



The Scottish Parliament  
Pàrlamaid na h-Alba

## INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

### AGENDA

**27th Meeting, 2013 (Session 4)**

**Wednesday 18 December 2013**

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

1. **Decision on taking business in private:** The Committee will decide whether to take items 3, 4 and 5 in private.
2. **European issues - consideration of priorities:** The Committee will consider a paper from the European Reporter on European priorities.
3. **Housing (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.
4. **Standards, Procedures and Public Appointments Committee inquiry on EU rules:** The Committee will consider its response to the inquiry.
5. **National Planning Framework 3:** The Committee will consider its approach to the scrutiny of the National Planning Framework 3.

Steve Farrell  
Clerk to the Infrastructure and Capital Investment Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5211  
Email: [steve.farrell@scottish.parliament.uk](mailto:steve.farrell@scottish.parliament.uk)

The papers for this meeting are as follows—

**Agenda Item 2**

Cover Note

ICI/S4/13/27/1

**Agenda Item 3**

PRIVATE PAPER

ICI/S4/13/27/2 (P)

**Agenda Item 4**

PRIVATE PAPER

ICI/S4/13/27/3 (P)

**Agenda Item 5**

PRIVATE PAPER

ICI/S4/13/27/4 (P)

**Infrastructure and Capital Investment Committee**

**27th Meeting, 2013 (Session 4), Wednesday, 18 December**

**European issues – Consideration of priorities**

**Introduction**

In December 2010, the Scottish Parliament agreed to introduce a European strategy for Parliament-wide EU engagement and scrutiny. The Strategy defines the Parliament's objectives and priorities.

The strategy, as agreed, sets out the principal role of the Parliament with regard to EU matters, which is 'to scrutinise the Scottish Government and its EU engagement'. To fulfil this scrutiny function, the Parliament agreed to:

- develop an early engagement approach and set an 'upstream' agenda based upon intelligence gathering and analysis of EU policy making at the earliest (pre-legislative) stages;
- mainstream the scrutiny of draft EU legislation to subject committees; and
- mainstream the 'downstream' monitoring of the transposition and implementation of legislation to subject committees.

An annual review of the European Commission Work Programme (CWP) is undertaken by each subject committee with the aim of determining a limited number of strategic priorities for action. The European and External Relations Committee will compile all the committees' priorities and proposed actions to inform its Chamber debate early in 2014.

**Purpose of the paper**

This paper is being brought forward so that the Infrastructure and Capital Investment Committee can agree its priorities within the CWP for the coming year, building on the work taken forward on priorities by the Committee in 2013.

As champion for EU matters within the Committee, the EU reporter monitors proposals within the CWP and assists the Committee to identify subject areas for the Committee's consideration. The EU Reporter has identified issues from the CWP felt to be relevant to the Committee's remit and other areas where potential work on European matters may be taken forward. The Committee is therefore invited to consider and agree the following proposals.

**Public Procurement**

Public procurement in Scotland is governed by a detailed and complex framework of European law and the **Procurement Reform (Scotland) Bill** is

necessarily framed within this existing EU legislation.<sup>1</sup> The overall legal framework includes principles deriving from the Treaty on the Functioning of the European Union (OJEU 2010), European Union directives on procurement and European Court of Justice and national court case law. The Treaty sets out four key fundamental principles that underpin the public procurement regime in Scotland, and across the EU—

- **Equal treatment:** everyone must be treated equally and given an equal chance of winning a contract, and the procurement processes must be fair.
- **Non-discrimination:** public bodies must not discriminate between individuals or businesses on the basis of the EU Member State in which they are located. They have a duty not to impede the free movement of workers, goods, services and businesses between EU Member States.
- **Transparency:** public bodies must ensure that their procurement and contracting processes are clear and transparent, and contract opportunities should generally be advertised. Tenderers must be able to clearly understand the process that the public body is following, the qualities that the tenderer is being asked to demonstrate, the authority's requirements and the basis on which a contract will be awarded.
- **Proportionality:** public bodies have a duty not to include contract requirements and terms that are disproportionate to the size or value of the contract.

On 23 September, a delegation of MSPs including the Convener and EU Reporter conducted a series of meetings in Brussels on the new Public Procurement Directives, their potential impact on Scotland, and how they would interact with the forthcoming Procurement Reform (Scotland) Bill.

Set out below are the issues highlighted as being the most significant in terms of changes to EU procurement practice during the meetings held with European Commission officials and others in Brussels—

- **The removal of the distinction between Part A and Part B services** and the introduction of a new “light-touch regime” for social services and health services. There will be OJEU advertising required for this new regime, but a much higher threshold has been agreed (€750,000). [The Current Directives/Regulations divide services into so called "Part A" (or "priority") services and "Part B" (or "residual") services. Only Part A services are fully caught by the Regulations. Part B services are caught by a lesser regime, with only a few of the detailed rules of the Regulations applying. Generally, Part B services are those that the EU considered would largely be of interest only to bidders located in the Member State where the contract was to be performed, and include:-

---

<sup>1</sup> Background contained in SPICe Briefing 12/23, Public Procurement in Scotland (Campbell et al 2012)

Health services; Education services Recreational, cultural and sporting services.]

- **Provisions to assist SMEs** – including mandatory subcontracting, a limit of two times the value of the contract turnover requirement (in some Member States, contracting authorities had required 11 or 12 times the contract value); and the ability to pay SME sub-contractors directly or to stipulate payment times.
- Being able to take into account **more social and environmental considerations** in the procurement process, although many of these provisions are open to interpretation in the Directives.
- Provision to **reserve certain contracts to mutual/social enterprises for three years** (i.e. so that they are removed from the regular procedures – contracts are given to the mutual/social enterprise without having to go out to tender). During negotiations the Progressive Alliance of Socialists and Democrats political group in the European Parliament had wanted an unlimited time period, whereas the European People's Party political group had wanted the provision removed altogether. It was felt that a three year time period was an acceptable compromise. The UK Government's position in the Council of Ministers negotiations was that it did not support this final provision, although it had originally suggested a tighter proposal on mutuals.

The Cabinet Office briefing document contains a much longer list of the provisions in the Directives. It also contains a list of those areas where Member States and other jurisdictions will be able to make their own policy choices. During the September visit to Brussels the Commission indicated that it will issue guidance on the new Directives in 2014 with a view to publishing it before any of the Member States transpose the Directives.

**The Infrastructure and Capital Investment Committee is invited to agree that it should monitor—**

- **The European Commission guidance on the new directives in the first half of 2014**
- **The Scottish Government consultation and guidance when they are published in response to the Directives. The Consultation is expected in the first half of 2014**
- **The proposed implementation of the directives via Scottish Government regulations**
- **The impact of these regulations on the provisions in the current Procurement Reform (Scotland) Bill**
- **The Committee may also wish to consider the issue of a procurement Ombudsman/tribunal**

### **E-invoicing in public procurement**

The proposal for a Directive on electronic invoicing in public procurement would establish a European e-invoicing standard, which is expected to improve interoperability of national systems, as well as eliminate legal uncertainty occurring when operating across borders. The initiative is at an early stage of the legislative process, with EP vote scheduled for early April 2014.

**The Committee is invited to agree to monitor the progress of the proposed Directive**

### **State Aid**

#### ***State aid modernisation: General Block Exemption Regulation (GBER)***

The revision of the GBER, as part of State Aid Modernisation, will refine general compatibility criteria to make spending more effective and to further simplify administration.

#### ***State aid modernisation in key sectors***

This non-legislative package completes state aid modernisation in key sectors, including an assessment of the application of state aid guidelines to airports and airlines, the revision of the environmental aid guidelines, the guidelines on Research, Development and Innovation and the guidelines on rescue and restructuring aid, as well as new guidelines for state aid for agriculture and forestry.

**The Committee is invited to agree to continue to monitor State Aid Modernisation.**

#### ***Review of State Aid Guidelines for broadband networks***

At its meeting of 23 January 2013, the ICI Committee agreed that it would write to the Scottish Government for an update on the Review of State Aid Guidelines for Broadband Networks, and State Aid Modernisation: General Block Exemption Regulation GBER. Correspondence to the Cabinet Secretary is reprinted at **Annexe A**, along with Cabinet Secretary's response.

The Cabinet Secretary informed the Committee that the Scottish Government was fully engaged in the European Commission's consultation on the new guidelines. Changes to the document included those covering: technological neutrality, ultra-fast broadband networks, a step change approach, open access and transparency. The Scottish Government endorses these principles.

The Cabinet Secretary also stated that the Scottish Government (17 February 2013) will map existing infrastructure, with a view to embedding re-use and sharing of infrastructure in future projects. It was also their commitment to "Work with industry and utilities to develop buy-in; to identify the barriers to implementing such an approach; and take forward solutions with the regulator and others." The Cabinet Secretary also highlighted the revised General Block Exemption Regulation, which will take effect as of 1 January 2014 and

will allow compatible aid to be awarded without the need to notify the measure to the European Commission.

**The Committee is invited to continue to monitor progress in this area, including the work being taken forward by the Scottish Government and the impact of the revised guidelines on broadband infrastructure in Scotland.**

### **Infrastructure and Investment Plan**

The Scottish Government published a progress report on its 2011 Infrastructure Investment Plan on 4 February 2013. The 2013 update focuses on achievements since 2011 and provides updated details on the programmes and projects which form part of the Scottish Government's investment plan.<sup>2</sup>

The Programme Pipeline Update sets out information on a number of infrastructure projects that fall within the Infrastructure and Capital Investment Committee's remit.

**The Committee is invited to agree that it considers potential European issues in future considerations of the IIP, where relevant including funding such as the Joint European Support for Sustainable Investment in City Areas (JESSICA), Scottish Partnership for Regeneration in Urban Centres (SPRUCE) funding, and European Structural funds.**

The 4th railway package aims to address the stagnation and decline in national markets by completing the single European railway area, so as to foster European competitiveness and growth. It is currently in the preparatory phase in the EP.

**The Committee is invited to agree to monitor this policy.**

### **Long-term investment funds from CWP**

In June this year the Commission proposed a Regulation for a new framework for long-term investment funds to increase the pool of capital available for long-term projects. It would only be offered by managers authorised under the Alternative Investment Managers Fund Directive and is expected to be particularly attractive to pension funds and insurance companies. So far little progress has been made by either the EP or the Council on this initiative. The EP plenary vote is scheduled for 25 February.

**The Committee is invited to agree to monitor progress of this policy.**

---

<sup>2</sup>

[http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_13-14.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_13-14.pdf)

## **Scottish Government's Action Plan on European Engagement**

[Annex A to the Scottish Government's Action Plan on European Engagement](#) sets out recent and future engagement activity in the four policy areas in which the Scottish Government aims to play a distinctive role; Energy and Climate Change, Marine Environment, Research and Creativity, and Freedom, Security and Justice. Appendix II sets out an EU Review and Forward Look: Forward Look to the Lithuanian Presidency where Public Procurement and the Fourth Railway Package are included in the list of key issues.

**No action is recommended at this time, although the clerks will keep a watching on developments in this area.**

### **Digital infrastructure**

The Committee clerks have recently been advised of a proposed visit to Scotland by [Robert Madelin, Director General \(DG\) for Communications Networks, Content and Technology at the European Commission](#) in May 2014. It is understood that Mr Madelin would welcome the opportunity to engage with the Committee either formally or informally during his visit to discuss the development of digital infrastructure. The clerks have been advised that his principal interest in visiting Scotland is likely to be the low uptake of broadband in Glasgow, however he is also interested in the provision of digital infrastructure in rural, island and other hard to reach areas. It is suggested that a meeting with the DG would present an opportunity to discuss digital infrastructure roll-out in Scotland as well as related EU policies and priorities.

**The Committee is invited to agree that the clerks should liaise with EC officials to pursue the possibility of a meeting with Mr Madelin in May 2014.**

### **Conclusion**

**The Committee is invited to consider the recommendations for monitoring the various EU policies as set out in this paper and to agree to pursue a meeting with the European Commission Director General for Communications Networks, Content and Technology.**

**Jim Eadie MSP  
European Reporter  
December 2013**



## ANNEXE A



The Scottish Parliament  
Pàrlamaid na h-Alba

### INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Beth Elliot  
Private Secretary  
Office of Deputy First Minister  
and Cabinet Secretary for Infrastructure,  
Investment and Cities

Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Direct Tel: 0131-348-5882  
(RNID Typetalk calls welcome)  
Fax: 0131-348-5088

Sent by email  
30 January 2013

Email: [ici.committee@scottish.parliament.uk](mailto:ici.committee@scottish.parliament.uk)

### INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE: EUROPEAN COMMISSION WORK PROGRAMME PRIORITIES FOR SCRUTINY

30 January 2013

Dear Beth

I write on behalf of the Infrastructure and Capital Investment Committee (ICI) as part of the annual review of the European Commission Work Programme (CWP), which is undertaken by each subject committee with the aim of determining a limited number of strategic priorities for action.

The Committee are seeking information with regard to the Review of State aid Guidelines for broadband networks, and State aid Modernisation: General Block Exemption Regulation.

#### Review of State Aid Guideline for Broadband Networks

Following the 2012 consultation on broadband infrastructure the European Commission will propose a regulation which would reduce the cost of deploying high-speed broadband networks across the EU. This would incentivise investment in line with Digital Agenda high speed internet targets. Please see the following link for information:

[http://ec.europa.eu/information\\_society/policy/ecomm/library/public\\_consult/cost\\_reduction\\_hsi/index\\_en.htm](http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/cost_reduction_hsi/index_en.htm)

The adoption date for the Guidelines had been forecast for January 2013 in a Europa press release published in December 2012. Please see the following link for information:

[http://europa.eu/rapid/press-release\\_IP-12-1424\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1424_en.htm)

At the ICI Committee meeting on 23 January 2013 it was agreed that the Committee would write to the Scottish Government requesting details on its engagement with the

development of new EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks, at EU and UK level.

The Committee also requested information on how the Scottish Government is engaging with the reduction of cost of broadband infrastructure deployment at both EU and UK level.

**State Aid Modernisation: General Block Exemption Regulation (GBER)**

In June 2012 the European Commission announced it was going to undertake a review and modernisation of its state aid policy framework. Amendment of the GBER is expected during 2013, the Commission is likely to publish proposals in the latter half of 2013 which aim to build on the block exemptions outlined in the 2008 Regulation as a result of the changes made to the enabling Regulation.

At the ICI Committee meeting on 23 January 2013 it was agreed that the Committee would write to the Scottish Government requesting details of its engagement with the State Aid modernisation agenda at both EU and UK levels.

A copy of the Infrastructure and Capital Investment Committee European Commission Work Programme Priorities for Scrutiny has been appended for your information (Appendix A).

I would be grateful if you could respond by **Wednesday 27 February 2013**.

Yours sincerely



**KELLY FORBES  
ASSISTANT CLERK**

Deputy First Minister  
and Cabinet Secretary for Infrastructure, Investment and Cities  
Nicola Sturgeon MSP

T: 0845 774 1741  
E: [scottish.ministers@scotland.gsi.gov.uk](mailto:scottish.ministers@scotland.gsi.gov.uk)

Kelly Forbes  
Assistant Clerk, Infrastructure and Investment Committee

By e-mail: [ici\\_committee@scottish.parliament.uk](mailto:ici_committee@scottish.parliament.uk)



17 February 2013

Dear Kelly

Thank you for your letter of 30 January 2013 regarding the Review of State Aid Guidelines for Broadband Networks, and State Aid Modernisation: General Block Exemption Regulation (GBER). I am pleased to have the opportunity of providing the committee with the detail required.

European Union State Aid rules around broadband play an important role in promoting the objectives of the Digital Agenda for Europe and helping to ensure that public sector investment is targeted in a way that addresses market failures and spreads the benefits of digital infrastructure across Europe.

The European Commission launched a review in 2011 and consulted with Member States on new guidelines last year. The Scottish Government was fully engaged in this process and we contributed to the UK response.

The revised guidelines, adopted in January 2013, contain a number of important changes from the previous version:

- Technological neutrality – acknowledgement that next generation broadband can be delivered by technology other than fibre. This opens the door for fixed wireless to form part of technology solutions. This is particularly important for the Scottish Government's ongoing procurement processes as wireless technologies, such as White Space (the frequencies formerly used by analogue television), may have an important role to play in Scotland's rural areas. Wireless will also underpin a number of technology pilots in our Demonstrating Digital Programme, which seeks to trial innovative new technologies in Scotland.
- Ultra-fast broadband networks – Public money can now be used to help deploy ultra-fast broadband networks (100Mbps +) in cities, albeit with strict conditions attached to ensure pro-competition outcome.

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.scotland.gov.uk](http://www.scotland.gov.uk)



- Step change approach – publicly funded infrastructure only allowed if it delivers a substantial improvement to existing networks.
- Open access – publicly funded networks must be truly open and ensure competition.
- Transparency – new provisions around publication of documents & reporting. The Commission want Member States to set up national infrastructure databases. Any operator bidding for public money will need to declare what infrastructure they own in the area and share with other bidders, to facilitate infrastructure sharing.

The Scottish Government fully endorses these principles, which underpin our Step Change 2015 programme.

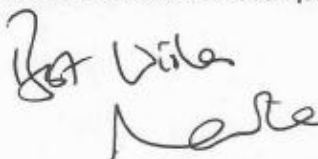
As we progress with procurements in the Highlands and Islands region and the Rest of Scotland, we are keen to explore ways of reducing the costs of deploying infrastructure by encouraging and facilitating a more proactive approach to infrastructure sharing with other utilities. This could involve reusing ducts or laying fibre in existing water and gas pipes, sewers or sub-sea cables; utilising existing fibre owned by utilities; and co-ordinating fibre roll-out with planned road works or maintenance. This could result in substantial cost savings and improve the efficiency and speed of roll-out.

To support this, we will map existing infrastructure, with a view to embedding re-use and sharing of infrastructure in future projects. We will also work with industry and utilities to develop buy-in; to identify the barriers to implementing such an approach; and take forward solutions with the regulator and others.

As part of its State Aid Modernisation programme, the European Commission has developed criteria with regard to aid for certain types of broadband infrastructure under specific conditions. This will be included in the revised General Block Exemption Regulation, which will take effect as of 1 January 2014 and allows compatible aid to be awarded without the need to notify the measure to the European Commission. The new exemption applies to aid covering basic broadband in regions where there is no broadband infrastructure and where no such infrastructure is likely to be developed in the near future ('white' areas), and small individual aid measures covering very high-speed next-generation access ('NGA') networks in 'white NGA' areas.

In addition, aid for broadband-related civil engineering works and passive broadband infrastructure is likely to be block exempted. Support for civil engineering works in many cases constitutes State aid if it concerns the installation of dedicated telecommunication infrastructure (ducts). Passive broadband infrastructure covers the installation of both ducts and dark fibres. A block exemption for civil engineering works and passive broadband infrastructure could speed up investments since (small) local authorities often prefer to support this, rather than adopting broadband schemes and having to comply with their more extensive State aid conditions. The Commission has acquired sufficient case experience in the area of aid to passive infrastructure and believes a block exemption may trigger increasing use in rural areas where existing passive infrastructure is not adequate.

I hope this reply is useful.



NICOLA STURGEON