



## INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

### AGENDA

**9th Meeting, 2016 (Session 4)**

**Wednesday 9 March 2016**

The Committee will meet at 9.30 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to consider its annual report for the Parliamentary year from 11 May 2015 to 23 March 2016 and its legacy paper in private at its next meeting.
2. **ScotRail Alliance update:** The Committee will take evidence from—  
  
Phil Verster, Managing Director, ScotRail Alliance.
3. **Transport update:** The Committee will take evidence from—  
  
Derek Mackay, Minister for Transport and Islands, Scottish Government;  
  
Aidan Grisewood, Director of Rail, John Nicholls, Director - Aviation, Maritime, Freight and Canals, and Michelle Rennie, Director of Major Transport Infrastructure Projects, Transport Scotland.
4. **Petition PE1236:** The Committee will consider a petition by Jill Fotheringham on A90-A937 safety improvements.
5. **Subordinate legislation:** The Committee will consider the following negative instruments—  
  
The Concession Contracts (Scotland) Regulations 2016 (SSI 2016/65);  
  
The Concession Contracts (Scotland) Amendment Regulations 2016 (SSI 2016/125);  
  
The Utilities Contracts (Scotland) Regulations 2016 (SSI 2016/49).
6. **Inquiry into the circumstances surrounding the closure of the Forth Road Bridge (in private):** The Committee will continue its consideration of a draft

report.

Steve Farrell  
Clerk to the Infrastructure and Capital Investment Committee  
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The papers for this meeting are as follows—

**Agenda item 2**

ScotRail Alliance Update Cover Note

ICI/S4/16/9/1

PRIVATE PAPER

ICI/S4/16/9/2 (P)

**Agenda item 3**

PRIVATE PAPER

ICI/S4/16/9/3 (P)

**Agenda Item 4**

Petition PE1236 Note from the Clerk

ICI/S4/16/9/4

**Agenda Item 5**

Procurement Subordinate Legislation Cover Note

ICI/S4/16/9/5

**Agenda Item 6**

PRIVATE PAPER

ICI/S4/16/9/6

**Infrastructure and Capital Investment Committee**

**9<sup>th</sup> Meeting, 2015 (Session 4), Wednesday 9 March 2016**

**ScotRail Alliance update**

**Background**

1. In 2015 the Committee carried out a short piece of work into [access to nine of Scotland's major urban railway stations](#), in order to identify issues and understand how access could be improved.
2. The Committee aimed to identify if there were shared issues being experienced by passengers up and down the country, including how easy it is for pedestrians, cyclists and disabled people to access and move within these stations. The Committee also wished to understand how access to other modes of public transport and taxis from stations might be improved to help people to carry on their journey.
3. Following this work, the Committee [wrote to Phil Verster, Managing Director of the ScotRail Alliance](#), summarising the Committee's findings.
4. In [Phil Verster's subsequent response](#) he promised to respond to the issues raised by the Committee in his next appearance before the Committee as well as giving an update on some current work.
5. The Committee also wrote to the ScotRail Alliance on 18 September 2015 [asking specific questions relating to its governance structure](#). Mr Verster [responded on 22 December 2015](#).

**Evidence session on 9 March 2016**

6. Prior to dissolution the Committee wishes to receive an update from the ScotRail Alliance on any steps it has taken in response to the Committee's findings in relation to accessing Scotland's major urban railway stations. The Committee will also take this opportunity to speak to Mr Verster on the performance of the ScotRail Alliance almost a year since its inception. The Alliance is made up of Abellio (who have operated the ScotRail franchise in Scotland since 1 April 2015) and Network Rail (who own and operate Britain's railway infrastructure).

*Written evidence*

7. Prior to this update the Committee received a written submission from the Office of the Rail Regulator. This can be found on in the attached **Annexe**.

**Andrew Proudfoot  
Senior Assistant Clerk  
March 2016**

## **Annexe**

### **Written evidence received from the Office of the Rail Regulator**

#### **Context**

This briefing has been prepared for Members of the Infrastructure and Capital Investment Committee of the Scottish Parliament ahead of Network Rail's appearance in front of the Committee.

#### **About ORR**

The Office of Rail and Road (ORR) is the independent regulator of the railways for Great Britain. We regulate the rail industry's health and safety performance, we hold Network Rail to account and make sure that the rail industry is competitive and fair. Network Rail in Scotland is funded directly by Transport Scotland and has its own financial settlement. It is therefore regulated separately for economic regulatory purposes.

#### **Executive Summary**

ORR published its most recent six-monthly report of how Network Rail is delivering against agreed targets in Scotland in November 2015.<sup>1</sup> The Network Rail Monitor covers the company's performance in areas such as punctuality, asset management, enhancement projects delivery, finance and efficiency.

The latest Monitor shows that the Network Rail is working to deliver the improvement plans for better day-to-day performance on the railways. Freight services are performing well, and punctuality is 3.9 percentage points ahead of the GB target. Passenger train punctuality in Scotland was short of target by 1.2 percentage points. Progress on major rail projects delivery in Scotland remains good, with, for example, the delivery of Borders Railway.

A summary of the key points is:

- Progress on delivery of major rail projects in Scotland remains good. The new Borders Railway opened in September. Construction work continues as planned on the Edinburgh to Glasgow Improvement Programme and the Aberdeen to Inverness project development is now well advanced.
- Network Rail has strengthened its approach to asset management, and has succeeded in reducing asset failures which have an impact on train services in most areas. The performance of rail assets such as bridges, earthworks and track equipment has continued to improve this year.
- Network Rail has improved delivery of renewals work in key areas, including track (plain line track renewals 19% ahead of plan), switches and crossings

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<sup>1</sup> [http://orr.gov.uk/\\_data/assets/pdf\\_file/0009/19926/network-rail-monitor-scotland-2015-16-q1-2.pdf](http://orr.gov.uk/_data/assets/pdf_file/0009/19926/network-rail-monitor-scotland-2015-16-q1-2.pdf)

(2% ahead of plan), and civils (for example, under bridges are 31% ahead of plan).

To help deliver its plans for enhancing the rail network in Scotland by 2019, Network Rail must implement its Enhancement Improvement Programme.<sup>2</sup>

## **Health and safety**

Britain's railways are currently the safest in Europe, a significant achievement for Network Rail and the industry. While safety performance has generally been good, with improvements in asset condition in some key areas, such as track quality and drainage compared with the end of Control Period 4 (CP4), Network Rail needs to be vigilant on its management of risks and in some areas needs to ensure it complies more robustly with its own standards.

Network Rail Scotland and Abellio ScotRail have put in place arrangements for a phased introduction of closer working through an alliance model. They have identified "safety" as one of the areas for integration and are currently applying safety validation to their proposals.

Routine Basic Visual Inspection (BVI) of track is a key element of Network Rail's arrangements for ensuring that the infrastructure remains safe for the passage of trains. In Scotland, previous inspections revealed various deficiencies in delivery of BVI of track. ORR has carried out a small number of unannounced inspections and accompanied patrols. We found minor failures but no significant concerns.

Increased vegetation clearance was carried out during 2014-15. This gave the route increased confidence in its capacity to deliver a safe and reliable network. However, despite the increased vegetation clearance, the Scotland Route is still expected to take around 20 years to become compliant with Network Rail's asset policy in this area.

## **Train service performance**

In Scotland we are holding Network Rail to account for delivery of its regulated performance targets throughout CP5. Scotland's Public Performance Measure<sup>3</sup> (PPM) Moving Annual Average (MAA) was 90.8% at the end of period 7 of 2015-16. This is short of the year end regulatory target of 92.0%.

We undertook an investigation into the reasons for the shortfall against the PPM target in Scotland in 2014-15 to determine if there was any evidence of any systemic performance issues. We concluded that a past breach of licence had occurred (within timetable planning), but that everything reasonably practicable was being done to address performance issues. A penalty was not imposed.

<sup>2</sup> <http://orr.gov.uk/news-and-media/news-and-announcements/2015/network-rail-is-taking-immediate-action-to-improve-planning-and-delivery-of-rail-enhancements>

<sup>3</sup> Public Performance Measure (PPM) shows the percentage of trains which arrive at their terminating station on time. It combines figures for punctuality and reliability into a single performance measure. It is the industry standard measurement of performance.

## Asset management

Asset performance has continued to improve this year. At period 7 the Composite Reliability Index<sup>4</sup> (CRI) reached 10.8% in Scotland, well above target (9.0%). The improvement is across most asset areas except points, where there has been no improvement since the end of CP4, and telecoms, which have deteriorated.

Delivery of renewals has improved this year with track and civils close to or ahead of plan. Delivery of maintenance continues to be variable compared to plan, reflecting weaknesses in the maintenance plans themselves. To address this, the routes are working with their maintenance delivery units to develop asset management plans at delivery unit level, so that plans better reflect local knowledge of maintenance needs.

We received Network Rail's Civil Adjustment Mechanism (CAM) submission at the end of March 2015, and found the bottom-up workbank to be broadly consistent with the asset policy targets for achieving sustainability during CP5. However, Network Rail was unable to provide sufficient certainty about costs, which appear to be significantly higher than expected during the periodic review. This has prevented us deciding the efficient level of funding.

## Developing the network

Progress on enhancement projects in Scotland under construction remains generally good, with the opening of Borders Railway on 9 September 2015 a particular highlight. Construction work continued as planned on the Edinburgh to Glasgow Improvement Programme (EGIP) and the Aberdeen to Inverness development is now well advanced. However, concerns remain regarding the sustainability of the enhancements portfolio in relation to the borrowing limit. Current analysis suggests that there is some risk around affordability in the remainder of the control period as described further in the efficiency and expenditure section.

We continue to see examples where Network Rail does not make adequate programme and funding provision for identifying and complying with its obligations under European technical specifications. This adds a risk of slippage to project milestones and possible delays to the introduction of improved train services for Scotland's passengers.

## Efficiency and expenditure

For the business year to date Network Rail's financial performance is in line with its own budget, but for the full year it is £10m worse than its budget as Network Rail is overspending on renewals and delivering lower efficiencies than it forecast. Compared to our determination it is forecasting to underperform the regulatory financial performance measure by around £29m in 2015-16 largely because of the

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<sup>4</sup> The aim of the Composite Reliability Index is to provide an indication of the contribution of infrastructure asset reliability to the safety and performance of the railway, for operating routes and the whole network. CRI shows the percentage improvement of asset reliability compared to the baseline taken at the end of Control Period 4

overspend on renewals, the efficiency challenges it faces and an overspend on the Rolling Programme of Electrification project.

Following the company's reclassification to the public sector by the Office of National Statistics (ONS), Network Rail agreed to borrow from DfT instead of issuing bonds. The amount of new borrowing available from DfT is limited to £30.2 billion across CP5 for Great Britain. As part of this agreement there is a separate limit on borrowing for Scotland of £3.3bn.

For a comprehensive assessment of Network Rail's performance, see:

[http://orr.gov.uk/\\_data/assets/pdf\\_file/0009/19926/network-rail-monitor-scotland-2015-16-q1-2.pdf](http://orr.gov.uk/_data/assets/pdf_file/0009/19926/network-rail-monitor-scotland-2015-16-q1-2.pdf)

Further information on who the ORR is and what it does can be found here:

[http://orr.gov.uk/\\_data/assets/pdf\\_file/0009/18909/what-we-do-infographic.pdf](http://orr.gov.uk/_data/assets/pdf_file/0009/18909/what-we-do-infographic.pdf)

**Edmund Butcher**  
**Parliamentary and Government Relations Manager**  
**Office of Rail and Road**



**Infrastructure and Capital Investment Committee**

**9<sup>th</sup> Meeting 2015 (Session 4), Wednesday 9 March 2016**

**Public Petition PE 1236 – A90/A937 junction at Laurencekirk**

**Introduction**

*PE1236*

1. PE1236, lodged on 16 February 2009:

*Petition by Jill Fotheringham, calling on the Scottish Parliament to urge the Scottish Government to improve safety measures on the A90 by constructing a grade separated junction where the A937 crosses the A90 at Laurencekirk.*

**Background to PE1236**

2. The A90 is a trunk road connecting central Edinburgh with Fraserburgh, although the route between a point several miles to the north of the Forth Road Bridge and Perth is classified as the M90. The A90 used to run through the centre of Laurencekirk, until a bypass was constructed in the mid-1980s. There are three at-grade junctions connecting Laurencekirk with this stretch of the A90. This petition relates to the southernmost of these, which is a staggered crossroads with the A937, a road which links Laurencekirk with Montrose.

3. The Public Petitions Committee (PPC) previously considered petition PE778, also submitted by Jill Campbell and took evidence from the petitioner in November 2004. The Committee closed the petition in March 2005 after receiving confirmation from the then Scottish Executive of a series of road safety improvements that would be made. These were implemented in 2005.

4. This current petition has been considered extensively by the PPC both in Session 3 and in the current session. It last considered this petition at its meeting on 27 November 2012 and agreed to refer the petition to the Infrastructure and Capital Investment Committee (ICI) for further consideration of the issues raised in it, as part of the Committee's remit.

5. The ICI Committee first considered the petition at on 12 December 2012. In its consideration of the petition since then, the Committee has received written and oral evidence from Transport Scotland, NESTRANS, Aberdeenshire and Angus Councils as well as representatives of the community.

6. During the Committee's scrutiny, discussions between Transport Scotland, NESTRANS and Aberdeenshire Council have been ongoing with respect to a solution regarding safety issues at the Laurencekirk junction. The Committee has received regular updates from Transport Scotland on progress in relation to NESTRANS "Access to Laurencekirk" study.

7. All written and oral evidence and updates from Transport Scotland on the access to Laurencekirk study are available on the Committee's website here:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61721.aspx>

8. The Committee last considered the petition on 24 June 2015 following a further update from Transport Scotland announcing that NESTRAN's "Access to Laurencekirk" study was complete. The update said that the preferred option arising from the study was an upgrade of the A90/A937 south junction to a grade-separated junction. Transport Scotland also said that it would work with its partners to progress this work further, including discussions around funding.

9. At that meeting the Committee agreed to keep the petition open pending the outcome of discussions with Transport Scotland and partners in taking forward recommendations made by NESTRANs.

#### **Recent update to the ICI Committee**

10. The Committee has received a further update from Transport Scotland on 24 February 2016 (see Annexe), highlighting an announcement from the Scottish Government that it will provide £24 million of funding to take forward the design and construction of a grade-separated junction at the A90/A937 South junction at Laurencekirk, as the petitioner has requested.

#### **For Action**

**11. The Committee is invited to consider the attached update from Transport Scotland and whether it wishes to take any further action in relation to this petition.**

**Jason Nairn  
Assistant Clerk  
March 2016**

**Annexe**

**Correspondence from Transport Scotland to the Infrastructure and Capital Investment Committee, dated 9 March 2016**

**PE 1236 - A90/A937 SAFETY IMPROVEMENTS**

Thank you for your letter of 9 February to David Anderson regarding the above, I have been asked to respond on his behalf.

On 28 January, Keith Brown, Cabinet Secretary for Infrastructure, Investment and Cities announced that the Scottish Government will provide £24 million of funding to take forward the design and construction of a grade-separated junction at the A90/A937 south junction at Laurencekirk. This is a significant step forward for the scheme and I hope that the Committee will welcome this announcement.

The next stage in the scheme development is to progress with the design phases of the junction upgrade, taking the design through Design Manual for Roads and Bridges Stages 2 (route option assessment) and 3 (development of preferred junction option) to the preparation of Draft Orders. Transport Scotland will look to appoint consultants and begin work to take the scheme through design development and statutory authorisation.

There is still a lot of development work to be carried out and all the members of the Laurencekirk Stakeholder Group including Nestrans, Aberdeenshire and Angus Councils, will continue to work together to ensure that the scheme is delivered as soon as possible for the benefit of road users and the local community in Laurencekirk.

I hope this is helpful.

Yours sincerely

**ALISON IRVINE**  
**Head of Strategic Transport Planning**  
**24 February 2016**

## Infrastructure and Capital Investment Committee

9th Meeting, 2016 (Session 4), Wednesday 9 March 2016

### Subordinate legislation – Negative Procurement Instruments

#### [Concession Contracts \(Scotland\) Regulations 2016 \(SSI 2016/65\)](#)

<b>Laid Date</b>	<b>SSI Reported on by DPLR Committee?</b>	<b>Reporting Deadline</b>
2 February 2016	Yes	14 March 2016

#### [Concession Contracts \(Scotland\) Amendment Regulations 2016 \(SSI 2016/125\)](#)

<b>Laid Date</b>	<b>SSI Reported on by DPLR Committee?</b>	<b>Reporting Deadline</b>
24 February 2016	No	21 March 2016

#### [Utilities Contracts \(Scotland\) Regulations 2016 \(SSI 2016/49\)](#)

<b>Laid Date</b>	<b>SSI Reported on by DPLR Committee?</b>	<b>Reporting Deadline</b>
28 January 2016	Yes	14 March 2016

#### Minister to attend the meeting

No

#### Purpose and ICI Committee consideration

1. These instruments are part of a number of instruments laid by the Scottish Government to enact changes to public procurement in Scotland.
2. The Concession Contracts (Scotland) Regulations 2016 give effect in Scots Law to European Parliament Directive 2014/23/EU on the award of concession contracts. They impose obligations and specify procedures in respect of the award of a concession contract by contracting entities. The regulations clarify how contracting authorities should calculate the estimated value of a concession contract for the purpose of determining whether or not these regulations apply, it sets out various exclusions from the application of these regulations, and sets out the tests which contracting authorities must apply in order to determine which provisions apply in the event that a contract contains elements which would be subject to these regulations, and elements which would not. The Concession Contracts (Scotland) Amendment Regulations 2016 correct errors identified by the Delegated Powers and Law Reform Committee during its scrutiny of the original Regulations. More details of these errors are provided later in this paper.
3. The Utilities Contracts (Scotland) Regulations 2016 (SSI 2016/49) gives effect in Scots law to European Parliament Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. They set out procedural rules for procurement exercises, the

circumstances in which a business may be excluded from bidding for public contracts, the basis on which contracts may be awarded, and the circumstances in which contracts may be modified.

4. Both sets of regulations align with the coming into force of regulations which give effect in Scots law to European Parliament Directive 2014/24/EU which regulates the award of public contracts. The Committee formally considered a negative instrument implementing 2014/24/EU at its meeting on 3 February 2016. The Committee considered the draft Procurement (Scotland) Regulations 2016, which made further provisions about regulated contracts, dynamic purchasing systems, general duties and specific duties under the Procurement Reform (Scotland) Act 2014, on 24 February. Given that this was an affirmative instrument, the Committee had the opportunity to hear from Cabinet Secretary regarding the full package of legislation relating to public procurement reform in Scotland.

5. The instruments all come into force on 18 April 2016, which is the date by which all member States of the European Union must have implemented all Directives relating to public procurement reform. This allows time between the laying of these regulations and their entry into force to give those concerned by the changes to the procurement rules sufficient time to prepare for these.

6. Following the Committee's scrutiny of the Procurement Reform (Scotland) Bill, the Cabinet Secretary for Infrastructure, Investment and Cities wrote to the Committee providing an update on the measures to be enacted and this is attached at Appendix A. A hard copy of the [policy note](#) providing a summary of the changes to public procurement rules in Scotland is also attached for members.

### **Consideration by the Delegated Powers and Law Reform (DPLR) Committee**

[Concession Contracts \(Scotland\) Regulations 2016 \(SSI 2016/65\)](#); and

[Concession Contracts \(Scotland\) Amendment Regulations 2016 \(SSI 2016/125\)](#).

7. At its meeting on 23 February 2016, the DPLR Committee considered the Concession Contracts (Scotland) Regulations 2016 and determined that it required drawing the Parliament's attention to some drafting errors contained within it, including incorrect references to EU legislation, errors in using significant, defined terms in the instrument, and a patently incorrect date used in a transitional provision.

8. In its response to the DPLR Committee's concerns, the Scottish Government laid an amending instrument correcting these issues on 24 March 2016 (the Concession Contracts (Scotland) Amendment Regulations 2016). The DPLR Committee considered the amending instrument at its

meeting on 1 March 2016 and it determined that it did not need to draw to the attention of the Parliament any matters within its remit.

[Utilities Contracts \(Scotland\) Regulations 2016 \(SSI 2016/49\)](#)

9. The DPLR Committee also considered this instrument at its meeting on 23 February and it determined that it contained some drafting errors, relating to the definition of “service contract” and “services contract”; and the use of the word “to” instead of “for” in regulation 3(1).

10. The DPLR Committee recommended that the error was significant and that an amending instrument should be laid to address the errors. The Scottish Government considered, however, that despite these errors, the instrument is sufficiently clear as to its intended effect and has committed to correcting these errors with a correction slip, rather than laying an amending instrument.

11. The full DPLR report can be accessed here:  
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/96987.aspx>

### **Procedure**

12. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

13. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

14. At the time of writing, no motions to annul have been received in connection with these instruments.

### **Recommendation**

15. **The Committee is invited to consider any issues that it wishes to raise in reporting to the Parliament on these instruments.**

**Jason Nairn**

**Assistant Clerk, March 2016**

**Appendix A****Letter from the Cabinet Secretary for Infrastructure, Investment and Cities to the Infrastructure and Capital Investment Committee, dated 17 December 2015**

Following my appearance before the Infrastructure and Capital Investment Committee on 17 June 2015, I undertook to update the committee on our plans to transpose the new European procurement Directives into Scots law.

I intend to lay regulations which transpose Directive 2014/24/EU on public procurement later this week. These will regulate most above-threshold public contracts awarded in Scotland. I intend to lay further regulations, transposing Directives 2014/23/EU and 2014/25/EU, on the procurement of concession contracts and utilities contracts respectively, in the new year. In order to give public bodies and businesses time to prepare for the changes these regulations will bring about, they will all take effect on 18 April 2016, the date by which all EU member States are required to have transposed these Directives.

In advance of that, I am today publishing the Scottish Government's response to the consultation exercise we undertook earlier in the year. I have attached a copy of that document, and will also make it available in SPICe.

You will recall that member States each have a number of choices to make about how they implement the Directives. That document sets out how the regulations will be brought forward in each area where we had a such a choice to make.

An analysis of all the responses we received as part of the consultation, which was published in August, showed that in very large part, those who responded to the consultation agreed with our proposals. It follows, therefore, that I intend, in very large part, to lay regulations which reflect those proposals.

The committee may be interested in my intended approach to transposition in three areas in particular.

Firstly, I will be taking strong action to tackle the issue of blacklisting of workers – a subject which has rightly received a great deal of attention.

The Directives set out several grounds on which a business may be excluded from bidding for public contracts. Until now, a contracting authority which wished to exclude a business that had blacklisted would have to rely on being able to demonstrate that it was guilty of grave professional misconduct.

The new Directive, however, introduces another ground on which contracting authorities may exclude a business from bidding for contracts. This is a broad ground, which covers situations when a business has breached its environmental, social or employment law obligations. By default, exclusion on this ground is at the discretion of the contracting authority, but member States have the option, when transposing the Directives, to go further, and to make this a mandatory ground for exclusion.

Blacklisting blights lives and has a significant impact on those affected. If blacklisting is still occurring, it must be stopped. For this reason, I have decided to use the flexibility the Directives give us to bring forward regulations which will make it a legal requirement for public bodies to exclude businesses which have either been found to have committed an act prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010, or which have admitted doing so.

This requirement will remain in force until either such time as the business has taken appropriate remedial measures, or a period of three years has elapsed since the blacklisting occurred (this is the longest period that exclusion on this ground is allowed for under the EU Directive). The remedial measures I refer to are that the business must prove that it has paid, or undertaken to pay, compensation in respect of any damage caused, clarified the facts and circumstances by actively collaborating with investigating authorities and taken concrete technical, organisational and personnel measures appropriate to prevent further offences or misconduct.

I will also bring forward regulations under the Procurement Reform (Scotland) Act 2014 to extend this requirement to lower-value regulated contracts.

Our scope for tackling blacklisting head-on in Scotland has been somewhat limited by the fact that the Scottish Parliament does not have responsibility for employment law. But by taking this action, we are going as far as we can to reform the part of the law in relation to blacklisting that we do have responsibility for. This also goes further than any other part of the UK has gone to make sure that those who blacklist do not win public contracts.

Secondly, the committee may also be interested to know that I do not intend, for now, to take up the option to allow public bodies to reserve certain categories of contracts to mutuals, or similar organisations. Many respondents to the consultation said that they would see some advantages to this, while a larger number were more neutral in their response.

I am not convinced that this provision would be very useful in practice, however. The Directive makes clear that participation in competitions can be restricted only to those businesses which have an objective in pursuit of a public services mission linked to the particular contract being tendered, which reinvest profits with a view to achieving that objective, which have a structure of management or ownership which is based on employee ownership, and which have not been awarded a similar contract by the same public body using this procedure in the preceding three years. Additionally, any contract awarded under this procedure must not exceed three years. Collectively, these conditions mean that such a provision may rarely be applicable.

I am prepared to consider making such a provision in the future, however. This Article of the Directive has a review clause built into it, which requires the European Commission to assess its effects and report to the European Parliament and Council by 18 April 2019. It would seem to be sensible to await the outcome of that review, and to consider any conclusions it reaches.



Finally, I will be bringing forward regulations which will not allow contracting authorities to award regulated contracts on the sole basis of lowest price or lowest cost. This is in line with the Scottish Model of Procurement, which emphasises the importance of balancing cost, quality and sustainability in order to get the greatest possible value from public spending.

All three of the measures I have outlined here are areas where the Scottish approach to transposition of the Directives stands in marked contrast with the approach taken by the UK Government, and will, I believe, give Scotland a better, more balanced set of procurement regulations.