estimated to fall in the region of some £4 million. The £4 million figure includes the estimated £1.1 million incurred on the tendering of the 2016-2024 contract for the Clyde and Hebrides ferry services. These cost estimates may not have captured every single cost associated with tendering, such as the cost of senior officials, specialist officials and Ministers, nor a proportion of the overheads which the Scottish Government accrues generally. It is, therefore, possible that the total costs of tendering past ferry contracts may be slightly higher than those previously published.

8. In addition to those costs directly attributable to the tendering process, an estimated £13.2⁸ million was also incurred on the restructuring of Caledonian MacBrayne into a separate services company (David MacBrayne Ltd) and an asset-owning company (Caledonian Maritime Assets Ltd), £11 million of which related to tax liabilities. Similar costs are unlikely to be incurred again, subject to no further significant company reorganisation. The particular issue of potential tax liabilities arising from any future restructuring of the existing public-sector company structures is addressed further under Section 6 – Future Operating Models for Companies Owned by the Scottish Ministers.

9. Added to the Scottish Government's costs are those incurred by bidders. These can also amount to substantial sums, depending on the nature of the contract being tendered and the amount of resources a bidder applies to the competition. In the case of a publicly-owned bidder, such costs are attributable to the public purse.

10. In addition to the high costs of tendering, all the ferry service contracts let by the Scottish Government, including the recent contract to CalMac Ferries Limited for operating the Clyde and Hebrides ferry services, provide for an allowable operator's return (essentially a fixed profit level). The contracts operate to a capped subsidy payment level, with a claw-back mechanism that recovers excess payments made in the event that the subsidy required to cover the costs of operating the services is lower than the capped subsidy level in any one year. The contracts therefore ensure that operating companies cannot profit excessively from Scottish Government ferry contracts. Nonetheless, in the case of private sector operators, any profit derived from the allowable operator's return can generally be considered to have been lost to the public purse.

11. In summary, tendering has the potential to deliver efficiency savings and good outcomes for consumers, but it can incur high costs. It is, however, possible for a direct award to an in-house operator to provide levels of operational efficiency and service delivery commensurate with the general ferry market.

⁷ Parliamentary Question S5W-00678

⁸ Parliamentary Question S2W-31530

6 FUTURE OPERATING MODELS FOR COMPANIES OWNED BY THE SCOTTISH MINISTERS



MV HAMNAVOE

1. Major organisational and structural changes are not required in order to address the immediate question about the possibility of making a direct award to an in-house operator in future. Significant changes at this point in time would only serve to raise further legal, financial and tax complications, and unnecessarily extend the timeline for the review. For these reasons, the review has initially focused on the changes required to the existing corporate company framework owned by the Scottish Ministers in order to satisfy the immediate requirements of Teckal (i.e. the control test) and the State aid rules (i.e. Altmark).

Existing Corporate Company Framework

2. The benefits of utilising the existing corporate company framework are summarised as:

- utilising existing company structures is likely to be far less complicated from a legal, accounting and tax perspective;
- any changes required to comply with the Teckal control test could be achieved by a relatively limited review of governance arrangements for the David MacBrayne group of companies, including Scottish Government representation on the company's Board, which could be achieved with very little or no direct impact on employees;
- the existing corporate company framework does not necessarily preclude the establishment of subsidiary commercial companies to bid for contracts on the open market in future - subject to continued compliance with the Teckal functions test, which allows for 20% of the company's activity to be conducted outwith that delivered with the parent authority (i.e. the Scottish Ministers).

Possible Future Structures

3. Once the immediate question of Teckal and State aid compliance has been addressed in terms of the limited changes required to the existing corporate company framework, consideration can be given to any future organisational restructuring which might improve service delivery and provide better value for money for the taxpayer. Any future restructuring would, of course, still be required to satisfy the full requirements of the Teckal doctrine and the State aid rules.

Agency of the Scottish Government

4. Any transfer of assets and business interests to an Agency of the Scottish Government sometime in the future would satisfy the requirements of the Teckal doctrine. Executive Agencies are an integral part of the Scottish Government and staffed by civil servants, including the Chief Executive who is directly accountable to Ministers. Agencies operate under a Framework Document approved by Ministers, which may be reviewed, amended or revoked at any time. This has the advantage that they can normally be set up by administrative action without the need for legislation. Although an Agency structure could satisfy the requirements of the Teckal doctrine, the economic

nature of the ferry services to be performed would not remove the need for State Aid compliance in relation to the funding of those services.

5. In addition to considering whether funding arrangements under an Agency model would comply with the State aid rules, there are a number of legal, employment and financial implications that could arise from the transfer of business activities and assets, including:

- tonnage tax in relation to the transfer of any vessels;
- Land and Building Transaction Tax /Stamp duty in relation to the transfer of heritable property;
- corporation tax in relation to any capital gain in relation to the transfer of assets;
- off-shore crewing exemption from National Insurance contributions, which will require HMRC approval;
- recovery of VAT, subject to HMRC regulation;
- funding arrangements and potential accounting and cash-flow implications for the Scottish Government;
- third party arrangements in relation to Solent Gateway Limited, a joint-venture company set up by David MacBrayne Limited, and any future contracts;
- payment and transfer of pension liabilities;
- TUPE transfer of staff, including harmonisation of pensions, pay, terms and conditions and contracts of employment.

6. Further detailed specialist advice will be sought to ascertain the full impact of these legal, employment and financial implications, be these incurred through changes to the current corporate company framework or future operating models. This analysis will be considered as part of the overall value for money that future operating models might provide to taxpayers.

New Statutory Public Body

7. A new public body would most likely be classed as an Executive Non Departmental Public Body with trading capability, subject to Office for National Statistics classification. It would take on responsibility for the provision of the ferry services (and any other transport services defined by Scottish Ministers). It would also receive grant funding from Scottish Ministers, supplemented by fare revenue, and be answerable to the Scottish Parliament through the Scottish Ministers.

8. A new statutory public body would mirror many of the benefits associated with the existing company framework. It would, however, provide a platform for more statutory regulation and public accountability in terms of the body's operational activities and performance.

9. The creation of a new statutory public body would, however, raise many of the same legal, employment, accounting and tax implications associated with the transfer of the current companies' business interests and assets to an Agency of the Scottish Government. It would also add further complexities in relation to the Scottish Government's ability to satisfy the Teckal doctrine and the State aid rules.

10. The corporate company framework structure, or transfer to an Agency of the Scottish Government, could be classed as an in-house operation under the terms of the Teckal doctrine. However, this would not necessarily be the case for a new statutory public body operating at arms-length from the Scottish Ministers. Under such arrangements, the Scottish Ministers may not be able to demonstrate compliance with the Teckal control test, which requires control similar to that exercised over their own departments.

11. The establishment of a new public body, funded by the Scottish Ministers, would also require careful consideration of the State aid rules. It is likely that the public body's functions would be classed as the delivery of economic services (even where stepping in to address market failure). As the delivery of economic services is not the usual domain of government, more detailed consideration would have to be given on whether the funding provided by the Scottish Ministers constituted State aid.

7 IMPLICATIONS FOR THE FERRY SERVICES



MV ARGYLL FLYER

1. The Scottish Ministers' priority is the provision and continuity of safe, efficient and reliable ferry services to the island communities and businesses which rely on them. In delivering that outcome, they must ensure that the organisation and funding of the ferry services complies with the relevant legislative framework.

2. It will take time to undertake the necessary analysis to ensure that the Scottish Government could comply with the relevant legislative framework, particularly its ability to satisfy the full requirements of the Teckal doctrine and the State aid rules (i.e. Altmark). This analysis and associated timelines have implications for each of the three contracted ferry services.

Clyde and Hebrides

A case will be built for making a direct award to an in-house operator which meets the full requirements of Teckal and the State aid rules, particularly the four Altmark criteria. A decision on the future approach to procuring these services will be taken in advance of the current contract ending in September 2024.

3. The joint approach to the European Commission on 1 April 2016 sought clarity on the legal requirement to tender the Clyde and Hebrides services. The approach stemmed from concerns raised by the National Union of Rail and Maritime Transport Worker's and some opposition parties that tendering could lead to the 2016-2024 public service contract being awarded to a private-sector operator. These concerns have since been overtaken by events. Following completion of the 2016 tender, the contract was awarded to CalMac Ferries Limited. The contract guarantees that the ferry services will be provided by a public-sector (in-house) operator for the remaining duration of the eight-year contract, until the end of September 2024.

4. As the Clyde and Hebrides ferry services will be provided by a public-sector operator until the end of September 2024, there is no immediate requirement to reach a final decision on whether to continue tendering the services, or make a direct award to an in-house operator. The services are already provided by a state-owned company and will be for the best part of another seven years from the date of publishing this report. Doing anything outwith the terms of the current contract at this stage, and certainly before ascertaining that a direct award would satisfy the full requirements of the Teckal doctrine and the State aid rules, could potentially render the Scottish Government open to legal challenge or a complaint to the European Commission, either of which could risk the provision of the ferry services in their current form.

5. The remaining seven-year duration of the current contract provides more than sufficient time for further detailed analysis of the existing corporate company framework and governance arrangements (as required by the Teckal control test), and detailed benchmarking against standard industry ferry practice to demonstrate that the in-house operator is a typical, well run and efficient undertaking, (as required by the fourth Altmark criterion). Completion of this analysis will then be used to inform the Scottish Government's case on the possibility of making a direct award to an in-house operator, ahead of the current contract ending in 2024.

6. If further analysis shows that it would be possible to make a direct award to an in-house operator, in full compliance the Teckal doctrine and the State aid rules (i.e. Altmark), the Scottish Government need not necessarily notify the European Commission about such an award. However, as previously stated under Section 3 Legal Framework, the

Commission's 2009 decision on the application of State aid to Scottish public ferry services means that it would be appropriate to notify the European Commission and seek its views on the suitability or otherwise of such an award.

7. The timeline afforded to complete the full analysis required to build a case for a potential direct award to an in-house operator for the Clyde and Hebrides ferry services does not however extend to the Northern Isles and Gourock to Dunoon contracts.

Northern Isles

A decision on the future approach to procuring the Northern Isles ferry services needs to be taken by spring 2018, taking account of progress on further analysis of the Teckal exemption and the State aid rules, and further engagement with local communities.

8. Arrangements are in hand to extend the term of the current Northern Isles ferry services contract with Serco NorthLink Ferries Limited to the end of October 2019, with limited scope for any further extension period beyond this date.

9. Unlike the Clyde and Hebrides, the remaining term of the extended Northern Isles contract places constraints on the time available to reach a decision on whether it would be possible to make a direct award to an in-house operator.

10. Tendering the Northern Isles ferry services would be a highly technical, complex and time consuming procedure, requiring extensive legal and financial due diligence by both contracting authority and bidders. A tendering exercise of this nature would normally take at least 18 months to complete: from initial advertisement, to preparation of tender documents and submission of bidders' proposals, to the award of contract, and finally the transition to a fully operational service. It might be possible to complete a tender exercise within a shorter timescale, but this could impact on the quality of the tender, the proposals submitted by the bidders and the final service solution.

11. The current time constraints means that a decision on whether to make a direct award, in full compliance with Teckal and the State aid rules, or to tender the Northern Isles services will have to be taken by the Spring of 2018. This would allow for the required 18-month timeline to complete the full tendering procedure, should that be required. To inform this decision, as well as considering the progress made on the possibility of satisfying both the Teckal doctrine and the State aid rules, the Scottish Government will follow up on its earlier engagement with local communities and stakeholders across the Northern Isles to build a better understanding of local views on

the future approach to be taken to the procurement of the Northern Isles ferry services.

Gourock-Dunoon

A direct award allowing for the transport of vehicles on a commercial basis is not considered a deliverable option in light of the limited scope of the public service obligation. Consequently, the currently paused tender for the Gourock-Dunoon ferry service will be restarted as soon as practicable to allow for the possibility of a commercially viable vehicle service being reintroduced as part of the next public service contract.

12. The Gourock-Dunoon contract was due to expire in June 2017. The contract was subsequently extended by nine months to March 2018, and will now be extended by a further nine months until December 2018.

13. A direct award for the Gourock-Dunoon ferry service under the State aid rules, assuming that such an award could be achieved through the successful application of the Teckal doctrine and the Altmark criteria, could only be applied to the transport of foot passengers under the terms of the public service obligation. A direct award allowing for the transport of vehicles is therefore not considered to be a deliverable option. Alternatively, tendering provides an approach which may realise the Scottish Ministers' long-standing policy position and the local community's aspirations for the return of a vehicle service to the town-centre route. This requires the currently paused tender to be restarted as soon as practicable.

ANNEXES



MV HELLIAR

ANNEX A

Minister for Transport and Islands

Derek Mackay

T:0300 244 4000

E: Scottish.ministers@gov.scot

Commissioner Violeta Bulc
European Commissioner for Transport

By email to Violeta.bulc@ec.europa.eu

1 April 2016

Dear Commissioner

Council Regulation (EEC) No. 3577/92 (the Maritime Cabotage Regulation) Re- tendering of Public Service Contract for the Clyde and Hebrides Ferry Services: Request for the Commission's Views

I am writing to seek the Commission's view on the legal requirement to tender the Clyde and Hebrides ferry services. The people of Scotland expect Scottish Ministers to safeguard lifeline ferry services to ensure island communities are connected to Scottish, UK and European markets, in order to take full advantage of tourism, business and employment opportunities. The tendering of lifeline ferry services has been the subject of frequent scrutiny by the Scottish Parliament. In the course of a Scottish Parliament debate in November 2015, I agreed to meet with David Stewart MSP and the National Union of Rail, Maritime and Transport Workers (RMT) to discuss the union's recent QC's legal opinion on the need to tender the Clyde and Hebrides ferry services.

We are undertaking a tendering exercise with a view to the award of a fresh public service contract to operate a number of ferry services, collectively known as the Clyde and Hebrides ferry services. The services are currently operated by CalMac Ferries Limited ("CFL") pursuant to a public service contract entered into following a tendering exercise initiated in 2006. That exercise proceeded on the basis that the proposed contract fell within Article 4(1) of the Maritime Cabotage Regulation. The services operated by CFL were among those considered, in the context of State aid, in the Commission Decision C-16/08 of 28 October 2009 ("the 2009 Decision").

CFL is ultimately wholly owned by the Scottish Ministers. The question has arisen whether, in the particular circumstances, the operation of the Clyde and Hebrides ferry services through CFL could fall to be treated, as a matter of EU law, as exempted from the requirement to invite public tenders on the same basis as the familiar Teckal exemption to EU public procurement rules.

I would be grateful if you would be able to clarify whether, as a matter of EU law, the Scottish Ministers may be exempted from the requirement to proceed with a competitive tender on the basis of the Teckal exemption which would allow the Clyde and Hebrides ferry services to be operated through an in-house provider without competition and whether or not such an arrangement would raise State aid implications.

I attach a supporting paper, jointly prepared with the RMT setting out the issues which I invite you to consider. Your views on whether the Teckal exemption is capable, in principle, of applying to a competent authority's securing the provision of public passenger transport services to which the Maritime Cabotage Regulation applies and whether such provision by a competent authority itself or an in-house company on a subsidised basis would raise State aid implications would be especially welcome.

The Scottish Ministers are currently engaged in the Clyde and Hebrides tender process. It would be extremely helpful to all concerned to have your earliest reply or an offer to discuss with both myself and RMT representatives.

Kind regards

DEREK MACKAY

Copied to:

[The Rt Hon Patrick McLoughlin MP](#), Secretary of State for Transport, UK Government
Mr Ivan Rogers, [Permanent Representative of the United Kingdom to the European Union](#)
Mick Cash, RMT General Secretary

Council Regulation (EEC) No. 3577/92 (the Maritime Cabotage Regulation) Re- tendering of Public Service Contract for the Clyde and Hebrides Ferry Services: Request for the Commission's Views

1. Joint paper, prepared by Scottish Government and the National Union of Rail, Maritime and Transport Workers (RMT)

Teckal Discussions

2. Discussions about the application of the Teckal exemption have taken place between the Scottish Ministers and the National Union of Railway, Maritime and Transport Workers ("RMT"). As a starting point, and before any application of Teckal, article 4(1) of the Maritime Cabotage Regulation imposes, through the reference in its second indent to the principle of non-discrimination, an implied obligation to conduct a public tendering (or equivalent) exercise among EU shipowners before awarding a public service contract to a shipping company. In the 2014 interpretative communication COM (2014) 232 ("the Maritime Cabotage Guidance") this principle is referred to in sections 5.3 and 5.4. At paragraph 5.4.1 it is clearly stated that where a public service contract is concluded applicable procurement rules must be respected. That obligation arises independently of the Treaty rules on State Aid.

3. Those procurement rules include the Teckal exemption which is codified under Directive 2014/24/EU and Directive 2014/23/EU at articles 12 and 17 respectively. If the Teckal exemption is capable of applying in principle to services for which public services contracts may be awarded under Article 4(1) of the Maritime Cabotage Regulation, the result would be as follows:

(i) The question whether CFL in fact satisfies the Teckal criteria would be one for further examination by the Scottish Ministers;

(ii) In the event that the Scottish Ministers find the criteria satisfied, it would be open to them to engage CFL to operate the relevant services, following expiry of the existing public service contract, without any obligation under Article 4(1) to invite public tenders (or to undertake an equivalent exercise); and

(iii) The State aid rules might, quite separately point to a public tender exercise, especially having regard to the findings of the Commission's 2009 Decision, but that did not specifically consider whether the delivery of the public service by an in-house company meeting the Teckal test would lead to a conclusion that there was no aid, and, such a question would also fall to be considered.

4. As regards the future operation of the Clyde and Hebrides ferry services, the Scottish Ministers currently hold a political preference for taking advantage of the *Teckal* rule if they conclude that it is lawfully open to them to do so consistently with the Maritime Cabotage Regulation, the State aid rules and any other applicable legal requirements. Accordingly at this stage, the parties (the Scottish Ministers and the RMT) are concerned to resolve the threshold question of whether the Teckal rule is capable of applying in principle to the provision of the relevant services and, if so, whether such a direct award would also raise State aid implications.

5. So far as the parties are aware, the applicability of Teckal to maritime services within Article 4(1) does not appear to have been the subject of any previous judgment of the Court of Justice and nor does it appear to have been addressed in the Maritime Cabotage Guidance.

Legal Argument

6. One view is that the Teckal exemption is in principle capable of applying to services covered by the Maritime Cabotage Regulation. Thus a competent authority wishing to secure the provision of island ferry services, such as the Clyde and Hebrides ferry services, may choose either (i) to procure the operation of those services from the private market (in which case Article 4(1) would plainly oblige it to award a public service contract by means of a transparent procedure such as open public tenders), or (ii) to operate the service itself or through its in-house company.

7. If making the latter choice, the competent authority might utilise vessels and staff owned and employed directly by one of its own departments. Alternatively, it might establish a legally separate entity over which it exerts control similar to that exercised over its own departments, in which case it would be likely to enter into a contract with that entity (which would be likely to amount to a public service contract within the Maritime Cabotage Regulation) specifying the relevant services and establishing funding arrangements.

8. The principle of non-discrimination referred to in the Maritime Cabotage Regulation is a fundamental Treaty principle to ensure the effective operation of the single market. It applies equally to the procurement rules as it does to other measures in relation to competition and it is clear from the Maritime Cabotage Guidance that when awarding a public service contract it is the public procurement rules that are relevant.

9. The Court of Justice has repeatedly made it clear that an authority is free to determine whether or not to perform public tasks itself without being obliged to call on other entities for such matters (see for example Stadt Halle C-26/03 at paragraph 48). In accordance with the Teckal line of authority of the Court of Justice, the provision of services through such an entity is regarded as tantamount to their provision by the authority itself and as such does not infringe the principle of non-discrimination.

10. As that is the same principle that is engaged through the Maritime Cabotage Regulation proponents in favour of the argument may reasonably suggest that nothing in Article 4(1), precludes the competent authority from adopting either of these methods for operating the relevant services, i.e. without the involvement of privately-owned shipowners at all. In other words, in direct parallel with the established procurement rules, the rules in Article 4(1) indicate what is to happen where a Member State enters into a public service contract with, or imposes public services obligations on, a private shipping company. It does not stipulate that the only way in which the State can bring about the operation of the services in question is by entering into such a contract or imposing such obligations. The State may provide the service itself. If it does so, the rules in the second indent of Article 4(1) are simply never engaged.

11. The 2007 Rail Regulation, Regulation (EC) No. 1370/2007 should also be noted. Article 1(1) empowers Member States to apply its provisions to public passenger transport “by inland waterways and, without prejudice to [the Maritime Cabotage Regulation], national sea waters.” By Article 5(2), the 2007 Regulation expressly recognises the power of a competent authority, as an alternative to seeking tenders from the private market, to operate passenger transport services itself or to do so via a separate entity. But, in accordance with Teckal, such an entity must satisfy certain criteria relating to control by the competent authority. The scheme of the 2007 Regulation therefore, in effect, represents a codification of the law as recognised in the Teckal line of authority. It is recognised that there are limits as to the possible application of the 2007 Regulation to the Maritime Cabotage Regulation, for example only extending to passenger transportation. As you will be aware, besides passengers, the operator of the Clyde and Hebrides ferry services also carries cars, vans, large commercial vehicles and freight.

12. It might also be suggested that the 2007 Regulations could not be applied to Maritime Cabotage to extend the application of the Teckal exemption, even to the extent of passenger transportation only. That may be a conclusion reached from considering section 8 of the Maritime Cabotage Guidance. An argument against the application of the exemption may suggest that the absence of a power to extend Article 5(2) of the 2007 Regulations to the provision of services covered by the Maritime Cabotage Regulation would be fatal to the application of Teckal in the latter context.

13. The absence of such provisions, however, cannot give rise to the inference that Member States are prohibited from operating the relevant services themselves rather than procuring them from the private market. The 2007 Regulations were not seeking to amend the Maritime Cabotage regime but merely providing member States with a power to extend the application of the 2007 Regulations to such matters. As the 2007 Regulations were not concerned with a review of the Maritime Cabotage Regulation it is unsurprising that the power was expressed as without prejudice to the Maritime Cabotage regime.

14. The primary object of the Maritime Cabotage Regulation was to define, in the relevant sector, the scope of the Treaty freedom to provide services. It was not an instrument aimed at requiring Member States to privatise, or divest, their own provision of the relevant services (which, in the light of what is now Article 106 of the Treaty of the Functioning of the European Union, would require a clearly stated legislative intent). Given that the Teckal principle is simply an extension (within defined boundaries) of the concept of a Member State providing services itself, nothing in the Maritime Cabotage Regulation is inconsistent with the application of that principle.

15. It should be noted however, that the Maritime Cabotage Regulation pre-dates the 2007 Rail Regulation and indeed the Teckal judgment. It is also therefore not surprising that it contains no express provisions seeking to reflect or codify the conditions on which a competent authority may provide passenger transport services otherwise than through the private market.

16. It should be further noted that this understanding of the law appears to accord with the views expressed by officials of D-G Mobility and Transport during a meeting with Mr. David Stewart MSP during the summer of 2015. The position expressed by officials is summarised in the attached e-mail, sent to Mr. Stewart by Mr. Erdem Erginel, International Relations Officer in the Maritime Transport and Logistics Unit (D.1) on 25 September 2015.

17. Furthermore it is also the case that in its judgment in the ANAV case mentioned in Mr. Erginel's e-mail (see attached) (*Associazione Nazionale Autotrasporto Viaggiatori v. Comune di Bari*, C-410/04, [2006] ECR I-3311), the Court of Justice was not directly concerned with the Maritime Cabotage Regulation but with road transport services by way of service concession which at that time fell outside the scope of the Community Public Procurement Directives. However, the Court recognised the application of the Teckal principle to service concessions outside those Directives (See paragraph 24 of its judgment).

18. It can be observed that like any view now expressed in response to the present communication, that view is not binding on the Commission; and that it will have been expressed without the benefit of a detailed explanation of the competing approaches of the present parties.

State Aid

19. If the Teckal principle applies as above in the context of the maritime cabotage regime it raises the question whether a direct award of a subsidised public service contract to an inhouse company would result in State aid within the notion of aid set out in Article 107 TFEU.

20. That article applies where the recipient of the aid is an undertaking, being an entity engaged in economic activity. Where a public body is itself simply discharging public functions that does not constitute an economic activity with the result that Article 107 does not apply. Where a public body, however, engages in economic activity that body may, itself, fall to be treated as an undertaking. That may be so in a market where other operators would be willing and able to provide services in the market concerned but in this case the very need for a public service contract only arises due to the failure of the market to deliver necessary services without public intervention. An intrinsic element of State aid is that there must be a distortion or threat of distortion of competition. That need not be significant but the likelihood must be more than merely hypothetical.

21. The 2009 Decision reached a conclusion that there was existing State aid in relation to the Clyde and Hebrides ferry service but it was compatible with the common market. The Decision, however, does not appear to have addressed the in-house nature of the provision nor does there appear to be any substantive consideration as to whether or not the service is economic. It appears reasonably clear that without public intervention these lifeline ferry services would not be provided by the market as they would be uneconomic.

22. The 2009 Decision places considerable emphasis upon fulfillment of the Altmark criteria in the context of the effect upon competition without apparently examining whether there was actually a market that might reasonably be considered to be subject to interference and distortion.

23. Those who would advocate a direct award would suggest that delivery of the public service obligation in-house or through an in-house company would not give rise to State aid considerations where the service provider was not active in the market of ferry services beyond the PSO itself (and therefore did not compete in the wider market). In such a case we would merely be providing services that the market was not providing without any interference with the market in relation to other services that operators may wish to provide.

24. We trust that this short exposition of views enables the Commission to provide a preliminary indication of its views on whether, in the these circumstances, the provision of these services via a Teckal entity, where operating costs are funded by public expenditure less fare revenues and the service is not operated for profit, is likely to raise a State aid issue

Conclusion

25. The Scottish Ministers and the RMT invite the Commission to consider this communication and attachments.

Derek Mackay MSP
for Transport & Islands
Scottish Government

Mick Cash Minister
General Secretary
RM

Dear Mr Stewart,

Thank you for your e-mail,

Further to our meeting of last month, I looked into the EU rules and regulations concerning tendering. I would like to take this opportunity to share with you my conclusions.

You will remember that during our meeting you had inquired about the possibility of not having a tender procedure in relation to ferry services connecting the Scottish islands.

At the outset, I would like to note that we recognize the importance of the maritime transport connections for residents of the Scottish islands. The EU rules in particular, the Cabotage Regulation (3577/1992), contain a balanced set of rules. On the one hand they liberalise cabotage services to improve the quality of services provided to European citizens through increased competition between operators. On the other hand, they provide for special rules which aim to ensure territorial continuity of the Member States' islands.

In the view of the European Commission a transparent and non-discriminatory tender for public services is the best way to ensure that the citizens receive the best possible services in terms of quality and price at the lowest cost for the tax payer. Consequently, we strongly advocate the widest possible use of open and transparent tendering procedures when public authorities entrust companies with a public service obligation.

Regarding the possibility of the direct award of a public service contract (i.e. without a tendering procedure), this is, in principle accepted by the European Court of Justice (case C-420/04 ANAV), in the case of 'in-house' service, if certain conditions are met cumulatively.

- The public authority awarding the contract must wholly own the share capital of the company to which the contract is being awarded;
- The public authority exercised a control over that company that is comparable to the control exercised over its own departments;
- The company carries out the essential part of its activities with the controlling authority.

The Cabotage Regulation does not explicitly foresee the modalities of the provision of the public service in-house, but the case-law should be applicable to maritime cabotage. As specified by the Court (also in the cases C-107/98 Teckal; C-29/04 Commission v Austria), as this is a derogation from the general principles of the Treaty, the existence of the above mentioned conditions has to be strictly interpreted and the burden of proof as regards the fulfillment of these conditions lies with the Member State invoking the derogation.

I hope you will find the above to be useful.

Yours sincerely

Erdem Erginel,

International Relations Officer European Commission
Directorate-General for Mobility and Transport
Maritime Transport and Logistics Unit (0.1)
B-1049 Brussels Office: DM28 3/98

ANNEX B

VIOLETA BULC
Member of the European Commission

Brussels, 22.09.2016
NvP Ares (2016) 5502257

Mr Humza YOUSAF
Minister for Transport and Islands
5 Atlantic Quay,
150 Broomielaw Glasgow G2 8LU SCOTLAND

Dear Minister

I am writing to you further to the letter of Mr. Mackay, who wrote to me in his capacity as Minister for Transport and Islands in the Scottish Government, on 1st April 2016.

In his letter, Mr. Mackay requested the Commission's view on the legal requirement to tender the Clyde and Hebrides ferry services. I understand that - after the above-mentioned letter was sent – the tender for the Clyde and Hebrides ferry services has been awarded to CalMac Ferries Limited (CFL). However, the Scottish Government EU Office in Brussels has indicated to my services that a reply to the letter of Mr. Mackay would nevertheless be useful, as similar cases regarding ferry services to Scottish islands might emerge in the future.

In his letter, Mr. Mackay wrote:

I would be grateful if you would be able to clarify whether, as a matter of EU law, the Scottish Ministers may be exempted from the requirement to proceed with a competitive tender on the basis of the Teckal exemption which would allow the Clyde and Hebrides ferry services to be operated through an in-house provider without competition and whether or not such an arrangement would raise State aid implications.

Before replying to this question, let me first observe that whereas the Commission can provide some general guidance and advice, it cannot offer legal certainty through its opinions: only the European Courts can provide authentic interpretation of EU law. Moreover, the legal analysis of a case can vary considerably depending on specific circumstances and concrete details.

I would also like to underline that the Commission recognises the importance of the maritime transport connections for the residents of Scottish islands. We are aware of the significance of ferry services for the social, cultural and economic well-being of the communities of the Scottish islands. We also appreciate the commitment of the Scottish Government to deliver sustainable maritime links to the islands, while acknowledging the financial challenges this may entail.

I have attached to this letter a note prepared by my services, analysing the legal situation, very much hoping it provides you with the desired clarity.

Remaining with best wishes for your start in this office,

Yours faithfully,

VIOLETA BULC
Address: European Commission – B-1049 Brussels, Belgium

Note on Council Regulation No. 3577/92

EU legislation on maritime transport, specifically the Council Regulation No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (“the Cabotage Regulation”),¹ ensures that all EU operators can offer their services without unjustified restrictions, so that users can profit from wide choices and affordable prices. It also recognises that there are situations in which the market does not adequately respond to citizens’ needs and it allows State intervention to guarantee public service links, participating in regular services to, from and between islands. In such cases, EU rules require that the attribution of public service is done on a non-discriminatory basis in respect of all Union shipowners and in an open and transparent way.

It is well established that EU Public Procurement Directives apply if contracting authorities enter into public contracts; that is, contracts for pecuniary interest concluded in writing with a third party and having as their object the execution of works, the supply of products or the provision of services within the meaning of the Directives.

In the *Teckal*-case,² the Court interpreted this rule in a functional manner. It laid down two cumulative criteria for the exemption from EU public procurement rules of a relationship between a contracting authority and another legal person. According to the Court, such a relationship falls outside the scope of EU public procurement law if:

- 1) the contracting authority exercises over the legal person concerned a **control which is similar to that which it exercises over its own departments**; and, at the same time,
- 2) that legal person **carries out the essential part of its activities with the controlling contracting authority or authorities**.³

Indeed, the Court considers that if both conditions are met, the agreement between the parties constitutes an in-house administrative arrangement, and it is therefore not a public contract with an external provider. The existing case-law excludes the participation, even as a minority, of a private undertaking in the capital of an in-house operator. Therefore it applies only to fully-owned public companies.

In the subsequent judgment in the case of *ANAV*,⁴ the European Court of Justice reiterated the legal possibility for a public authority to award a public service contract directly, provided that certain conditions are met:

[T]he principles of equal treatment, non-discrimination on grounds of nationality and transparency do not preclude national legislation which allows a public authority to award a contract for the provision of public service directly to a company of which it wholly owns the share capital, **provided that** the public authority exercises over that company control comparable to that exercised

¹ Official Journal L364, 12/12/1992 P.7-10

² C-107/98

³ Ibid, para.50

⁴ C-410/04

over its own departments and that that company carries out the essential part of its activities with the controlling authority.⁵

Even through the Cabotage Regulation does not explicitly refer to the direct award of public service contracts, the case law on the in-house operator should be applicable in cases on maritime cabotage as well. Our view is that, since this is a derogation from the general principles of the Treaty, the existence of the above mentioned conditions has to be strictly interpreted and the burden of proof as regards the fulfilment of these conditions lies with the Member State invoking the derogation.

It should also be noted that the use of a public procurement may have consequences for compliance with EU State aid rules. In particular, I would invite you to examine the Commission Decision C-16/08 of 28 October 2009⁷ that you refer to in your letter, which assessed whether ferries services across Scotland constituted State aid by reference to the four “Altmark” conditions (see point 166). The fourth Altmark condition can be considered to be met where the undertaking is shown via a public procurement procedure.

⁵ Ibid, para.33

ANNEX C

FERRY SERVICES PROCUREMENT POLICY REVIEW TERMS OF REFERENCE

Purpose

The Policy Review will examine the future approach to the procurement of the Scottish Government's lifeline ferry services, in accordance with European and domestic legislation.

The Policy Review's primary purpose is to ensure the continued provision of safe, efficient and effective ferry services that meet the needs of island and remote rural communities and which provide value for money to the taxpayer.

Remit

The Policy Review will identify and consider in detail the legal, policy and financial implications relevant to the procurement of ferry services, including:

- the possible application of the Teckal exemption
- the requirement to ensure compliance with State aid rules, and
- all other legal, policy and financial implications relevant to the procurement of ferry services in future

The review will examine alternative models to the current organisational structures and governance of David MacBrayne Ltd and Caledonian Maritime Assets Ltd. within the context of meeting the conditions of Teckal and State aid rules.

The review will produce a report on the sustainable provision of ferry services in future. It will be made available to Parliament and be published on Transport Scotland's website.

Structure and Process

The Minister for Transport and the Islands will oversee the review which will be conducted by officials with the relevant expertise from across Transport Scotland and Scottish Government, including:

- Transport Scotland Ferries Unit
- Transport Scotland Analytical Services
- Transport Scotland Finance
- Scottish Government Finance
- Scottish Government Legal Directorate
- Scottish Government European Union Office
- Scottish Government State aid Unit

- Scottish Government Procurement and Commercial Directorate

The review will be structured around three workstreams:

- Legal – including such elements as consideration of the Teckal exemption, the Maritime Cabotage Regulation and State aid rules
- Policy – including such elements as operational implications, consideration of future operating models, key stakeholder engagement and implications of Brexit
- Financial – including such elements as consideration of costs, benefits and value for money associated with procurement of ferry services in future

Stakeholder Engagement

The review will engage closely with stakeholders through a series of key stakeholder reference groups and bi-lateral meetings, including:

- Regional Transport Partnership Ferry User Groups involving local authority, community, business and tourism stakeholders
- Constituency MSP and Transport Spokespersons
- Trade Unions
- European Commission
- Existing Public Service Contract Operating Companies

Provisional Timeline

The requirement to consider complex and detailed legal, policy and financial information means that the outcome of the review cannot be prejudged. Emerging findings could influence both the direction and timeline of the review.

A provisional timeline is presented for information purposes only at this early stage in the review process and may be subject to amendment as the review progresses.

Key Milestones	Provisional Timeline
Key Stakeholder engagement	February – June 2017
Consideration of legal, policy and financial implications	February – August 2017
Publication of Report	Autumn 2017

ANNEX D

Meeting with European Commission on Scottish Ferries Procurement Review

DG MOVE, Rue de Mot 28, room S36

Friday 28 April 15:00

Meeting Note

Transport Scotland began the meeting by thanking the Commission services for taking the time to meet and by giving an overview of the importance of ferries to Scotland, including the scale of the coastline, number (93) of inhabited islands with a population of around 100,000 served by over 30 vessels at a cost of £200 million per annum, making Scotland's ferry services a unique part of the transport system in the UK and possibly one of the largest subsidised ferry services in Europe. He also illustrated the lifeline nature of services in Scotland for the economies of the island communities that they serve. As a result these issues have had a significant profile at both political and operational level.

Nearly all political parties in Scotland have indicated they have an ideological preference for these services not to have to be tendered. However, all parties when in Government have agreed, based on the legal requirement that public service contracts shall be attributed on non-discriminatory basis in respect of all Community shipowners, that these services would be opened up to competition and so, since devolution in 1999, this has been the approach that has been taken by successive Governments.

Last year the Scottish government approached the Commission with a question on whether the Teckal exemption could be applied to the maritime transport services. The Commission replied that, although the Cabotage Regulation does not foresee a possibility of an in-house operator, there is no explicit rule that would forbid the application of this option to maritime cabotage. However, since this is a derogation from the basic principles of the Treaty, the Teckal conditions have to be interpreted strictly. The Commission also stressed that its opinion has no binding effect and that only the European Court is competent to provide authentic interpretation of EU law.

Following the clarification from the Commission, the current Minister for Transport has commissioned a review of ferry procurement in Scotland to determine the optimum approach to the provision of ferry services in Scotland. The review will be conducted without prejudice to ideological preference and will be rooted in evidence based consideration of the following policy, financial and legal questions;

1. Whether the Teckal exemption is capable of being applied to the provision of ferry services;
2. Whether it is possible to apply the exemption and to still fulfill State Aid and EU Procurement requirements;
3. Whether and how value for money for the public purse will be ensured if providing ferry services without a tender on the open market; and,
4. The wishes of the communities to whom these services are so vital.

The Commission services thanked the Scottish Government for the discussion paper in advance of the meeting and indicated their understanding of the sensitivity of the issues at stake. They indicated that there are several aspects to the issue including: the justification for imposing public service obligations or concluding public service contracts; the mode of the attribution of a public service contract to a provider; and the definition of a proper amount of compensation for the service. The point of departure is the principle that the market should be open to all operators without restrictions, which is a fundamental concept in the Maritime Cabotage Regulation. The public service has to be clearly defined and can be introduced only if the public authorities can demonstrate that the public service need (or part of it) cannot be met by the private operators. Providing a robust market study and evidence supporting the scope of the public service is particularly important on routes where currently there are private operators.

In addition to the principles of the Maritime Cabotage Regulation, the procedure for entrustment of the public service has to comply with public procurement rules. Recourse to a public tender process provides a simple solution to the questions of non-discrimination in the attribution of the service and of determination of appropriate compensation.

The discussion moved on to evidence of public services and requirement for subsidy, clarification of ownership models and control and whether there are other, similar examples to Scotland.

Transport Scotland indicated, in relation to the evidence base for public subsidy, that it has been very clear from recent tenders in Scotland that the required services would not have been provided without the subsidy being available. The most recent tender attracted 2 bids, one from our “in-house” operating company and one from the private sector, which would not have happened without public subsidy being available.

On State Aid issues the Commission services noted that the rules on Services of General Economic Interest (SGEI) can be used to provide operating aid for the day to day running of ferry services, where there is a recognition that these services would not otherwise be provided, and drew attention to the fact that the 2012 SGEI package also applies to maritime transport. The rules are sufficiently broad to allow Member States to meet their objectives, provided that the relevant compatibility criteria (including genuine need for the service and compliance with sector-specific legislation) are met. Alternatively, Member States can set up their compensation in compliance with the four conditions set out in Altmark, in which case the compensation is not considered State aid. However, there are challenging conditions to be met in relation to Altmark, which imposes strict conditions aimed *inter alia* at limiting the compensation granted to the costs which an efficient provider would incur in performing those obligations.

A competitive tender is the best way to ensure that (subject to all other conditions being met) the subsidy provided is not State aid, as there is no advantage to the winning company which it would not gain in the normal market. It was also made clear that this was much more straightforward than being able to meet the second option set out in the fourth Altmark criterion, which states that where there is no tender

process, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the necessary means, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

The challenge in applying the benchmarking provision under the fourth Altmark criterion is how to prove that the undertaking against which you are benchmarking is “efficient”. The burden of proof is high and efficiency is difficult to prove in a vacuum. On this basis, most people choose to run a tender in order to ensure that the service is provided at the least cost to the community. It should also be noted that under the SGEI rules there is no restriction on the provider making a reasonable profit in return for the provision of the services in question. The Commission services reiterated that Member States always have the right to notify an aid measure for legal certainty and are welcome to approach the Commission services informally to get a first indication of whether a planned measure is compliant with the relevant rules.

Transport Scotland indicated that requirements for benchmarking and whether that is a realistic avenue to pursue would be considered, as well as whether the recent tender that had been run could serve as a useful starting point for benchmarking, alongside a wider range of critical questions including whether it is possible to apply Teckal in respect of in-house operating company? Transport Scotland indicated that, so far as the two control and function tests applicable to Teckal go the Scottish Government is confident that the functions test is met, however there is less clarity about whether the control test is met in respect of the current structures and what changes might be necessary to the company to meet the control test. Transport Scotland outlined the public ownership arrangements that exist in Scotland and offered to send further details on this to the Commission services, and invited the Commission services to give their views on the application of Teckal and relevant case law.

The Commission services explained that the Teckal exemption requires the fulfilment of three conditions, initially set by the case-law and now codified in the new public procurement Directives. Firstly, the public (controlling) authority needs to have a control over the controlled enterprise similar to that it has over its own departments; 80% of the activity of the controlled entity must be carried out on the basis of an entrustment by the controlling authority; no direct private capital participation in the controlled entity is permitted.

Concerning the “similar control” condition, the Commission colleagues were very keen to have further detail on the current structures and what potential structures to meet the control function might look like. The Court of Justice has not provided precise indications on the exact elements which constitute similar control. In order to get a full picture of whether the control condition is fulfilled it is therefore important to take into consideration all potentially relevant circumstances. In principle, as indicated in the Directives, similar control exists where the controlling authority has decisive influence over the strategic objectives and significant decisions of the organisation. Some of the most relevant elements that are usually looked at are how and by whom the decision-making bodies of the controlled entity are appointed, what are their powers, whether the public authority has control over the appointees as well as to what extent that

enables the public authority to control the entity. In general, details on the corporate structure and the link between decision making bodies and Government would help in assessing the situation.

Transport Scotland sought clarity on the question of whether Teckal was applicable to the Maritime Cabotage Regulation. Until the recent letter from the Commission, this had not been an avenue that had been explored as it had never, in the Scottish Government's previous interpretation of the guidance, been applicable to the Maritime Cabotage Regulation.

The Commission services responded by saying that the guidance excludes a direct award of a contract to a private operator. An in-house operator which fulfils all the necessary conditions of ownership, control and function is not considered an external provider, but an integral part of an administrative structure of a public authority. Such an internal provider is entrusted to deliver services to the competent public authority(ies). Such entrustment could be arranged without a public tender.

The Commission services informed that to date there are no known examples of in-house operators in the maritime transport sector. The Commission services noted that, whilst this option might appear attractive, the public authority is not released from the obligation to demonstrate that there is a real need for a public service on each route considered and that this need cannot be fulfilled by the market. This would mean that the scope of operations of the in-house operator and the elements that actually require state funding would have to be precisely defined. The Commission services also recalled that, in particular on routes with current or potential private operators, the performance of public service maritime operation by an in-house provider could be subject to a complaint.

The Commission services sought clarity on whether all services currently awarded would be bundled. Scottish officials explained that the bundling of services has been the case with the Clyde and Hebridean Ferry Services which includes a number of routes ranging from 120 metre vessels serving Stornoway and Ullapool to 30 metre vessel undertaking 15 minute journeys. The bundling of services, as is common practice, was to make the services more attractive to potential commercial suppliers and to minimise the amount of subsidy that might be required to support the full breadth of services. Bundling also allowed for operational flexibility and redeployment of vessels when necessary.

From the Commission services' perspective, the important elements are understanding whether there are routes within the bundle that are profitable. The arguments in favour of bundling have to be weighed against the services provided and that can become problematic if you are bundling profitable and non-profitable services. There is a need to look at the full scope of activities including conducting a market study on what would be considered a public service need and the capacity of the market to meet those needs in the absence of public intervention. State Aid would also require the same questions to be asked and answered. Under the rules on Services of General Economic Interest bundling is not necessarily a problem, provided that there is clear evidence to support the need to have a bundle. However, it must always be kept in mind that relevant sector-specific rules must also be complied with.

Transport Scotland responded that the [Ferries plan for Scotland](#) contained much of the information that may need to be provided, having undertaken a needs based assessment of each of the routes which was then used as the basis for specification of services. Experience in Scotland has been that no private operators have wanted to enter these routes, or that the private sector would step in if there was no public service available.

Transport Scotland thanked the Commission services for their helpful clarifications and outlined the further work underway, including finalising legal advice on Teckal and State Aid issues, in advance of final recommendations. Officials expressed a desire to keep a dialogue with the Commission going during this period and invited Commission officials to Scotland where they would be able to see and hear first-hand from communities some of the challenges and issues pertinent to the review. Officials also indicated that the Minister would be keen to both write and to visit Brussels for a meeting at some point in the future.

ANNEX E

STUC first stage response to Scottish Government Ferries Review

11 July 2017

Introduction

The STUC and our affiliated trade unions with membership in the maritime sector have long held the view that the tendering of ferry services is detrimental to local economies and to workers as well as posing potential long term risk to the maintenance of effective lifeline services. Moreover, it has been our strong view that the EU regulations under which successive Scottish Governments have tendered contracts for these services are not in the long term interests of either passenger services or workers' terms and conditions of employment on lifeline ferries.

Since 2005, successive Scottish administrations have taken a view that they have no option but to tender these contracts, in order to comply with EU law and to avoid any potential for legal action to be pursued against it by private operators.

In February 2017, the Scottish Government announced that the European Commission had accepted the Scottish Government and RMT's joint case for considering an exemption under Teckal case law for public contracts for Scottish ferry services from re-tendering requirements in EU Maritime Cabotage Regulation 3577/92. This joint position was based on the legal advice RMT received in November 2015.

In this context, we strongly welcome the Scottish Government and the current Transport Minister's proactive pursuit of the legal means to permanently provide Scottish ferry services through an in-house operator. The transport minister has stated that should the government conclude that it is possible to apply the Teckal exemption and satisfy State aid rules then "(it) would be minded to provide ferry services through an in-house operator, taking account of the communities they serve."

By pausing the current tendering exercises for the next contracts for Gourock-Dunoon and Northern Isles ferry services, the minister has signalled serious intent. This is positive news. Trade unions, backed up by over a decade of high quality academic research and legal opinion, are confident that the case for an in-house operator is strong. Moreover a number of major developments over the past two years have added significant weight to that case. This paper examines the new developments as well as relying on previous academic research which remains relevant today.

Ferries Review process

The Scottish Government Ferries Review identifies three main streams of inquiry:

- Legal – including consideration of the Teckal exemption, the Maritime Cabotage Regulation and State aid rules
- Policy – including operational implications, consideration of future operating models, key stakeholder engagement and implications of Brexit
- Financial – including consideration of costs, benefits and value for money associated with future procurement of ferry services, vessels and infrastructure enhancement.

The STUC and ferries unions has no difficulty with the suggested lines of inquiry provided that in stream three (Financial) it is understood that the benefits to be

assessed include the wider economic and social benefits of stable and reliable employment and services, underpinned by the Scottish Government's Fair Work objectives. The trade union view remains firmly in favour of public ownership and operation of lifeline public ferry services, supported by public investment as the model to deliver those long term economic and social benefits to workers, passengers, communities and taxpayers.

Legal advice

As stated earlier, the key recent development is the legal advice obtained by the RMT which prompted the Scottish Government to review its existing legal advice on the necessity for public contracts for Scottish ferry to be subject to the requirements in EU Maritime Cabotage Regulation 3577/92 for regular commercial competition for these public contracts.

The STUC recognises that the Government will take its own legal advice on this and other aspects of the issue. It is unfortunate that by general (though not absolute) convention, we will not be in a position to analyse this advice during the course of the Ferry Review.

Given the complexity of EU law and the history of ferry contract tendering in Scotland, there is every possibility that the legal advice whichever way it leans will contain a number of caveats. Legal advice to government however at all levels is notoriously risk averse. It is therefore regrettable that the general public, whose taxes are spent on transport provision and whose name the final policy decision will be taken, will not have the opportunity to assess all of the factors which will ultimately contribute to the final decision.

Audit Scotland and the current Clyde and Hebrides Service

The STUC and affiliated ferry unions are confident that the Audit Scotland report into ferry services, due out in the Autumn will back the assertion made by Jeanette Findlay and Dania Thomasⁱ that the foundation on which the case for public ownership is built is the

‘... largely undisputed proposition that the existing service in the Clyde and Hebrides – the largest of the bundled routes - is a well-run, efficient and cost-effective service provided by the public-sector operator, CalMac (Findlay, J, 2005, 2010, 2016).’

The fact that the Clyde & Hebrides (CHFS) contract, the largest of the three public ferry contracts is operated by a publicly owned and highly successful company, providing a range of socio-economic benefits is the cornerstone of our position. Had the CalMac bid not been successful in securing the 2016-24 CHFS contract, Scotland's publicly owned ferry operator, with a long history of quality provision for island communities would have effectively ended in Scotland, with only the joint operation of a Ministry of Defence contract in Southampton the sum total of its maritime activity. As Prof. Neil Kay has argued, the public sector is only ever one unsuccessful tender away from oblivion and the introduction of a private monopoly: *‘CalMac will have to defend its right to run the network every six years and if it loses just once in the tendering process this will effectively eliminate it once and for all as an operator -*

or at least as an operator with the resources and capabilities necessary to run such a network.

With clearly defined capital costs, specified service levels and effective state regulation, the essential competitive advantage of one provider over another can only be gained by cutting labour costs. Whilst this does not translate to cutting jobs, Jeanette Findlay's argument captures this fundamental problem: 'vessels, timetable and staffing are largely pre-determined and any cost-saving could only come in terms of a deterioration in the terms and conditions of on and off-shore CalMac employees.' This applies to all three public sector ferry contracts.

Thus a tightly specified tender process, in which the Scottish Government negotiates in private with all bidders, encourages bids that are based on reducing pay or other terms and conditions of ferry staff. As argued later, this runs contrary to Fair Work objectives and potential community benefit.

It is of course possible and desirable to secure terms and conditions for staff and collective bargaining rights for trade unions in all public contracts for ferry services. However, if the purpose of any tendering process is to seek best value, it is entirely reasonable that Government should choose not to embark on a costly tendering process in the first place. This is particularly the case if the long-term consequence of tendering is the loss of the public sector operator (including the operator of last resort role) and the creation of a private sector monopoly.

New developments

Putting aside past disagreements between various governments and trade unions about the interpretation of EU law and regulation, it is freely admitted that a number of significant developments – legal and political have taken place since the Scottish Government's decision to re-start the tender process for the 2016-24 CHFS contract. Of major significance is the legal advice obtained by the RMT and the view from the European Commission that the Teckal exemption is a valid line of legal argument. This is dealt with later.

There are also three other factors which have emerged. This paper does not argue that any of these of themselves are a silver bullet for the case for public provision without tender. However, taken together they constitute very important context for a decision which is not just technical but political in nature. These are; the emergence of a clearly defined Fair Work agenda, the clear and increasing public support for public ownership and the referendum decision to leave the EU.

Fair Work

The Fair Work Framework, fully supported by the Scottish Government was published in 2016. It states that:

Our vision is that, by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society.

The Fair Work Framework states that fair work is delivered through five pillars, security, respect, opportunity, fulfilment and effective voice. Of particular importance relating to ferry service provision are the pillars of security and effective voice. *Security* includes security of employment and pay. Given the importance of a public sector ferry operator to the provision of lifeline passenger services, workers and local communities have a major stake in ensuring that workers are confident in the knowledge that their jobs are guaranteed and that the terms and conditions of employment will not be subject to detriment. Given the view articulated earlier that tendered contract awards based on 'best price' encourage a downward pressure on such terms and conditions, the case for publicly owned provision without tender is strong.

The Fair Work Framework, in a reflection of wider Scottish Government policy, identifies payment of the Scottish Living Wage as a key element of workers' job security.

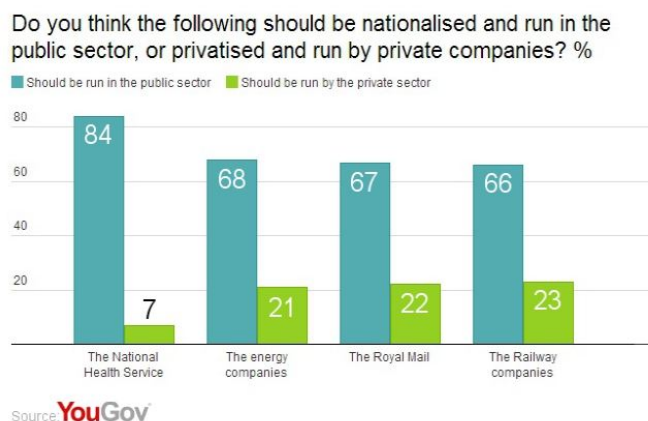
The STUC and the Scottish Government have a differing view about whether the Scottish Living Wage can be delivered through the current procurement regulations. The current position is that the Scottish Government and the agencies it most closely influences (NDPBs, NHS Scotland etc.) pay the Scottish Living Wage as a matter of government policy. Most recently, the Scottish Government's decision to re-negotiate the charter for two Seatruck vessels that form part of the current public contract with Serco for Northern Isles ferry services has seen the National Living Wage being paid to seafarers who were previously earning a basic rate below the National Minimum Wage.

Whilst we share the Scottish Government's view of the Living Wage as important progress in public procurement, there can be no doubting the STUC and ferries union position in supporting the collectively bargained rate of pay and terms of condition of employment, particularly for seafarers in the Scottish ferry industry. It is essential that public funds do not go towards poverty wages and it is equally important for existing public contracts, such as those in the ferry industry are not undermined by the Living Wage.

Clearly the most effective way of delivering this in the ferry industry – particularly given the Government's reluctance to mandate payment through procurement – is through direct government employment. The STUC and ferry unions' position here chimes with another key Fair Work strand - employee voice, through which the Government approves collective bargaining agreements with recognised trade unions. Whilst there are many private sector companies which recognise unions, coverage is far more widespread in the public sector and trade union membership amongst Scottish ferry workers is particularly strong. The same cannot be said of private sector employers, particularly in the shipping industry. Once again, ending re-tendering and securing public sector delivery for the long term is the most effective way to guarantee basic trade union rights are observed and respected.

Public support for democratic ownership

Recent evidence suggests a continuing high level of public support for direct delivery of services and for public ownership more generally.



Public ownership and delivery in transport is a highly popular policy as reflected in the views of the Scottish public on Abellio Scotrail and the current Scottish Government's thinking on developing a public sector bid (UK legislation currently precludes full nationalisation). Indeed, the most recent stage reached in these discussions specifically raises the prospect of using CalMac Ferries to launch a public sector bid for ScotRail. We would simply point out at this stage that we would be in an invidious position if we were to argue for an end to tendering of Scottish ferry contracts at the same time as the Scottish Government was using the public sector ferry operator to legitimise the equally flawed and inherently pro-private rail franchising process.

Support for public ownership and operation of ferry services was high during the CHFS tender process, which ultimately resulted in CalMac being awarded the contract. We also believe that public ownership and the direction of public investment in Scottish ferry services needs to be effectively applied to the vessels and harbour and ports infrastructure. On vessels, we need to move away from the complicated and expensive charter arrangements we still see on the Northern Isles contract and there is also a strong case to be made for Caledonian Maritime Assets Ltd procuring additional tonnage to deploy in the event of vessel breakdown or other incidents on any of the three public ferry contracts. The diversity of the vessel profile, particularly on the CHFS network might make this difficult but it is by no means impossible. We look forward to getting into the detail of this aspect of the Ferry Review with Transport Scotland and other Government officials.

Clearly, the widespread support for public ownership does not itself make legal the case for exempting Scottish ferry contracts from competitive tendering. But this high level of public support provides important political context to the Scottish Government's Ferry Review.

Brexit

The UK Parliament's Article 50 vote suggests that on the balance of probabilities Scotland will exit the EU. However, the terms of Brexit and its impact on procurement law and the stipulations of any new trade agreements are hard to predict. As Findlay makes clear (Fraser of Allander Institute Economic Commentary, March 2017) EU regulations are likely to apply in the UK for at least two years and probably longer.

The STUC accepts that it is not possible to base decisions on ferry contracts on assumptions, in particular that EU Regulations and State Aid Guidance will not apply in the future or that similar rules will not replace them.

However, it is equally the case that in a complex and changing landscape, and with potentially competing views on the legality of specific actions, it is far from certain that legal action from the EC or private sector ferry companies would be taken against the Scottish Government in the event of David MacBrayne operating a public ferry contract that had not been subject to the competitive tendering process.

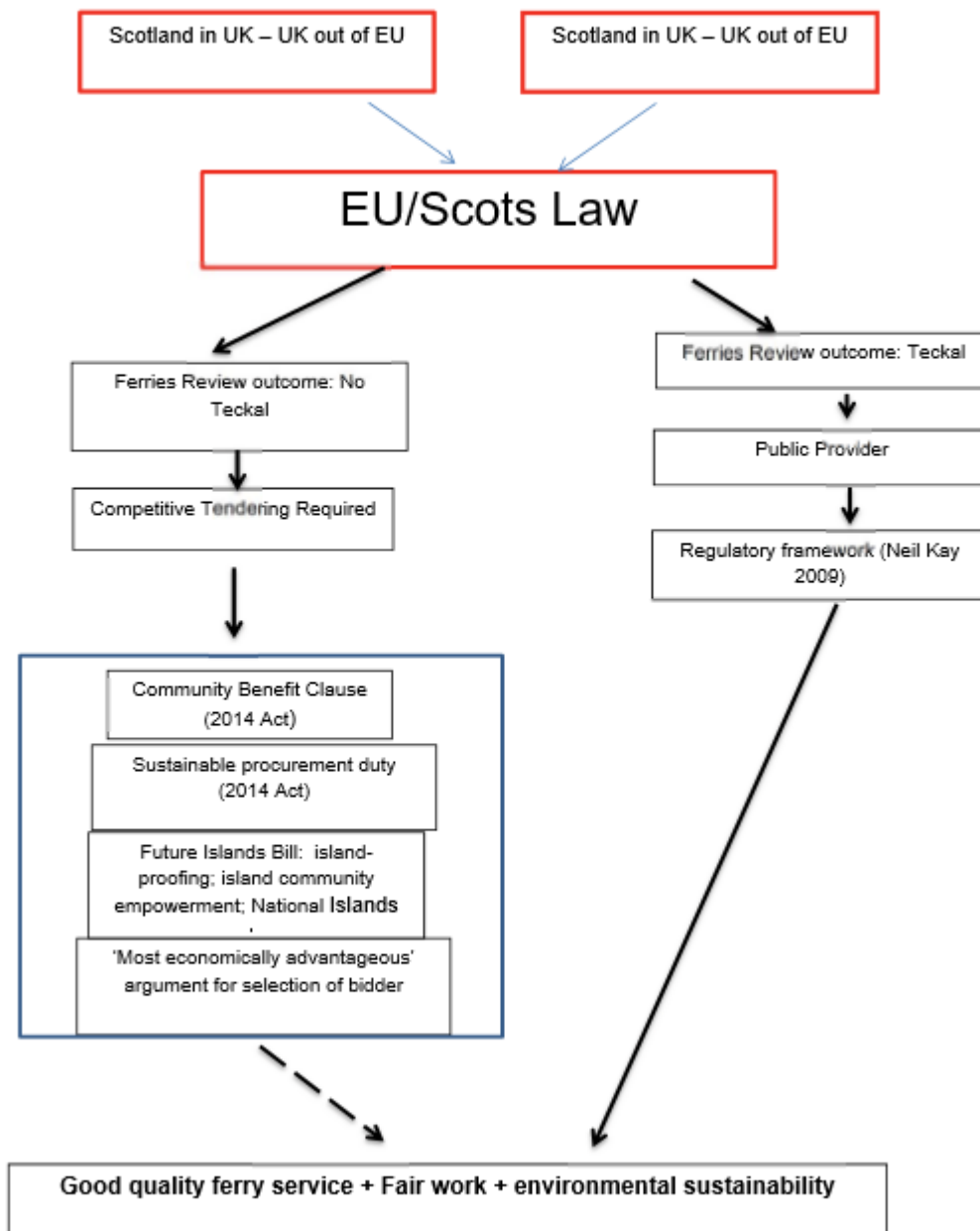
Findlay (Fraser of Allander bulletin March 2017) outlines two potential paths in relation to tendering. Each recognises that EU and Scots law will continue to be the determining framework guiding the review. Whilst the situation might change for future contracts, the key determining factor in relation to the two most imminent contracts (Gourock-Dunoon and Northern Isles) is whether a Teckal exemption can be applied.

The STUC is strongly of the view that, whilst Brexit alone cannot be used to argue for non-tendered public provision, neither should it be used to argue against it. If it is judged that a Teckal criteria exemption can be applied to these contracts, Brexit will not matter. Indeed, it can be argued that it would reduce the chance of any private corporation legal action or negative EC reaction.

The ferry unions and STUC are clear in our view that the application of Teckal to the Northern Isles contract (NIFS) would see the operation returned to the public sector operator, David MacBrayne from Serco NorthLink who hold the existing contract. The Scottish Government is likely to extend the existing Serco NorthLink contract in light of the Ferry Review, so if Teckal is found to apply, this return to the public sector operator would be completed in late 2018.

For the record, in the event that Teckal is not found to apply, STUC and the ferry unions will mount a concerted 'Nationalise NorthLink' campaign during any re-started tender process for the next NIFS contract. Similarly, we will also mount a campaign for the Gourock-Dunoon contract to be awarded to the incumbent operator, CalMac subsidiary Argyll Ferries and for the restoration of freight services as part of that contract.

Fraser of Allander Institute Economic Commentary, March 2017



The 1992 Regulation and State Aid

Prior to the development of Teckal case, the view of Government appeared to be that the effect of the 1992 Regulation required Member States to create a competitive market – essentially to tender services.

The STUC has never accepted this position and much of that view is supported by the RMT legal advice. Whilst the RMT legal advice is in the context of the tender for the

Clyde and Hebrides contract, a great deal of the content of the opinion is relevant to the provision of services for other routes. This is particularly the case with the control test under the Teckal exemption criteria as discussed later.

As stated in the RMT legal advice *“nothing in the 1992 Regulation requires Member States to create that kind of competitive “market”. As in the case of the closely analogous 2007 Rail Member State are perfectly entitled to perform the service themselves without recourse to commercial operators. The obligations of non-discrimination and transparency designed to ensure competitive conditions in the award process (rather than in a wider commercial market) only apply where the authorities choose to go to the market to procure the service.”*

The RMT legal advice recognises that the 1992 Regulation is a liberalising measure and unambiguously rejects the view that it prevents states providing services through its own public authorities

“... the question is whether [the 1992 Regulation] goes further, acting as a divestment measure prohibiting a State from carrying on activities falling within Article 4 through its own public authorities. It seems to me impossible to read the Regulation in that way. The rules in Article 4(1) indicate what is to happen where a Member State enters into a public service contract with, or imposes public services obligations on, a shipping company. It does not stipulate that the only way in which the State can bring about the operation of the services in question is by entering into such a contract or imposing such obligations. The State may, in other words, simply provide the service itself. If it does so, the rules in the second indent of Article 4(1) are simply never engaged.”

A similar view is taken in relation to other state aid rules.

Thus the central question is whether Teckal applies.

“In my view, however, the Teckal exemption is capable of applying to the operation of services governed by the 1992 Regulation. On the information available to me, the relationship of the operating company (CalMac Ferries Limited) with the Scottish Ministers, and the nature of its activities, satisfy the control test. On the available information about the relevant activities, the functional test also appears to be satisfied.

“On that basis, that neither the 1992 Regulation nor the State aid rules oblige the Scottish Ministers to hold a competitive tendering exercise before awarding that company a public service contract for the Clyde Hebrides services.”

The Teckal exemption

The clear conclusion of the RMT legal advice is that in principle there is no impediment to the application of the exemption to maritime passenger services. This is a general conclusion which can be applied to all public contracts for ferry services in Scotland.

“... I have no difficulty in concluding that the Teckal exemption is in principle capable of applying to maritime passenger services falling within the 1992 Regulation.”

The two key Teckal tests centre on the control and function of the public body being considered for exemption. The analysis of whether CalMac falls within the control and function test clearly concludes that it does.

In relation to the control test, the argument is laid out in paragraphs 50-57 of the legal advice and it is unambiguous in its conclusion that it does.

Whilst recognising that the function test is somewhat more complicated given that the application relates to service concessions, the advice concludes:

There were formerly some speculative comments in the CJEU's Caselaw as to whether Teckal could apply at all to service concessions. Any such doubt is resolved by the 2014 round of legislation: see in particular Article 17 of the Service Concession Directive. That provision, when it comes into force in Scotland, will prescribe slightly different criteria according to the particular nature of the concession arrangement in question, and where it does impose a functional test it is not in quite the same terms as the judge developed version of that test: see e.g. Article 17(4)(c): "the participating contracting authorities or contracting entities perform on the open market less than 20 % of the activities concerned by the cooperation".

Organisational Structure and Governance

The advice was accepted in broad terms by the Scottish Government and the European Commission, making it clear that a Teckal criteria exemption is feasible. It is also recognised that the organisational and governance structure of public service operators must be carefully designed in order to comply.

We support the aim of the Ferries Review to examine alternative models to the current organisational structures and governance of David MacBrayne Ltd and Caledonian Maritime Assets Ltd. within the context of meeting the conditions of Teckal and State aid rules. In fact, this is a necessity if the function test of the Teckal exemption is to be satisfied.

The STUC and our affiliated trade unions with membership in the maritime sector look forward to engaging further with the Scottish Government on this, as well as providing input on the design of an appropriate regulatory regime, including that applied to David MacBrayne's involvement in the international ferry market.

Conclusion

There is now a very clear opportunity for progress to be made in achieving publicly owned and operated ferry services, free for the long term from the inhibiting and distorting demands created by competitive tendering. In so doing, the Scottish Government would be guaranteeing a positive future for the communities served by lifeline ferries and those who work in the service. Since the point in 2015 when the RMT secured the legal advice referred to in this paper, the Scottish Government, European Commission and trade unions have moved much closer to a consensus on the potential for in house provision without tendering. The STUC has welcomed the

positive attitude adopted by the transport minister and is optimistic that this positive approach will be matched by Transport Scotland officials and the Government's legal advisers in developing a viable path to public provision.

Aside from the important purpose of designing a governance and regulatory regime which will match the requirements of Teckal exemption, the government can point to the central importance of delivering on fair work and community objectives. It can make clear that whatever statutory framework emerges as a consequence of Brexit, that it is committed to democratically owned and publicly operated ferry services.

End of STUC first stage response to Scottish Government Ferries Review



**TRANSPORT
SCOTLAND**

CÒMHDAHAIL ALBA

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Zetland Transport Partnership

Agenda Item

7

Meeting(s):	ZetTrans	21 February 2018
Report Title:	ZetTrans Business Programme 2018/19	
Reference Number:	ZTP-03-18-F	
Author / Job Title:	Secretary to ZetTrans/Executive Manager – Governance and Law	

1.0 Decisions / Action required:

- 1.1 That the Partnership **RESOLVES** to comment on and approve the attached Business Programme for 2018/19.

2.0 High Level Summary:

- 2.1 The purpose of this report is to present an updated Business Programme for ZetTrans for the period ending March 2019.

3.0 Corporate Priorities and Joint Working:

- 3.1 In order to fulfil the statutory duties with regard to the functions of ZetTrans, and in order to meet public governance principles, ZetTrans must make sure its Business Programme supports the Council's role in the planning and direction of services to meet the needs of our community, to ensure that the priorities of the Partnership are being monitored, and to set business in accordance with local and national reporting frameworks.

4.0 Key Issues:

- 4.1 The Business Programme for 2018/19 is attached as Appendix 1 and is presented to the Partnership for approval. The Business Programme is intended to organise the business of the Partnership in accordance with the various administrative requirements to present key information, such as performance indicators, budget setting and outturn reports, as well as the statutory requirement to consider draft and final Audit of Account reports. The Business Programme enhances these requirements by publicising the plans for decision making and other public reporting requirements, in keeping with the principles of good governance.
- 4.2 The Business Programme and schedule of meetings was approved on 14 December 2017 (Min Ref. 40/17) with the timescales for ongoing and future projects and studies in mind.
- 4.3 The updated Business Programme will be presented regularly and will serve as an indication of the business that has been conducted and is yet to be undertaken during the year.

5.0 Exempt and/or confidential information:	
5.1	None.
6.0 Implications	
6.1 Service Users, Patients and Communities:	The Business Programme will provide important information for stakeholders and communities as to the planned business throughout the year.
6.2 Human Resources and Organisational Development:	None.
6.3 Equality, Diversity and Human Rights:	<p>a) There are no direct impacts on equality, diversity or human rights with regard to approval of the Business Programme, although individual items will have to have regard to those in terms of any outcomes and associated risks.</p> <p>b) The terms of this report does not require an Equalities Impact Assessment.</p>
6.4 Legal:	<p>a) There are no specific legal requirements however this report is good practice in developing and monitoring the Partnership's business.</p> <p>b) There are no direct legal impacts with regard to approval of the Business Programme, although individual reports will have to have regard to current and impending legislation and the impact these may have on ZetTrans, the Council, and the services which the Partnership delivers, in terms of outcomes and legal risks.</p>
6.5 Finance:	The proposals in this report do not have any direct financial implications, but indirect costs may be avoided by optimising member and officer time.
6.6 Assets and Property:	There are no implications for major assets and property. Where possible, all meetings of the Partnership will be held in Shetland Islands Council premises and that such costs will therefore be covered by the Council.
6.7 ICT and new technologies:	There are no implications for ICT and technologies. Where possible, all meetings of the Partnership will be held in Shetland Islands Council premises and will have facilities to allow members to attend meetings remotely. Any associated costs will be covered accordingly by the Council.
6.8 Environmental:	There are no environmental issues arising from this report.
6.9 Risk Management:	The risks associated with setting the Business Programme are around the challenges for officers meeting the reporting timescales required, and any part of the business programme slipping and causing reputational damage to the Partnership.

	Equally, not keeping to the dates set would result in decision making being unplanned and haphazard.
6.10 Policy and Delegated Authority:	<p>(a) Maintaining a Business Programme will ensure the effectiveness of the Partnership's reporting framework, and its planning and performance management, by monitoring and reviewing the achievement of key outcomes and objectives as set out in its strategic and operational plans.</p> <p>(b) The Partnership has authority to approve its own Business Programme for 2017/18, as set out in this report.</p>
6.11 Previously considered by:	The Business Programme for 2018/19 was considered by the Partnership at its meeting on 14 December 2017 (Min. Ref. 40/17).

Contact Details:

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Finalised: 16 February 2018

Appendices:

Appendix 1 - ZetTrans Business Programme 2018/19

Background Documents: None



ZetTrans - Meeting Dates and Business Programme 2018/19 as at Friday, 16 February 2018

D= Delegated R=Referred			
Quarter 1 1 April 2018 to 30 June 2018	Date of Meeting	Business	
	26 April 2018 10am Ordinary	Lead Officer Report (Incl SETF Minute 21 March 2018)	
		Shetland Transport Strategy Refresh – Final Draft	
		Inter-Island Air Services – Emerging Issues	
		HIAL Air Traffic Management Strategy 2030	
		Business Programme 2018/19	
	26 June 2018 3pm Unaudited Accounts & Ordinary	Unaudited Accounts 2017/18	
		Shetland Bus Network Usage Report	
		Inter-Island Air Service – Outline Business Case	
		Lead Officer Report (Incl SETF Minute 7 June 2018)	
		Business Programme 2018/19	
Management Accounts – Draft Outturn			
D= Delegated R=Referred			
Quarter 2 1 July 2018 to 30 September 2018	Date of Meeting	Business	
	21 September 2018 3pm Final Accounts Only	Management Accounts – Quarter 1	
		Deloitte - Annual Audit Report on 2018/19	
Quarter 3 1 October 2018 to 31 December 2018	Date of Meeting	Business	
	4 October 2018 10am Ordinary	Lead Officer Report (incl SETF Minutes - 12 September 2018)	
		Business Programme 2017/18	
	8 November 2018 10am Ordinary	ZetTrans Draft Annual Report 2016/17	
		Transport Strategy Refresh	
		Lead Officer Report	
		Business Programme 2017/18	
	Date of Meeting	Business	
	13 December 2018 2pm Ordinary	Management Accounts – Quarter 2	
		Business Programme 2017/18	
Lead Officer’s Report			



ZetTrans - Meeting Dates and Business Programme 2018/19 as at Friday, 16 February 2018

Quarter 4 1 January 2019 to 31 March 2019	Date of Meeting	Business	
	22 February 2018 10am PPMF & Ordinary	Lead Officer Report (incl SETF Minutes 5 December 2018)	
		2018 North Isles Ferry Services Contract	
		Business Programme 2018/19	
		Management Accounts – Quarter 3	

Planned business still to be scheduled - as at Friday, 16 February 2018

- Project Business Cases
- Code of Corporate Governance and Annual Review
- 2018 North Isles Ferry Services Contract
- Transport Strategy Refresh
- Bus Network Overview
- Performance Indicators 2017/18 – Quarter 4
- Performance Indicators 2018/19 – Quarter 1
- Performance Indicators 2018/19 – Quarter 2
- Performance Indicators 2018/19 – Quarter 3

Updates on the following 4 items will be provided within the Lead Officer's report as matters progress:

- Smart Integrated Ticketing
- National Transport Policy/Strategy

tbc = to be confirmed

PPMF = Planning and Performance Management Framework meetings – no other business to be added

Budget = Budget setting meetings – other items can be added if time permits

Ordinary = Ordinary meetings – other items can be added

Special = Special meetings arranged for particular item(s) – other items can be added if time permits

END OF BUSINESS PROGRAMME as at Friday, 16 February 2018



Zetland Transport Partnership

Agenda Item

8

Meeting(s):	Zetland Transport Partnership	21 February 2018
Report Title:	Lead Officer's Report	
Reference Number:	ZTP-08-18-F	
Author / Job Title:	Michael Craigie – Lead Officer	

1.0 Decisions / Action Required:

That the Partnership **RESOLVES** to: -

- 1.1 Approve the expenditure of up to £200k on the purchase and installation of new Smart Ticketing enabled hardware on public bus services in Shetland as described in sections 4.12 to 4.15 of this report.
- 1.2 Consider the remainder of the report, provide comments and note the report.

2.0 High Level Summary:

- 2.1 The Lead Officer's Report provides and overview of issues that are emerging and/or would benefit from some initial discussion by the Partnership ahead of a formal report on each of the issues at a later date.
- 2.2 This report covers the following topics: -
 - Fair Funding of inter-island ferry services
 - Northern Isles Ferry Services (NIFS)
 - Freight Fares Review
 - STAG Study
 - Introduction of Road Equivalent Tariff (RET) on Northern Isles ferry services
 - Smart and Integrated Ticketing
 - Inter Islands Air Services Outline Business Case
 - Islands Transport Forum
 - External Transport Forum

3.0 Corporate Priorities and Joint Working:

- 3.1 ZetTrans' overarching policy is to have in place transport arrangements that are affordable and meet people's needs within available resources. To achieve this ZetTrans works closely with its member bodies of Shetland Islands Council, NHS Shetland and Highlands and Islands Enterprise.

4.0 Key Issues:

Fair Funding of Inter-island Ferry Services

- 4.1 Under section 63 of the Transport Act 1985 ZetTrans has a duty to secure public transport services in Shetland where they would not otherwise be provided.
- 4.2 In the case of inter-island ferry services this duty is fulfilled by the fact that Shetland Islands Council provides ferry services in a manner that is consistent with the Regional Transport Strategy and currently meets the social and economic needs of the islands.
- 4.3 Shetland Islands Council in partnership with ZetTrans and Orkney Islands Council has undertaken a prolonged campaign with Scottish Government to secure sufficient funding to meet the revenue and capital costs of inter-island ferry services in the short and long terms.
- 4.4 A position has been reached between Scottish Government and Shetland Islands Council where a significant proportion of the operational costs for 2018/19 will be supported by a specific grant in addition to the sum that comes through the Block Grant settlement. The combination of these ensures ferry services can continue at current levels for 2018/19 but does not address the capital investment required.
- 4.5 Further to this offer of additional funding Scottish Government has also given a commitment to resolving the medium/ long term position on responsibility, funding and delivery of local authority provided inter island ferry services.
- 4.6 Over the coming months the Lead Officer will work closely with officers of Shetland Islands Council, Orkney Islands Council, HITRANS, HIE and Transport Scotland to develop further detail on models of responsibility, funding and responsibility and reports will be taken to the Partnership as detail develops. As this detail develops reports will be provide to ZetTrans and Shetland Islands Council as input/ decisions are required. A meeting of this group has been arranged for 15 March 2018.

Northern Isles Ferry Services – Freight Fares Review

- 4.7 The Freight Fares Review continues to be under consideration by Ministers. The Working Group considered a freight fares formula preferred by Transport Scotland in March 2017. This formula, considered by the Working Group at the start of the process, was developed on a revenue neutral basis. Ministers requested further information to fully understand the impacts of implementing the new fares structure. The review is also considering the issue of existing and future discounts, which has required further investigation into this complex issue. No firm commitment has ever been made by Ministers to additional funding or timescales for the conclusion of the review. However Ministers are aware of the requests from stakeholders for a swift resolution, and further information will be made available as soon as possible.

Northern Isles Ferry Services – STAG Study

- 4.8 Transport Scotland has stated that “the NIFS STAG study has now concluded and a final report, with commercially sensitive information redacted, has been agreed internally by Transport Scotland. The report will be published on the Transport Scotland website shortly”.

- 4.9 Once the report is published the Lead Officer will consider the content and conclusions of the report and relevant matters to the Partnership setting out the highlighting any areas that the Partnership may consider in providing feedback to Transport Scotland.

Northern Isles Ferry Services – Introduction of Road Equivalent Tariff (RET)

- 4.10 Transport Scotland has been working on the mechanism to include commercial ferry operators on the Pentland Firth. This is necessary to allow reduced fares to be rolled out on the subsidised services as well as any commercially operated services to comply with EC State Aid and Competition rules about market distortion.
- 4.11 It's a complex piece of work with no precedent, but Transport Scotland state that work is progressing well. They have commissioned consultants to develop a Financial Model for compensating commercial ferry operators, which is anticipated to conclude in March/April. Transport Scotland is in the process of putting further advice about timescales, announcements and plans to the Minister for Transport and Islands during the second half of February 2018. It is likely that an announcement providing further information will be made in March/April. Transport Scotland will provide an update to the meeting of the Working Group on 15 March 2018.

Smart and Integrated Ticketing

- 4.12 Officers working on behalf of ZetTrans have successfully secured sufficient funding to replace the current ticketing hardware on Shetland's bus services with new Smart ticketing equipment (total replacement, installation and running costs in 2018/19 of £200k). The funding has been secured from: from the European Low Carbon Transport and Travel Challenge Fund (£82k); Transport Scotland's Local Transport Policy Unit (£60k); and Shetland Islands Council (£58k).
- 4.13 The new hardware provides the capability to introduce various payment methods, including debit and credit cards, as well as opportunities to developed a wider range of ticket products that can be focussed in existing users as well as potential users that don't perhaps currently use bus services as an alternative to the car.
- 4.14 The equipment will be procured through the Scotland Excel Framework which removes the need for an independent tendering process.
- 4.15 The Partnership is asked to authorise this expenditure and instruct the Lead Officer, or his nominee, to undertake the necessary measure to procure and install Smart ticketing equipment.

Inter Islands Air Services – Outline Business Case

- 4.16 Peter Brett Associates have been appointed to undertake the Outline Business Case (OBC) into inter-island air services in Shetland.
- 4.17 The OBC follows on from the Shetland Inter-Island Transport Study which provided the Strategic Business Case (SBC) for inter-island transport services and infrastructure in Shetland over the short medium and long term.

- 4.18 It is anticipated that the OBC will be complete by the end of May 2018 and emerging issues of the OBC will be presented in due course.

Islands Transport Forum

- 4.19 The Islands Transport Forum was due to meet on 18 January 2018. However, due to adverse weather at the time the meeting was postpone until 23 March 2018.
- 4.20 This provides the Partnership with the opportunity to consider any items it would wish to see included on the agenda.
- 4.21 At the time of writing the agenda includes: -
- National Transport Strategy (NTS) review – update
 - Brexit issues
 - Mobility as a Service – Island Project Opportunities
 - Low Carbon Transport and Travel ERDF – Island project proposals update
 - Audit Scotland – Transport Scotland's Ferry Services
 - HIAL Air Traffic Management 2030 Strategy
- 4.22 Recognising that Fixed Links continues to be an area that remains important to Shetland communities it is suggested that this also be included on the agenda for the next meeting.

Shetland External Transport Forum

- 4.23 The Shetland External Transport Forum last met on 11 December 2017.
- 4.24 The cleared minute is attached as Appendix 1. Members are invited to comment on the issues in the minute and if so minded suggest items to be included on the agenda for the next meeting which is scheduled for 21 March 2018.

Exempt and/or Confidential Information:

- 5.1 None.

6.0 Implications :

6.1 Service Users, Patients and Communities:	There are no implications immediately arising from this report.
6.2 Human Resources and Organisational Development:	There are no implications immediately arising from this report.
6.3 Equality, Diversity and Human Rights:	There are no implications immediately arising from this report.

6.4 Legal:	There are no implications immediately arising from this report.	
6.5 Finance:	There are no financial implications immediately arising from this report.	
6.6 Assets and Property:	There are no implications immediately arising from this report.	
6.7 ICT and New Technologies:	There are no implications immediately arising from this report.	
6.8 Environmental:	There are no implications immediately arising from this report.	
6.9 Risk Management:	There are no implications immediately arising from this report.	
6.10 Policy and Delegated Authority:	ZetTrans' policy is to seek to have in place transport arrangements that meet people's needs and that can be afforded in the medium term. To achieve this policy ZetTrans works closely with Shetland Islands Council.	
6.11 Previously considered by:	These are ongoing issues which have not yet been considered elsewhere.	

Contact Details:

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Date: 16 February 2018

Appendices: Appendix 1 – Cleared Minute of Shetland External Transport Forum 11 December 2017

Background Documents: None



NOTE

**Shetland External Transport Forum
Room 16, Islesburgh Community Centre, Lerwick
Monday 11 December 2017 at 2.15 p.m.**

Present:

R Thomson
R McGregor
D Sandison
R Roberts

In attendance (Officers):

M Craigie, Lead Officer
L Adamson, Committee Officer, SIC

Also In attendance:

M Horn, Transport Scotland
P Linhart-MacAskill, Transport Scotland
M Kean, Transport Scotland
K Bevan, NorthLink Ferries
S Garrett, NorthLink Ferries
T Burns, Loganair
J Hinkles, Loganair Limited
A Farquhar, HIAL
L Still, HIAL
G Crichton, Streamline
I Reid, Reid Removals
N Leslie, Northwards Ltd
D Neil, JBT Distribution Ltd
J Smith, Sumburgh Airport Consultative Committee
V Sandison, Lerwick Port Authority
E Miller, Shetland Tourism Association
N Grant, SIC
C Robertson, SIC

Apologies:

D Ellis, Transport Scotland
R Henderson, Seafood Shetland
R Matheson, Flybe
S Mathieson, Visit Scotland

Chairperson

Mr Thomson, Chairperson presided.

Circular

The circular calling the meeting was held as read.

Minutes

The minutes of the meeting held on 28 September 2017 were confirmed on the motion of Mr Thomson, seconded by Mr McGregor.

24/17 Matters Arising

None.

25/17 Transport Scotland Updates

a. Northern Isles STAG

Ms Horn, Transport Scotland, advised that the Northern Isles Ferry Services STAG is moving forward to publication, and has been submitted to Ministers. It is anticipated that the report will be published before the end of the year, or into January 2018. Work on consultation will follow the Minister's announcement on the conclusion of the study.

b. Introduction of RET

Ms Horn advised that the manifesto commitment on the reduction of fares on Northern Isles Ferry Services has been announced, with RET to be applied on the Pentland Firth and an RET variant for Aberdeen / Orkney/ Shetland routes where cabins are not included. There is a need to work out the compensation for Pentland ferries, and have engaged consultants to come up with compliant proposals, and work is ongoing in that regard. She advised that in terms of RET there is no discrimination between islanders and visitors, with all travellers being treated equally.

c. NIFS Contract 2018

The Forum were advised that the timeline of the Procurement Policy Review has been extended, however an interim report on the emerging findings will be produced soon. The interim report will set out the terms of North Isles Ferry Services, with proposals pm whether to tender future contracts in the spring. Ms Horn advised that Transport Scotland are in discussions with Serco to extend the current contract to allow time for the Procurement Policy Review, and confirmed continuity of service going forward.

In response to a question regarding freight rates, Ms Horn advised that the aim of the Ferry Freight Fare Review is to standardise charges for all ferry networks. In that regard, a methodology has been identified and work is ongoing on the Review. She advised that the RET announcement was focused on cars and passengers, and the 2.9% increase in freight charges from January is built into the contract. She added that the increase in freight rates is a consequence of the rise in the consumer price index (CPI) which in the preceding two years had been at or below 0% therefore no fares increases had been applied. The Chair referred to the ongoing lobbying by ZetTrans and industry groups following the

announcement of the 2.9% increase, and advised on the importance for that lobbying to continue.

26/17 **Presentation by Serco NorthLink**

Mr Garrett, Managing Director, NorthLink Ferries, gave a slide presentation and reported on a number of matters including:

- Passengers, NCV and Freight on All Routes for 2017, and comparisons with previous years
- Deck Space
- Cabin Usage
- Pod usage
- Magnus Lounge Usage
- Weather disruptions – 34 sailings impacted on during October/November
- Operations Update
- Booking Questionnaire responses
- Customer Services Questionnaire statistics
- Community engagement and sponsorship

In responding to questions relating to freight capacity, Mr Garret reported from the trial period during the summer where an analysis of capacity was undertaken, and that information is continually revised. He confirmed that regular contact continues with Haulier representatives regarding capacity. He advised that a contract meeting with Transport Scotland later this week would discuss trends, and industry and community needs to achieve a balance to the best satisfaction of all customers. He advised that there are peaks and troughs on certain sailings each week, which are identified through coloured coded sailings of red, amber and green, and therefore forecasting forward can be done for any individual customer. He added that the focus is very much on the satisfaction of all in a fair and equitable manner.

Concern was however expressed from a Haulier in terms of capacity, particularly in the first quarter of 2018. A comment was made that weekly projections are not particularly helpful to the hauliers, as it is the information on the next day's capacity that is needed. He said that hauliers are hopeful that the January-March 2018 schedule can be revised, with opportunity to add in additional sailings, which is an area the hauliers will continue to lobby. It is hoped that further information would be available following Mr Garret's meeting with Transport Scotland later this week.

In responding to a question, Mr Garret updated the Forum on the soft launch of an App, where customers will be able to get mobile access to NorthLink's website. The formal launch of the App is planned for February 2018. Mr Garrett suggested that he could include information on the App, in his presentation to the next meeting.

27/17 **Presentation by Flybe**

There was no representative from Flybe in attendance.

28/17 **Presentation by Loganair**

Mr Hinkles, Managing Director of Loganair, gave a slide presentation, and reported on a number of matters including:

- Punctuality and Reliability:
 - September and October - 84% of flights on time
 - November – 80% of flights on time
- Market Growth:
 - The position has been economically unsustainable for Loganair with a significant number of empty seats. Related to increased pricing going forward is that the charges at Edinburgh airport have increased.
- Customer Focus:
 - New frequent flyer programme launched
 - Booking portal launched for corporate customers
 - Baggage policy enhanced from 1 December 2017
- Operational updates:
 - Defibrillators fitted on all aircraft by Q1/2018.
 - Universal life jackets introduced
 - Extra space for hand baggage on certain aircraft
- Community Involvement
- Future Plans:
 - Commitment to make sure service is reliable, affordable and economically sustainable
 - Proposals will be formulated over the next few weeks, including a review of Edinburgh and Glasgow capacity, pricing, and capacity for Summer 2018 and peak dates, where engagement will take place with key stakeholders.
- New Developments
 - Summer schedule will include a new non-stop Wednesday service to Bergen from 26 May
 - Trial of non-stop service to Manchester on Saturdays – June to Sept 2018
 - Fair Isle service to Kirkwall – May - Oct 2018

In concluding his presentation, Mr Hinkles thanked the community of Shetland for their support to Loganair Ltd.

In response to a question, Mr Hinkles confirmed that discussions were ongoing with Flybe in terms of proposals to code share, and it is hoped that solutions will be found for Flybe, Loganair and customers in that regard.

In response to a question regarding any proposal to extend the direct service to Bergen to allow travel for Norwegian Constitution Day on 15 May, Mr Hinkles advised that this year an additional flight to Bergen had been available for Constitution Day, however as there had been no increased demand it was decided to combine the Orkney and Shetland flights. He confirmed that flights will be available to Bergen during May next year, however the non-stop flight will only start from 26 May.

29/17 **Agenda Items for Future Meeting 2017/18**

Items for future meetings can be sent to the Lead Officer or the Committee Officer.

30/17 **AOCB**

None.

31/17 **Date of Next Meeting**

The next meeting will be held on Wednesday 14 March 2018, in Room 16, Islesburgh Community Centre, Lerwick, at 2.15pm.

32/17 **Meeting Dates 2018/19**

The Forum noted the following meeting dates for 2018/19:

- Thursday, 7 June 2018
- Wednesday, 12 September 2018
- Monday, 17 December 2018
- Thursday, 14 March 2019

All meetings will be held at 2.15pm, venues to be confirmed.

The meeting concluded at 3.15pm.

Chairperson