



## INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

### AGENDA

**6th Meeting, 2012 (Session 4)**

**Wednesday 14 March 2012**

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

1. **Rail Franchise 2014:** The Committee will take evidence from—

Robert Samson, Passenger Manager, Passenger Focus;

Bill Ure, Member, Member of Passenger's View Scotland;

Anne MacLean, Convener, Mobility and Access Committee for Scotland;

Ken Sutherland, Research and Media Officer, Railfuture Scotland;

John Brandon, Convener, Friends of the Far North Line.

2. **Forth Replacement Crossing** The Committee will take evidence from—

David Climie, Project Director, Forth Replacement Crossing Team, and  
Lawrence Shackman, Project Manager, Forth Replacement Crossing  
Team, Transport Scotland.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Public Service Vehicles (Registration of Local Services) (Scotland)  
Amendment Regulations 2012 SSI/2012/32;  
the Bus Service Operators Grant (Scotland) Amendment Regulations  
2012 SSI/2012/33;  
the Home Energy Assistance Scheme (Scotland) Amendment Regulations  
2012 SSI/2012/34; and  
the Housing (Scotland) Act 2010 (Consequential Modifications) Order  
2012 SSI/2012/38.

4. **Subordinate legislation:** The Committee will consider the following instrument which is not subject to any parliamentary procedure—  
  
the Housing (Scotland) Act 2010 (Commencement No.6, Transitional and Savings Provisions) Order 2012 SSI/2012/39(C.8).
5. **Homelessness (in private):** The Committee will consider a revised draft report.

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The papers for this meeting are as follows—

**Agenda item 1**

PRIVATE PAPER

ICI/S4/12/6/1 (P)

Written evidence

ICI/S4/12/6/2

[RAIL 2014 – PUBLIC CONSULTATION](#)

**Agenda item 2**

PRIVATE PAPER

ICI/S4/12/6/3 (P)

Written evidence

ICI/S4/12/6/4

**Agenda item 3**

Cover note

ICI/S4/12/6/5

[the Public Service Vehicles \(Registration of Local Services\)  
\(Scotland\) Amendment Regulations 2012 SSI/2012/32](#)

[the Bus Service Operators Grant \(Scotland\) Amendment  
Regulations 2012 SSI/2012/33](#)

[the Home Energy Assistance Scheme \(Scotland\)  
Amendment Regulations 2012 SSI/2012/34](#)

[the Housing \(Scotland\) Act 2010 \(Consequential  
Modifications\) Order 2012 SSI/2012/38](#)

**Agenda item 4**

Cover note

ICI/S4/12/6/6

[the Housing \(Scotland\) Act 2010 \(Commencement No.6,  
Transitional and Savings Provisions\) Order 2012  
SSI/2012/39\(C.8\)](#)

**Agenda item 6**

PRIVATE PAPER

ICI/S4/12/6/7 (P)

## Infrastructure and Capital Investment Committee

### 6th Meeting, 2012 (Session 4), Wednesday, 14 March 2012

Written evidence has been received from—

- Friends of the Far North Line
- Railfuture Scotland

#### WRITTEN EVIDENCE FROM FRIENDS OF THE FAR NORTH LINE

##### Executive Summary

- The Friends of the Far North Line (FoFNL) is calling for a not-for-profit model for the future operation of ScotRail and a strong programme of finance for Network Rail to enable it to progress its enhancement projects.
- FoFNL calls for a new geographically representative body to represent rail passengers throughout Scotland.
- FoFNL calls for some timing trials with more powerful trains on the Highland Main Line (HML) to help determine what kind of rolling stock is most suitable for the future.
- FoFNL wishes to see some faster limited-stop three hour services introduced on the HML before 2014.
- FoFNL calls on the Scottish Government to aim to complete both the HML and Aberdeen – Inverness “strategic priority” schemes by 2017 such that, allowing for any slippage, they will definitely be completed by the end of Control Period 5 (CP5) in 2019.
- FoFNL has submitted to Transport Scotland a professionally compiled blueprint for an hourly service between Inverness and Tain which it hopes might be implemented early in CP5.
- FoFNL calls for the retention of, and improvements to, both the sleepers and the daytime cross-border services to the north of Scotland. The reintroduction of a daytime through train via the West Coast Main Line is requested, as is the reintroduction of Motorail.

##### Background

1) The new ScotRail franchise from 2014 will enable the Scottish Government, if it so chooses, to make a step change towards implementing various aims of national policy.

2) FoFNL is a 180-member Rail User Group founded in 1994 and is grateful for the invitation to share its thoughts for the new franchise with the Committee. FoFNL is interested in helping to improve both passenger and freight services on the lines from Inverness to Thurso and Wick; from Inverness to Aberdeen; and from Inverness to Perth for onward travel to Edinburgh, Glasgow and destinations south of the border including London. FoFNL’s committee contains a wide range of expertise from retired railway operators, those currently working for the industry, and from commerce, shipping, and the medical, legal, scientific and information professions.

##### Policy

3) The key national policy aims which may be fostered through the setting up of the new franchise are:

1. Scotland’s much lauded and significant carbon reduction targets through the extension and use of environmentally friendly and sustainable rail services
2. Modal shift from road to rail to save on oil consumption and to reduce road congestion and parking congestion.
3. The chance to save money by reducing the money leaking out of the system. This could be achieved by moving away from the current franchise model towards a not for profit model, a traditional Scottish mutual solution.
4. The desire to have a Scottish railway in which we can have pride that it is “world class” by providing truly appropriate, well-appointed and comfortable rolling stock owned by the Scottish Government and therefore not subject to leasing charges.

5. The Government economic strategy to improve connectivity within Scotland, especially in linking Aberdeen with Inverness and both of those with the other four cities by rail services with notably improved and competitive journey times and a quality of service/comfort equal to the private car.
6. A huge improvement in public transport integration better connecting people, places, work and leisure both within Scotland and to and from the rest of the world.
7. Pre-empting any major future difficulties with world oil supplies or prices by providing significant additional rail capacity and line speed improvements to permit possible sudden massive increases in rail traffic, freight in particular.
8. Providing partnership with rail users such that use is affordable to all comers, and passenger consumer representation is comprehensively restored to at least the levels and wide geographical coverage of ten years ago. Passengers need to feel that they have a say in the design of trains and services.

## Structure

- 4) FoFNL, in common with many other people and organisations, is seriously concerned that the present franchising model is unnecessarily costly and permits leakage of large amounts of public money away from the running of the railways.
- 5) Does the Scottish Government (whatever the result of the referendum) really want to tie itself in to another five, ten, fifteen, or twenty years of this kind of structure?
- 6) FoFNL passionately believes that the railways should be run for the economic and social benefit of the country and its people. This leads to the conclusion that some kind of mutual not-for-profit structure should be devised, so that all monies accrued are ploughed back in to improving the railway and its services. Where better to start than now with the completion of the current franchise period and the opportunity to create a new model for the future?
- 7) It is profoundly disappointing that the Railways Act is drawn up in such a way that state-run railways from any country in the world (with the sole exception of the UK) may bid to run Scotland's railways. **FoFNL believes that this needs to be amended so that a not-for-profit company or companies under the auspices of the Scottish Government might be set up to own both tracks and signalling infrastructure and to run ScotRail passenger train services.**
- 8) Network Rail is already publicly owned and has a great deal of Scottish autonomy. We understand that the Scottish Government already has powers to procure and own trains, but legislation may be needed to permit the Government to operate rail services.
- 9) It seems to us that now is the ideal time to implement such an arrangement. If it cannot all be arranged by 2014, a further short-term extension of the current franchise, or temporary operation by a Scottish version of Directly Operated Railways [currently operating East Coast services] should be arranged.
- 10) This arrangement should save money which
  - Is paid to lease trains
  - Is paid in track access charges
  - Is paid in delay minutes and in administering such a system
  - Is factored in for franchisee profits
  - Is paid out in shareholder dividends
- 11) Obviously, as cross-border passenger service franchisees and freight operating companies also use Scottish tracks, some of the cumbersome delay minutes system will remain, but that between Network Rail and ScotRail can be removed. It should also be possible to cease the practice of NR paying SR for the disruption costs when lines are out of use for repair.
- 12) There will be initial costs in setting up the new system, but once established it should cost a whole lot less to run. Staff would transfer under TUPE rules. Fewer legal and financial staff should eventually be needed.

## Train procurement

13) There would be an initial cost if, and when, trains are bought back from their current owners. This need not happen all at once. It could be phased and, for example, those due to be phased out by 2019 could stay leased until then. There will also be a one-off capital requirement when brand new trains are obtained by the new not-for-profit ScotRail operator.

14) FoFNL presumes that procurement of new electric trains for the Edinburgh Glasgow Improvement Programme (EGIP) services is already in hand. A new diesel (or hybrid) inter-city train for the Edinburgh/Glasgow to Aberdeen/Inverness routes is long overdue and there is also a need for a new long distance rural routes train by 2019.

15) The need for a high-standard Scottish inter-city train has been well known for many years now and is frequently aired in the columns of the Scottish press. The class 170 with its doors opening right in to the carriages, three coach seating limit, and lack of room for luggage, etc., is frequently found wanting. The only other option, other than a new build, might be the current InterCity 125 trains operating with perhaps five coaches between the power cars. These are old trains, but the technical experts in Derby say that they have plenty of life in them yet and many sets will be looking for work and therefore available cheaply later in the decade.

16) A new long distance rural routes train is needed to replace the class 156s which are likely to come out of service in 2019 owing to more stringent disability rules. This affects the West Highland lines and other routes in England and Wales. The Far North and Kyle lines could also be usefully served.

## Infrastructure

17) The importance of the work carried out by Network Rail Scotland for the operation of a successful franchise does not receive sufficient attention in the consultation document. It is not sufficiently clear how respondents can comment on the financial decisions which are going to be made to determine NRS's budget for Control Period 5 (CP5).

18) This is particularly important in the light of point 7 in 3) above and nowhere more so than in the almost total dependency of lines in the Highlands on single track sections with infrequent passing loops. That pan-Scotland connectivity of the cities of Aberdeen and particularly Inverness are dependent on such a slow and cumbersome infrastructure and that these lines are at full capacity for much of the day demonstrates the urgent need for redoubling and reinstating loops on these lines.

19) The First Minister's 5<sup>th</sup> August, 2008 post-Cabinet announcement of a 35 minute cut in journey times between Inverness and Edinburgh was warmly welcomed and is now an expectation of the Highland public. Since then, some services have become slower and there is still much to do in providing the necessary loops, double tracking and more powerful trains to achieve this. **FoFNL earnestly hopes that this will be achieved within CP5 and thus within the first five years of the new ScotRail operation.**

20) Indeed, the timing of your committee meeting provides an illustration of how necessary are these improvements for business links in both directions between Inverness and Edinburgh/Glasgow/Central Belt. The first train from Inverness at 06.47 only reaches Edinburgh at 10.00; therefore an overnight stay is required in order to attend. In the opposite direction it is even worse with the first arrival being as late as 10.28 by the 07.06 from Glasgow. The Edinburgh connection for this leaves at 06.29, a four hour journey!

21) Four hours and a change of trains is not attractive to either business or leisure users when the journey can be done by car in just under three hours. Even today, the journey could be done by rail in three hours with a more limited number of stops. The main problem is timetabling for trains to pass robustly on the single track lines. **FoFNL would like to see some faster limited stop 3 hour services introduced before 2014.**

22) Hopes for other lines include the Strategic Transport Project Review priority project for completion in 2016 of an hourly frequency between Aberdeen and Inverness with trains taking no more than two hours en route and a

new station at Dalcross for Inverness Airport and the Scottish Open Golf Tournament. This package would also see a half-hourly frequency from Elgin to Inverness and from Inverurie to Aberdeen.

23) Services on the Far North Line between Inverness and Wick run via Thurso and have been slowed down by 25 minutes from end to end since 2004. This has made the trains less competitive to road in journey times. Points, signalling and level crossings are outdated and need expenditure to improve matters significantly. Again there is a lack of passing loops in appropriate places. The Invernet local and commuter services at the southern end of the line in Easter Ross have been doing well, with scope for further expansion including the reopening of Conon Bridge station awaiting funding to serve new housing developments. **FoFNL has submitted to Transport Scotland a professionally compiled blueprint for an hourly frequency service between Inverness and Tain which we would hope might be implemented early in CP5.**

### Cross-border Services

24) FoFNL strongly supports the retention of the sleeper services in something like their present pattern as part of the ScotRail operation and, even after the full implementation of HS2, the Highland sleeper may still be necessary. In our Rail 2014 response, we have suggested three ways in which the operation of the sleepers could be more economic: splitting and joining the current Highland sleeper portions at Carstairs rather than Edinburgh; push-pull operation whilst electrically powered; and running without guards.

25) FoFNL would like to see the reintroduction of Motorail services between accessible points in Scotland and England. This would be environmentally friendly and help the growing number of mobile elderly drivers who have difficulty getting hire-car insurance once they reach the age of 70. This socially inclusive service could be made part of the ScotRail portfolio.

26) Most passengers (ourselves included), and many people in the rail industry, have been horrified by the suggestion that Anglo-Scottish daytime trains should go no further north than Edinburgh. To have to change at Edinburgh, with all the attendant difficulties and uncertainties, would deter both business and leisure travellers from going by rail. Passengers from York to, say, Tain would have to change twice.

27) We consider the Highland Chieftain service between London Kings Cross and Inverness should continue to operate 7 days per week all year round. We deplore the managed decline in the standard of service by recent operators, particularly of the northbound catering offer even though a chef is present and could provide hot meals. The Highland Chieftain “High Tea” and three-course dinner were legendary. Whether or not this train remains part of another franchise or transfers to ScotRail, a return to the previous standard of service should be specified.

28) FoFNL would like to see the reintroduction of a daytime service to and from northern Scotland via the West Coast to give connectivity with the North-West England and West Midlands conurbations. A route via Mossend rather than via Edinburgh would be most appropriate. Operation might be by ScotRail using InterCity 125 or Voyager/Meridian sets.

### Passenger Representation

29) FoFNL is concerned that passengers’ ability to have their views heard by the railway industry has been severely curtailed in recent years to the detriment of both the industry and its users. This is amply illustrated by the spate of letters in the Scottish press about the inadequacy of inter-city trains (see 15 above) and other letters about the various cross-border services (see 24 – 28 above).

30) The Rail Passengers’ Committee for Scotland, and its regional sisters elsewhere in England and Wales, were disbanded in 2005 and replaced by a new GB organisation named Passenger Focus. The members of the RPCS had been drawn from all parts of Scotland and were a valuable resource to the committee and to the industry.

31) Passenger Focus’s man in Scotland, Robert Samson, and its Scottish board member, the late James King, have worked tirelessly to keep on top of the situation. PF has recently been slimmed down even further and in FoFNL’s opinion the resources are no longer there to represent users adequately in Scotland. **FoFNL calls for a new geographically representative body to represent rail passengers throughout Scotland.**

## Conclusions

32) FoFNL applauds the many major improvements that have taken place in the Central Belt in recent years, and particularly the promotion of a renewed railway link to a part of the Borders.

33) We are concerned that the improved strategic links of Scottish significance better connecting the CB with Inverness and Aberdeen (and the railway between these two cities) are taking far too long to complete. The suggestion in the Scottish Government's recent Infrastructure Investment Plan that the promised completion of the HML and Aberdeen – Inverness line improvements may not be realised in full in 2011 and 2016 respectively but are now programmed back as far as 2025 and 2030 respectively is just not acceptable. 2011 was always unlikely and capital budget pressures are understandably causing some delays, but **FoFNL calls on the Scottish Government to aim to complete both schemes by 2017, such that, allowing for any slippage, they will definitely be completed by the end of CP5 in 2019.**

34) The faster services from Inverness to Edinburgh/Glasgow were predicated on much more powerful trains such as Voyagers, but we are still waiting for a trial run to see what can be achieved. FoFNL is concerned that the proposed IEP train for East Coast will be slower than the current HSTs on the HML gradients. **FoFNL calls for some timing trials with more powerful trains on the Highland Main Line to help determine what kind of rolling stock is most suitable for the future.**

35) The Far North Line is badly in need of much investment to significantly speed up services. Journey times to Wick have increased from 3 hours 45 minutes in 1994 to mostly between 4 hours 10 and 4 hours 25 minutes in 2012. Network Rail knows it has to make improvements here and we trust it will be given resources in CP5 to make a start.

36) With the current financial constraints, it is not the best time in which to be starting new programmes for either Network Rail or ScotRail. The Government's concept of Value for Money is laudable but so are its environmental, social inclusion, integration and other policies. On-going rail development ticks all the right boxes. That is why **Friends of the Far North Line is calling for a not-for-profit model for the future operation of ScotRail and a strong programme of finance for Network Rail to enable it to progress its enhancement programmes.**



## WRITTEN EVIDENCE FROM RAILFUTURE SCOTLAND

I am pleased to submit the following observations in further support of the response already submitted to Transport Scotland's 'Rail 2014' Public Consultation and in relation to the specific questions now asked:

\* The current efficiency and accessibility of the rail network in Scotland

Greater technical efficiency can be achieved by logical 'infill' electrification schemes in Greater Glasgow/SPT area and Greater Edinburgh/Lothians/Fife SESTRAN area: followed by early commitment to main line electrification northward to Dundee - Aberdeen as a continuous investment programme. Some of those projects can be coherently and more economically integrated with the current EGIP works.

Improved operational efficiency and better use of existing track capacity can be achieved by increasing more through- running west-east across central Scotland (e.g. utilising the City Union line/Crossrail - further discussed below). This would keep trains 'on the move' in passenger and revenue earning service, with reduction of unproductive terminal turn-around at Glasgow Central for many separate shorter distance as applies at present. Modest signalling investment in reduced 'headway' spacing between trains, could be achieved feasibly (and safely) to achieve to permit higher track utilisation without necessarily prejudicing reliability.

Restoration of double track on heavily used/high frequency suburban routes e.g. Milngavie line would improve efficiency and reliability from out-of-sequence running at junctions which adversely impacts on the wider network

Improved revenue efficiency can be achieved by higher train occupancy / passenger loading levels which themselves can encourage application of a more flexible and innovative fares policy as outlined in Q20 response to 'Rail 2014'. Increasing patronage of the main Glasgow - Edinburgh route and Milngavie line is more a direct result 'turn up and go' service with doubling of previous service frequency, and waiting time from 'just missed a train' but without any change [improvement] in the overall journey time over the intervening years The Cumbernauld line and certain routes serving Fife and Ayrshire might similarly benefit

A particularly significant way of increasing rail accessibility is through a combination of:  
More local and easily accessible additional stations on the existing network to improve on the meagre 10% of Scotland's population currently within reasonable walking distance of a rail station.

In response to Q24 of 'Rail 2014' we believe a reasonable demand case for upward of 40 new / reopened stations on the current ScotRail passenger network (together with additional stations on new or reopened lines sometimes upgrading existing freight-only lines as further discussed below). Network Rail have themselves confirmed requests for 20 additional stations within the restricted catchment area of the EGIP project

These would exploit obvious areas of new traffic patronage currently on offer from new housing expansion, economic/employment opportunity, social need and relief of urban road congestion. These are vital to broaden the geographic user base of the current ScotRail network which currently suffers from a restricted number of access points [stations]. It is a matter of regret that despite many very successful additional stations created over recent years, there now seems a current hiatus, and lack of any coherent programme achieve those required stations - even in the face of rising rail patronage levels, and full cost funding offers for station construction made from private sector developers.

A more determined pursuit of more adequate car parking at existing and new stations must be collaboratively pursued by Transport Scotland / Network Rail / ScotRail / Local Authorities and private finance sources to maximise improved park and ride accessibility to use rail services: but which is routinely being frustrated by grossly inadequate station parking provision.

An example of the continued absence of fully integrated 'joined up' transport and land-use planning policy is still regrettably evident with the new Edinburgh Gateway (Gogar) interchange. Whilst this provides for

good rail / tram / bus interconnection, it conspicuously squanders the huge park and ride potential availability for the large number of householders who may users who find the car the only convenient or meaningful access to reaching this new 'hub interchange'. And de facto, will be perversely denied the opportunity of using public transport for a meaningful stage of their onward journey to final destination.

Improved accessibility, including convenient vehicle drop-off points from cars and disabled access into station sites are essential. Yet Glasgow's Central station is now shamefully deficient in both those, given closure of the tunnel access route into the heart of the station nearly 3 years ago. It is essential that Gordon Street is reopened to private cars, for the sole purpose of offering to offer a safe and convenient 'drop-off' point for those arriving by such personal transport. Convenient and accessible drop-off points with notification of enforcement/penalty consequences are satisfactorily applied in other transport terminals elsewhere and must be (re-introduced) at this key Glasgow station via its street level Gordon Street entrance/exit

Despite improved accessibility to the rail network being recognised as one of the Key Strategic Outcomes (KSO) of Transport Policy, it is felt that this consideration is being unnecessarily sacrificed by excessive and exaggerated importance given to 'improved journey times, sometimes only by a few minutes and which are perceived to be of negligible importance to the actual or potential passenger. EGIP intentions to achieve a very marginal improvement in the Glasgow - Edinburgh journey (saving only 7-8 minutes) for just two headline 'express trains' per hour, against the electrified stopping trains. But with those additional [express] trains imposing considerable infrastructure disruption to existing local suburban line services and incurring very considerable new rolling stock acquisition costs, may be cited as a dubious proposal which merits reconsideration and investment re-allocation into other rail projects, which offer a broader economic or social dividend across Scotland?

Some form of localised decentralised policy planning units by Transport Scotland might also offer an administrative improvement which could more adequately identify and pursue localised railway needs and opportunities. It is welcome to see an embryonic recognition of this requirement in the Scottish Government's December 2011 Infrastructure Investment Plan (IIP) under 'Sector Plans' (page 45) which notes. . 'The emerging consensus is that a more joined up approach to delivering services, with key decision making being taken locally, is the best way to ensure that rail services become more efficient and attuned to local needs' (quote).

Such a structure, with local knowledge and understanding, had it been in place, might have obviated the rather unfortunate and misinformed use of an arbitrary 1mile yardstick to infer that some stations were 'too close' and potentially closure candidates. This unsurprisingly generated considerable public apprehension, entailing two Parliamentary debates to secure 'clarification' over the negative inferences outlined in Section 7.10 / 7.11 of 'Rail 2014'. Such reassurance [against station closures] eventually culminated with the

5 March 2012 unequivocal public confirmation from Transport Minister that there will be no closure of any of the 14 theoretically/hypothetically 'closure threatened' stations in Scotland 'within 1 mile of each other'!

\* Developments which could be made to improve the network and rolling stock for passengers;

Improving the network:

Pursuit of the EGIP project must include restoration of the previously intended Garngad Chord and north electric turn-back at Finnieston or Queen St Low Level which were identified as key ingredients in achieving improved journey times benefitting all EGIP line users with improved connectivity/ higher track capacity for future growth/ tackling urban congestion/ modal shift on to rail and reduction of emissions.

The outline case for electrification and upgrading of the Glasgow City Union Line as offering a cross-Scotland route with new interchange station opportunities at West Street (with the Subway) and Glasgow Cross (with the Argyle Line) were more fully outlined in our response to Q16 of 'Rail 2014'. This pragmatic use of existing infrastructure would have comprehensively satisfied the full range of KSOs required and was also backed by a strong business case/notionally high STAG appraisal. It should logically be undertaken as a coherent and cost effective adjunct to the EGIP project, which has more

potential to achieve modal shift and competitively boost public transport than any other single transport intervention project across Scotland.

Crossrail's full carrying potential should be further exploited, in conjunction with the logical short (1 mile) link directly into Glasgow Airport. This link is identified as a key infrastructure project of 'national significance' with National Planning Framework (NPF2) status. Its Transport Scotland supplied capital cost 'estimates' have now been re-assessed (by an independent professional civil engineering analyst), and found to be potentially achievable at a very significantly lesser figure than those previously quoted, and which were the direct cause of its peremptory 2009 cancellation by the Scottish Government.

Restoring passenger services to Edinburgh South Suburban line, Alloa-Dunfermline, Falkirk-Grangemouth, as short line 'feeder routes' should be pursued on the basis of utilising the synergy benefits (equipment / material and labour) associated with the geographically adjoining and operationally inter-related 'core lines' of the main EGIP project .

Short length rail extensions e.g. Thornton-Levenmouth and Leuchars-St Andrews also have significant 'multiplier potential' building on the interconnectivity achieved by the above projects to both improve accessibility, journey times, and [particularly] offer a meaningful and competitive alternative to otherwise insatiably increasing demand for car usage.

We believe that the recognised need, by Transport Scotland, for infrastructure upgrading (restoration of double tracking/passing loops) on Perth-Inverness line merits full implementation long before 2025 (now suggested as a 'deferred' completion date in the 2011 IIP). And similarly, a stronger commitment to early delivery of double tracking/passing loops on the Aberdeen-Inverness line, which themselves should logically be undertaken as components of the planned Aberdeen Crossrail, to achieve a meaningful modal shift on to sustainable public transport improvement across this expanding urban area

The previous ScotRail intention to achieve a direct rail crossing of the Dornoch Firth (with a 45 minutes / 26 mile shortening of the circuitous inland route) merits further perusal, as the key ingredient in reducing the 4.0 hour average Caithness-Inverness journey time to under 2.5 hours. This is an accepted target time towards a significant reduction in 'regional peripherally' which continues to frustrate potential economic growth opportunity areas of East Sutherland / Caithness and Orkney. Investing in a more economic/efficient, lower cost rail route, generating more passengers and revenue is the only meaningful long alternative to uncertain retention of a high cost poorly used service competing against an ever improving A9 road link north of Inverness.

As a further points in support of further investment in Scotland's rail infrastructure I would ask your Committee to note:

- \* The actual user response to investment new / reopened lines and stations is invariably is far higher than the previously pessimistic 'forecasts' normally used. And offers further confirmation of a suppressed demand for the range of user and non-user benefits associated with the range of KSO delivered.

- \* Surveys tend to confirm a higher and more successful modal shift, away from private car usage on to new / improved rail links (at typically 20%) compared to new / improved bus based projects (with typically only 5% transfer).

- \* Our disappointment that the projected Scottish Government investment in rail infrastructure improvements / network extensions is intended to decrease from 2014 to 2014 even after scrapping several previously planned infrastructure projects e.g. Edinburgh and Glasgow Airport rail links, and Aberdeen Crossrail. And now followed by the current EGIP desire to make a £52 m retrenchment saving by scrapping the previously intended Garngad Chord. No justification has been advanced in the IIP explaining why several desirable rail projects with apparently good KSO credentials are not now being pursued and /or unacceptably 'deferred' compared to IIP intimation of certain new major road projects EG unconditional commitment to full dualling of the A9 and A96 (up to £3.5 bn). Even although they may not have been fully justified through the established KSO procedures but seem to have been 'subjectively ranked ahead of', or to the 'exclusion of' several rail projects.

Such selective expenditure squeeze on required rail infrastructure and massive switching of capital funding into major road projects continuing in the in the years after the distorting effect of the up to £1.6 bn Forth Replacement Crossing is disturbing and difficult to accept in terms of even greater patronage projected on the rail network, and unique borrowing/funding opportunity available from Network Rail's Regulatory Base (RAB).

See the two separate ATTACHMENTS (B) and (C)

The lack of long-term vision and commitment to sustain even the average levels of rail capital investment achieved over the 2007-2012 period seems somewhat inconsistent / contradictory when viewed against the Scottish Government's ambitions elsewhere to achieve a more sustainable and energy efficient lifestyle and supported by renewables which are particularly applicable to rail passenger (and freight) systems.

Improving the rolling stock:

A comprehensive outline of the required improvements to new (and refurbished) rolling stock was given in Railfuture Scotland's Response to Q31 /Q32 of 'Rail 2014' to which I would respectfully draw to your attention.

\* The potential cost associated with such an upgrade and the current providers' ability to cope with and provide for the growing demands on the rail service

The costs of many of the required costs associated with various infrastructure projects and rolling stock upgrades etc. are already well documented in various reports and studies undertaken by Transport Scotland / Network Rail / ScotRail / Local Authorities / Regional Transport Partnerships together with privately commissioned professional estimates of the likely funding requirements.

As above, and discussed in response to Q25 of 'Rail 2014', we believe there is further considerable scope for collaborative and mutually beneficial funding of new stations and lines as joint investment ventures between the public and private sector to achieve this betterment of Scotland's rail system.

It is disappointing and frustrating that offers of private sector funding for additional rail infrastructure 'to cope with growing demands for rail service provision' e.g. new stations at Robroyston (Glasgow) and Winchburgh (West Lothian) are apparently being 'resisted' by Transport Scotland for reasons which seem neither coherent or convincing. Even more so, with their recent 2012 irrational thwarting of a wholly private sector funded offer to construct a Glasgow Airport Rail route link for public benefit entirely from equity sources and at no cost/ no risk to public sector finance (which would be highly consistent with both the Key Outcome Objectives of Transport Policy and the general fiscal policy strategy of the Scottish and UK Governments. This aims to encourage greater private sector funding opportunity and initiative.

Sensitive, flexible, and innovative use of fares policy, as discussed above and amplified in our response to can be utilised to spread-out peak overloading of rolling stock and make better use of [limited] track capacity.

\* The importance of and further potential for, the integration of Scotland's rail network with the rest of the UK

From a passenger / customer viewpoint, for business and leisure travel, the provision of direct / through rail services is a highly valued commodity and retention of the existing (no change needed) London - Edinburgh - Dundee - Aberdeen / Perth - Inverness services must be a non-negotiable condition of the post-2014 ScotRail franchise renewal. In response to Q29 of 'Rail 2014' it was noted that around 25-30% loss of rail patronage usually accompanies withdrawal of direct / through services, when they are substituted by a requirement to change of train (or station) en route.

There is also a requirement for a meaningful provision of direct (though) rail services on Cross Country routes from Glasgow / Aberdeen - Edinburgh to major centres of the East Midlands and South / South West England is also highly as a convenient, and attractive/competitive alternative to long distance motoring and air travel.

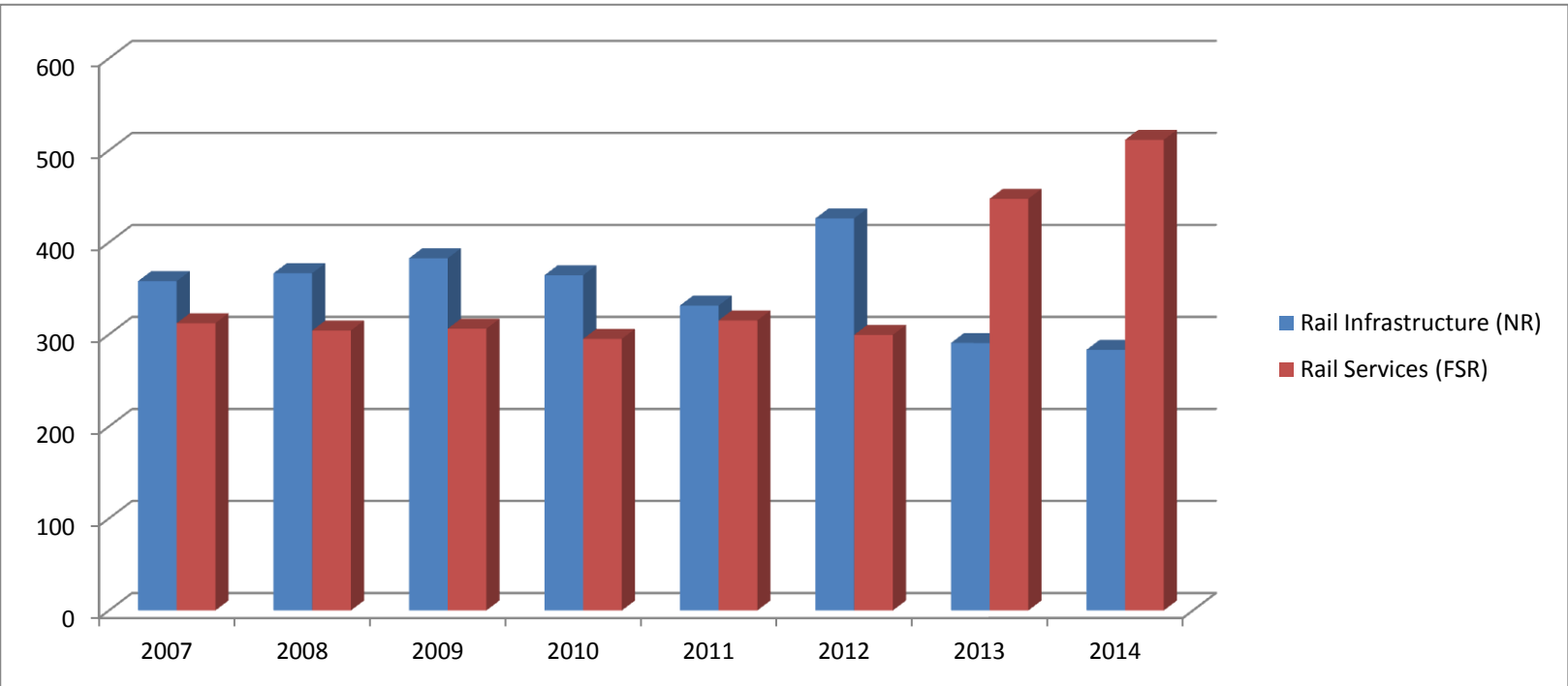
Railfuture Scotland would urge introduction of an experimental direct Glasgow/Edinburgh - Paris / Brussels service via the Channel Tunnel in the belief that an element of market demand currently exists, should be pursued and that previously evidenced 'difficulties' involving customs inspection etc. can be resolved / overcome.

Efforts by the Scottish Government to accelerate construction of a High Speed Rail link into central Scotland, integrally constructed with the English section/s and in operational service sooner than originally envisaged by the UK Government, are much to be welcomed. As is the requirement to identify and safeguard appropriate High Speed rail terminal station sites in Glasgow and Edinburgh.

# Scottish Government Rail Budgets

Taken from Rail2014 (page 11)

RAIL BUDGETS	2007	2008	2009	2010	2011	2012	2013	2014
Rail Infrastructure (NR)	357.9	366.5	382.7	364.3	331.4	426.1	290.7	283.2
Rail Services (FSR)	312.2	304.3	306.2	295.2	315.2	299.5	447.4	511.5
TOTAL	670.1	670.8	688.9	659.5	646.6	725.6	738.1	794.7



# PR13 Initial Industry Plan - Network Rail

## Definition of proposed CP5 enhancements

### Committed Projects

Edinburgh – Glasgow improvements programme – infrastructure works	242
Edinburgh – Glasgow improvements programme – electrification	154
Scottish small projects fund	30
Scottish stations fund	25
CP6 development fund (Scotland)	10
Level crossing initiative (Scotland)	42
Strategic freight network (Scotland)	50
<b>TOTAL</b>	<b>553</b>

### Future Planned Projects (beyond 2014)

Aberdeen to Inverness journey time improvements & other enhancements	198
Carstairs journey time improvements	54
Highland main line journey time improvements (phase 2)	37
Motherwell North resignalling enhancements	17
Motherwell area stabling	9.9
Portobello Junction capacity enhancements	19
Scotland traction power scheme	28
Scotland electrification (phase 2)	284
<b>TOTAL</b>	<b>646.9</b>

Mr Steve Farrell  
Clerk to the Infrastructure and Capital Investment Committee  
The Scottish Parliament

Our ref:  
FRC/ICI/Feb2012

Date: 5 March 2012

Dear Mr Farrell

## **INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE: FORTH REPLACEMENT CROSSING UPDATE 2**

I refer to the commitment given by Transport Scotland to provide a regular written update in relation to the Forth Replacement Crossing (FRC) project. This is the second of these updates and will cover the following topics:

- Progress Update
- Stakeholder Engagement
- FRC Public Transport Strategy

### **PROGRESS UPDATE**

#### **Principal Contract**

In January Forth Crossing Bridge Constructors (FCBC) and Transport Scotland's Employer's Delivery Team (EDT) moved into new permanent site offices at Ferrytoll, near Rosyth (**Photograph 1**). The offices will house over 250 staff from the EDT and FCBC. The satellite compound located in Echline Field is near completion, it is anticipated that it will be operational in March 2012. Construction of the bridge south approach viaduct and southern approach roads will be managed from this location.

Works currently being undertaken include site clearance, access roads, accommodation works, landscaping and environmental works (**Photograph 2**). The installation of monitoring equipment for traffic, air quality (dust) and noise and vibration is complete, and monitoring results are published on the FRC website. In preparation for construction of the central tower, blasting took place in early February on Beamer Rock, excavation and drilling works are now being undertaken (**Photograph 3**).

From the end of March short night time closures of A90 at Ferrytoll Junction will be undertaken. These closures are essential to ensure the safety of road users and will be over a period of 6 months for approximately 30 minutes for each blast. These works are programmed to be outside peak hours at 10pm.

As of 15 February 2012, 123 subcontract opportunities out of 166 have been awarded to Scottish firms with a total value of over £23 million. In addition 1,151 supply orders have been awarded on the Principal Contract of which 980 have been awarded to Scottish companies. This



represents 85% of the total number of supply orders. This is expected to increase as the construction progresses through the rest of the build period.

### **Fife Intelligent Transport System (ITS) Contract**

Progress has continued on Fife ITS with earthworks, grouting, piling, ducting and pavement works (**Photograph 4 and 5**). The delivery of gantries is expected to commence in March for commissioning and testing.

In April and May major traffic management will be implemented on the M90. The works involve reconstructing the south bound carriageway between the A92/M90 merge and Admiralty to extend its current life and support a bus lane.

For approximately four weeks, one lane of southbound traffic will be running in contra-flow, with two lanes provided for northbound and southbound traffic. This will be implemented between Junction 1 Admiralty and Junction 3 Halbeath and could cause significant delays. Additionally, over three weekends in April / May there will be surfacing works taking place on the M90 southbound carriageway, reducing southbound traffic to one lane running in contra-flow. Short term closures of slip roads to and from the M90 will be required at different stages.

Extensive public information initiations have been and are being undertaken in relation to these developments.

Traffic management is essential for the delivery of the FRC project whilst minimising its construction impact on journey times and public safety. Transport Scotland aims to inform the travelling public of the detail of these planned traffic management measures well in advance of their implementation, implement clear signage to give road users prior warning of the works and diversion routes and provide information on alternative modes of travel that could help minimise disruption, where possible.

### **M9 Junction 1a Contract**

Extensive earthworks and vegetation clearance have been completed so that work can start on creating the new road links and widening of the M9 (**Photographs 6 and 7**). The temporary diversion to the Swine Burn is complete and earthworks operations have commenced in this area. Works have commenced in widening bridges over the local roads and it is expected that these works will be completed by early autumn. The first gantry was delivered to site on 31 January 2012 and work on installing ITS gantries over the M9 Spur is underway.

The M9 Spur is currently programmed to be closed in both directions to all traffic between M9 J1a Kirkliston and A90 Scotstoun Interchange on Saturday 3 March 2012 for three consecutive Saturday nights from 9pm until Sunday morning at 10am. This is to allow for the installation of 3 new overhead gantries. During these periods, signed diversion routes will be in place which will increase journey times for road users.

Works are progressing well on the M9 Junction 1a Contract, and are scheduled to be completed by the end of 2012.

### **Contact and Education Centre**

Construction is progressing well and remains on schedule to be completed in autumn 2012 (**Photograph 8**).

## STAKEHOLDER ENGAGEMENT

The Contractor's Community Liaison Officers continue to engage with communities and businesses over localised issues such as traffic management and construction progress.

The FRC project team are holding an MSP briefing session on 15 March 2012, this will be followed by briefing sessions for key stakeholders on 16 March 2012. These events will focus on the construction activities for the year ahead and the upcoming traffic management measures.

The Community Forums are now well established, the most recent forums took place at the end of January 2012. The agendas and minutes are published on the project website. The next forums are scheduled for April / May.

## FRC PUBLIC TRANSPORT STRATEGY

Work is ongoing on preparing the refreshed Forth Replacement Crossing Public Transport Strategy. A number of meetings have been held between the Regional Transport Partnership, the relevant Local Authorities, the Confederation of Passenger Transport, the main Bus Operators, and Transport Scotland, and this work will be completed in spring 2012.

In addition to the public transport interventions included in the various FRC projects, one of the other complementary schemes for the Public Transport Strategy is the Halbeath Park and Choose Project. These works are being designed and supervised by the Fife Council.

The previous update to Committee indicated that the land acquisition issues remained unresolved, which resulted in the need for a Public Local Inquiry to be held as part of the compulsory purchase order procedures. This Inquiry was held in Dunfermline on 8 and 12 December 2011. The Reporter found in favour of the Fife Council and the various orders were then confirmed in late January 2011. Accordingly, all land has been secured for the project.

As a result the tender documents will be issued in early March 2012. This leaves adequate time to complete the procurement and construction process by the summer of 2013, when increased disruption around the Ferrytoll area is expected.

A regular written update will continue to be provided to the Infrastructure and Capital Investment Committee, and the project team look forward to the forthcoming Committee appearance on 14 March 2012.

Yours sincerely



David Climie CEng FICE  
FRC Project Director

## **Forth Replacement Crossing, Progress Update**

### **Photograph 1**

**Principal Contract, Site Offices, Rosyth**



### **Photograph 2**

**Principal Contract, site clearance at St Margaret's Hope**



**Photograph 3**  
**Principal Contract, blasting at Beamer Rock**



**Photograph 4**  
**Fife ITS Contract, earthworks**



**Photograph 5**  
**Fife ITS Contract, visual screen at Park Lea, Rosyth**



**Photograph 6**  
**M9 Junction 1a Contract Preparation for widening of M9 spur looking South West**





**Photograph 7**  
**M9 Junction 1a Contract Preparations for widening of M9 spur looking South East**



**Photograph 8**  
**Contact and Education Centre**



**Infrastructure and Capital Investment Committee**

**6<sup>th</sup> Meeting, 2012 (Session 4), Wednesday, 14 March 2012**

**Subordinate Legislation Cover Note**

<b>Title of Instruments</b>	<p>the Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2012 SSI/2012/32;</p> <p>the Bus Service Operators Grant (Scotland) Amendment Regulations 2012 SSI/2012/33;</p> <p>the Home Energy Assistance Scheme (Scotland) Amendment Regulations 2012 SSI/2012/34; and</p> <p>the Housing (Scotland) Act 2010 (Consequential Modifications) Order 2012 SSI/2012/38.</p>
<b>Type of Instruments</b>	Negatives
<b>Laid Date</b>	<p>SSI/2012/32; SSI/2012/33; SSI/2012/34: 10 February 2012</p> <p>SSI/2012/38: 13 February 2012</p>
<b>Circulated to Members</b>	9 March 2012
<b>Meeting Date</b>	14 March 2012
<b>Minister to attend the meeting</b>	No
<b>SSI drawn to the Parliament's attention by Subordinate Legislation Committee</b>	<p>SSI/2012/32; SSI/2012/34; SSI/2012/38: No</p> <p>SSI/2012/33: Yes</p>
<b>Reporting Deadline</b>	<p>SSI/2012/32; SSI/2012/33; SSI/2012/34: 19 March 2012</p> <p>SSI/2012/38: 26 March 2012</p>

**The Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2012 SSI/2012/32**

*Purpose*

1. The Explanatory Note states that Regulations seek to extend the definition of a local bus service to include Demand Responsive Transport (DRT) services. DRT services are described as any form of transport where day to day service provision is influenced by users' demands. DRT services tend to be most beneficial to people with mobility difficulties who are unable to use conventional public transport services and to people living in areas where public transport services are limited. Most recognisable forms of DRT services include dial-a-ride and dial-a-bus services.

2. The Explanatory Note states that in making the proposed change, DRT services would fall within the regulatory regime operated by the Traffic Commissioner. DRT services would also qualify for the Scotland-wide Concessionary Travel Scheme, thereby improving accessibility and social inclusion for eligible passengers in remote areas and ensuring that all passengers receive a regular and reliable transport service.

3. The Explanatory Note also states that the Regulations will result in additional strain being placed on the Bus Service Operators Grant and Concessionary Travel Scheme budgets for 2012-13.

*Consideration by Subordinate Legislation Committee*

4. The Subordinate Legislation Committee made no comments in relation to the Regulations.

**The Bus Service Operators Grant (Scotland) Amendment Regulations 2012 SSI/2012/33**

*Purpose*

5. These Regulations seek to extend the Bus Service Operators Grant (BSOG) by making provision for a grant to be paid to operators of Demand Responsive Transport (DRT) services, such as flexible bus services.

6. The Explanatory Notes describes that the Bus Service Operator Grant (BSOG) is paid directly to operators, principally to benefit passengers. It does this by helping operators to keep their fares down and encourages operators to run services that might not otherwise be commercially viable, thus contributing to the maintenance of the overall bus network.

7. The Explanatory Note states that the extension of BSOG would apply only to DRT services which are available to the general public and would not cover any services which are limited to specific groups. Such DRT services would thereby also qualify for the Scotland-wide Concessionary Travel Scheme.

8. The Explanatory Note also states that the Regulations will result in additional strain being placed on the Bus Service Operators Grant and Concessionary Travel Scheme budgets for 2012-13.



*Consideration by Subordinate Legislation Committee*

9. The Subordinate Legislation Committee (SLC) has drawn the attention of the Parliament to issues relating to the drafting of the definition of “flexible services”. The SLC suggested that the meaning and effect of “flexible Services” could have been made clearer had it referred to the meaning given in regulation 2(2A)(a) of the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001, rather than regulation 2(2A). In addition, the SLC suggested that the word “meanings” in the Regulations was incorrect and should not be pluralised.

10. Whilst the SLC did not consider that these issues would affect the operation of the Regulations it considered the definition of “flexible services” to be significant and called on the Scottish Government to make the corrections.

11. The Scottish Government accepted that the “flexible services” definition would have been more applicable had it referred to a different regulation; however, it does not indicate that it intends to correct this drafting error.

12. A full extract from the Subordinate Legislation Committee’s report on the Regulations is attached at the **Annexe**.

### **The Home Energy Assistance Scheme (Scotland) Amendment Regulations 2012 SSI/2012/34**

*Purpose*

13. These Regulations make technical changes to the criteria used to set the level of grant and the eligibility for grant under the Home Energy Assistance Scheme to improve the thermal insulation and energy efficiency of dwellings and provide advice on reduction or prevention of energy wastage in a dwelling.

14. Specifically, the Regulations update the methodology for assessing the energy efficiency of dwellings. The Explanatory Note states that this will make it marginally easier for dwellings with gas central heating to qualify and marginally harder for those with electric central heating systems. In addition, the Regulations will close a gap in eligibility for individuals in receipt of certain allowances, under the War Pensions Scheme to ensure that people can apply for grant in the same way that those who meet the disability allowance criteria can.

15. The Energy Assistance Package (EAP) is the Scottish Government’s primary programme for addressing fuel poverty. A person is defined to be living in fuel poverty if, to heat their home to a satisfactory standard, they would need to spend more than 10% of their household income on fuel. EAP aims to assist people in, or at risk, of fuel poverty and to ensure that the available funding is efficiently used. The package provides a range of measures aiming to reduce fuel bills and improve the energy efficiency of homes.

*Consideration by Subordinate Legislation Committee*

16. The Subordinate Legislation Committee made no comments in relation to the Regulations.

**The Housing (Scotland) Act 2010 (Consequential Provisions) Order 2012  
SSI/2012/38**

*Purpose*

17. This Order makes consequential modifications to existing legislation as a result of the commencement of Parts 1 to 12 of the Housing (Scotland) Act 2010.

18. The 2010 Act modernises the framework for regulating social landlords in Scotland. It establishes the Scottish Housing Regulator as an independent body, with the objective of safeguarding and promoting the interests of persons who are, or who may become, homeless, tenants of social landlords, or recipients of services provided by social landlords.

*Consideration by Subordinate Legislation Committee*

19. The Subordinate Legislation Committee made no comments in relation to this Order.

**Recommendation**

20. A copy of all the SSIs and their accompanying documents are included with the papers.

**21. The Committee is invited to consider any issues which it wishes to raise in reporting to the Parliament on this instrument.**

Steve Farrell  
Clerk to the Committee  
February 2012

## ANNEXE

**Subordinate Legislation Committee: 11th Report, 2012 (Session 4)**

*Bus Service Operators Grant (Scotland) Amendment Regulations 2012 (SSI 2012/33)*  
*(Infrastructure and Capital Investment Committee)*

9. These Regulations amend the Bus Service Operators Grant (Scotland) Regulations 2002 to extend the provisions for Bus Service Operator Grant, to operators of “flexible” bus services which are registered as a local, public bus service. “Flexible services” are defined in the Public Service Vehicles (Registration of Local Services) (Scotland) Amendment Regulations 2012 (SSI 2012/32), which the Committee also considered at its meeting on 28 February 2012.

10. The Regulations are subject to negative procedure, and will come into force on 1 April 2012.

11. In considering the Regulations, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in **Appendix 2**.

12. Section 38 of the Transport (Scotland) Act 2001 provides for Bus Service Operators Grant, payable by the Scottish Ministers to such eligible bus services as are prescribed by regulations.

13. The Committee notes that the extension of the grant provision in these Regulations is made by taking account of the different stopping arrangements applying in the case of such “flexible services”.

14. The Scottish Government was asked whether, in relation to the definition of “flexible service” in regulation 2(2)(a), the meaning and effect could have been made clearer. The Scottish Government has accepted that the definition of “flexible service” would have been clearer, had it referred to the meaning given in regulation 2(2A)(a) of the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001, rather than regulation 2(2A). It is accepted that the word “meanings” should not have been pluralised, in the definition of “flexible service”.

15. The Committee considers that the definition of “flexible service” in regulation 2(2)(a) is a central definition for the purposes of these Regulations. It notes that there is a patent drafting error in the definition.

**16. Although it is not considered likely that this error will affect the operation of the instrument, the Committee draws this instrument to the Parliament’s attention on the general reporting ground as it contains a drafting error.**

**17. The Committee also notes that the response from the Scottish Government does not indicate that it intends to correct this drafting error by bringing forward an amendment. The Committee indicates that the definition of “flexible service” is significant to the Regulations and that the Government should consider bringing forward an amendment to correct this error.**

**APPENDIX 2**

**The Bus Service Operators Grant (Scotland) Amendment Regulations 2012 (SSI 2012/33)**

**On 15 February 2012 the Scottish Government was asked:**

In relation to the definition of “flexible service” in regulation 2(2)(a), could the meaning and effect have been made clearer, as-

## ANNEXE

(i) such a service is defined as having the meanings given in regulation 2(2A) of the 2001 Regulations, but that paragraph (2A) contains 2 meanings, both for a flexible service and a standard service, and

(ii) “flexible service” in the 2001 Regulations is only given one meaning, though it is set out in 5 sub-paragraphs?

### **The Scottish Government responded as follows:**

(i) The Scottish Government accepts that the definition of “flexible service” would have been clearer had it referred to the meaning given in regulation 2(2A)(a) of the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001. However, the view of Scottish Government is that there is unlikely to be any confusion for the reader.

(ii) The Scottish Government accepts that the word ‘meanings’ should not have been pluralised in the definition of “flexible service”. However, the view of Scottish Government is that again there is unlikely to be any confusion for the reader.

## Infrastructure and Capital Investment Committee

**4th Meeting, 2012 (Session 4), Wednesday, 22 February 2012**

### Subordinate Legislation Cover Note

<b>Title of Instrument</b>	The Housing (Scotland) Act 2010 (Commencement No.6, Transitional and Savings Provisions) Order 2012 SSI/2012/39(C.8)
<b>Type of Instrument</b>	Commencement Order
<b>Laid Date</b>	13 February 2012
<b>Circulated to Members</b>	9 March 2012
<b>Meeting Date</b>	14 March 2012
<b>Minister to attend the meeting</b>	No
<b>SSI drawn to the Parliament's attention by Subordinate Legislation Committee</b>	yes
<b>Reporting Deadline</b>	26 March 2012

### Procedure

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

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

### Purpose

3. This Order brings certain provisions of the Housing (Scotland) Act 2010 into force on 1 April 2012. The purpose of the 2010 Act is to modernise the framework for regulating social landlords in Scotland. It establishes the

Scottish Housing Regulator as an independent body with the objective of safeguarding and promoting the interests of persons who are or who may become homeless, tenants of social landlords, or recipients of services provided by social landlords. The Order will commence the new regime for the regulation of social housing.

4. From 1 April 2011, the provisions of the 2010 Act, necessary to establish the Scottish Housing Regulator as a body corporate and enable it to consult on how it proposed to act as regulator, commenced. With one exception, this order will commence all remaining functions, enabling the new body to perform the full range of functions that the Act confers on it.

### **Subordinate Legislation Committee**

5. The Subordinate Legislation Committee agreed to draw the attention of the Parliament to this instrument, on the basis of a drafting error and a need for clarity on the transitional arrangement. The SLC noted that the transitional provision relating to the rights of social landlords to appeal against their removal from the Registered Social Landlords list, seemed not to be modified in accordance with other transitional orders of the Housing (Scotland) Act 2001. The Committee raised these concerns with the Scottish Government and was content with the response it received on both points, however, suggested a more detailed explanation of the un-amended transitional provision would be useful.

6. A full extract from the Subordinate Legislation Committee's report is annexed to this note.

7. A copy of the SSI and all accompanying documents, is included with the papers.

### **Recommendation**

8. **The Committee is invited to take note of this instrument.**

Steve Farrell  
Clerk to the Infrastructure and Capital Investment Committee  
Tel. 0131 348 5211  
email: [steve.farrell@scottish.parliament.uk](mailto:steve.farrell@scottish.parliament.uk)

**ANNEXE****Subordinate Legislation Committee: 11th Report, 2012 (Session 4)**

*Housing (Scotland) Act 2010 (Commencement No. 6, Transitional and Savings Provisions) Order 2012 (SSI 2012/39) (Infrastructure and Capital Investment Committee)*

18. This Order brings into force various provisions of the Housing (Scotland) Act 2010 to commence the new regime under the 2010 Act for the regulation of social housing. The provisions commenced are listed in Schedule 1 to the Order.

19. Schedule 2 to the Order contains various, complex transitional and savings provisions. Generally, these provisions are to facilitate an effective transition to the new regulatory regime under the 2010 Act.

20. The Committee notes that matters in progress under the Housing (Scotland) Act 2001 as at 1 April 2012 will generally be concluded by the new Scottish Housing Regulator under the provisions of the 2010 Act. However, there are certain cases where matters remain to be concluded under the 2001 Act regime. In those cases, responsibility for concluding the matter under the 2001 Act is transferred from the Scottish Ministers to the new Regulator.

21. The Order is not subject to parliamentary procedure, and comes into force on 1 April 2012.

22. In considering the Order, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 3. Where no further comment is made on a question, the Committee is content with the Government's response.

23. First, the Scottish Government was asked whether, in paragraph 18(f) of Schedule 2, the reference to schedule 7 to the 2001 Act is an error and whether it should actually refer to schedule 8.

24. In response, the Scottish Government agreed that there is a typographical error and that the reference to "schedule 7 to the 2001 Act" should be to "schedule 8". It committed to bringing forward an amending commencement order in advance of the coming into force of this Order on 1 April 2012, to correct the reference to ensure that the transitional provision operates in relation to the intended schedule.

25. The Scottish Government was also asked about the transitional provision made by paragraph 4(2) of Schedule 2.

26. This provision relates to the right of appeal which a social landlord has against a decision of the Scottish Ministers on registration in, or removal from, the Register as contained in section 62 of the Housing (Scotland) Act 2001. The section 62 right of appeal continues to have effect in relation to undetermined appeals on 1 April 2012, as if the decision appealed is treated as made by the Scottish Housing Regulator, in relation to the Register kept by the Regulator under section 20 of the 2010 Act.

27. The Committee pointed out that the transitional provision does not modify the effects of section 62(2) and (3) of the 2001 Act, in relation to such undetermined appeals, on or after 1 April 2012. This appeared to require some explanation. Section 62(2) places an obligation on the Scottish Ministers not to remove bodies from the Register while the appeal is pending. Section 62(3) provides, for a proposal to remove an industrial and provident society from the Register, that the Scottish Ministers, rather than the Regulator, shall give notice of appeal to the Financial Services Authority.

**ANNEXE**

28. It was not evident why the effect of section 62(2) and (3) of the 2001 Act should not be modified, as part of the transitional arrangements. The legislative background, as between the 2001 and 2010 Acts, is complex. The Committee therefore asked for an explanation.

29. The Scottish Government response offers a clarification and explanation of why the effects of section 62(2) and (3) of the 2001 Act are not modified by the transitional provision.

30. In relation to section 62(2), after 1 April 2012, the Scottish Ministers' "pre-commencement" Register under the 2001 Act will no longer be in force. The body appealing under section 62 will have moved to the new Register, by virtue of section 21(1) of the 2010 Act. The Regulator could not then simply remove the body from that new register without complying with the 2010 Act regime. There will be no pre-commencement register from which the Scottish Ministers could remove the body, and the Regulator will only have the power to remove it from the new Register in accordance with the 2010 Act provisions.

31. As regards section 62(3), the response clarifies that, in relation to notice of certain appeals to the Financial Services Authority, the transitional provision concerns appeals brought prior to the appointed day. The likelihood is that any appeal would already have been notified prior to 1 April 2012. The duty is to notify "as soon as may be after an appeal is brought". The duty to notify will have attached to the Scottish Ministers and they are in a position to fulfil that duty, even though they may require to notify shortly after the responsibility for the conduct of the appeal has passed to the new Regulator. It was therefore considered not necessary for the notification provision to be transferred to the new Regulator, though that would have been a possible course of action.

32. Although the Committee accepts the clarification provided in the response, it notes that this matter highlights the need for sufficient explanation, in either the Explanatory or Executive Notes with the instrument, to enable proper parliamentary scrutiny of complex transitional arrangements. Such explanation also assists readers generally in understanding the provisions.

33. The Committee therefore draws this instrument to the Parliament's attention on reporting ground (i) as the drafting of the instrument appears to be defective, in respect that, in the transitional provision in paragraph 18(f) of Schedule 2, the reference to schedule 7 to the Housing (Scotland) Act 2001 should refer to schedule 8.

34. The Committee welcomes that the Scottish Government has undertaken to bring forward an amending commencement order in advance of the coming into force of this Order on 1 April 2012. This is to correct the reference to ensure that the transitional provision operates in relation to the intended schedule.

35. The Committee is also content with the transitional provision made by paragraph 4(2) of Schedule 2, but it notes that it would have been useful to its scrutiny if either the Explanatory or Executive Notes had explained why the transitional arrangement does not require any modification of the effects of section 62(2) and (3) of the Housing (Scotland) Act 2001.

36. As a general observation, the Committee welcomes the detail of the Explanatory Note to this Order, which helped the Committee to identify the drafting error in Schedule 2. It also welcomes the fact that 40 days have been allowed from the laying of the instrument to the coming into force date, which will allow for the error to be corrected before the provision comes into force.



**ANNEXE****APPENDIX 3****The Housing (Scotland) Act 2010 (Commencement No. 6, Transitional and Savings Provisions) Order 2012 (SSI 2012/39 (C. 8))****On 17 February 2012 the Scottish Government was asked:**

(1) Please explain why the provision made in column 3 of Schedule 1 is considered a usual and competent use of the power in section 161(2)(c) of the Housing (Scotland) Act 2010 to commence different provisions for different purposes. This provision commences section 110 on 1 April 2012 for certain purposes, but paragraph 4 of the Executive Note states that the Scottish Government has no intention to bring that section into force for all purposes. It therefore appears that the commencement of section 110 for restricted purposes is intended to continue indefinitely. This does not appear to have been the intention of the Parliament given the terms of the Act as passed and in particular the definition of “disposal” provided in section 165.

(2) In paragraph 18(f) of Schedule 2, would you agree that the reference to schedule 7 to the 2001 Act appears to be an error and should refer to schedule 8? If so would the Scottish Government propose to correct this error, so that the transitional provision can operate in relation to schedule 8?

(3) The transitional provision made by paragraph 4(2) of Schedule 2 (providing that the right of appeal against a decision of the Scottish Ministers on registration or removal as contained in section 62 of the 2001 Act continues to have effect in relation to undetermined appeals on the appointed day, as if the decision appealed is treated as made by the Scottish Housing Regulator in relation to the register kept by the Regulator under section 20 of the 2010 Act) does not modify the effects of section 62(2) and (3) of the 2001 Act in relation to such undetermined appeals, on or after the appointed day.

Those subsections place an obligation on the *Scottish Ministers* not to remove bodies from the register while the appeal is pending, and for a proposal to remove an industrial and provident society, to give notice of appeal to the Financial Services Authority.

Could you explain why it is not considered necessary or appropriate to modify the effects of section 62(2) and (3) for the purposes of this transitional provision, as it appears the effect of the provision is that after the appointed day, appeals are treated as relating to the decision of the *Scottish Housing Regulator* in relation to the Regulator's register, and yet those subsections provide that the *Scottish Ministers* have the requirements not remove a body from the register, and to give notice where applicable to the FSA?

**The Scottish Government responded as follows:**

(1) The policy rationale for the provision made in column 3 of Schedule 1 is fully set out in the Executive Note. The Scottish Government considers that there is a problem with the breadth of the requirement for tenant consultation as set out in section 110 of the Housing (Scotland) Act 2010. To commence it in full would, in the Scottish Government's view, place unreasonable and impractical restrictions on the ability of Registered Social Landlords to manage their businesses.

The Scottish Government therefore intends to bring forward legislation to amend section 110 when a suitable opportunity arises and will consider further the commencement of the section when the Parliament has had the opportunity to consider the position. It is incorrect to say that the Executive Note states that “*the Scottish Government has no intention to bring that section into force for all purposes*”; the Note contains no such statement.

The Scottish Government does not consider this an unusual use of the commencement power. The powers to commence provisions and to make different provision for different

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purposes are part of a normal and prudent scheme for commencement of a lengthy and detailed set of statutory provisions. The Scottish Ministers are expected to use them to achieve an appropriate and workable introduction of what has been enacted. Where a difficulty in a provision has been identified, it is entirely appropriate that the power is used to commence only the unproblematic element of the provision, pending further Parliamentary consideration of the problematic element.

(2) The SGLD thanks the Subordinate Legislation Committee for its question. This is indeed a typographical error; the reference to “schedule 7 to the 2001 Act” should refer to “schedule 8”.

An amending commencement order will be brought forward in advance of the coming into force of this Order on 1 April 2012 to correct the reference to ensure the transitional provision operates in relation to the intended schedule.

(3) The transitional provision made by paragraph 4(2) of Schedule 2 is intended to enable the Scottish Housing Regulator (SHR) to progress any appeal that is taken against a pre-commencement Ministerial decision. The Scottish Ministers consider that it achieves that purpose.

In relation to section 62(2), the Scottish Government does not consider it necessary to modify this provision. After commencement, the pre-commencement register under the 2001 Act will no longer be in force. The body appealing under section 62 will have moved to the new register, by virtue of section 21(1) of the 2010 Act. The Regulator could not then simply remove the body from that new register without complying with the 2010 Act regime. So in practice it appears to the Scottish Government to be of no consequence that section 62(2) ceases to operate. There will be no pre-commencement register from which Ministers could remove the body, and the Regulator will only have power to remove it from the new register in accordance with the 2010 Act.

As regards section 62(3), to give notice of certain appeals to the Financial Services Authority, the likelihood is that any appeal would already have been notified pre-commencement. The duty is to notify “as soon as may be after an appeal is brought”, and the transitional provision only applies where an appeal is brought before the appointed day. The duty to notify will have attached to Ministers and there is no reason why they cannot fulfil that duty, even if particular timings might mean they have to notify very shortly after the responsibility for the conduct of the appeal has passed to the SHR. The Scottish Government therefore saw no need to provide for transfer of the duty, though it agrees that such an approach would have been possible if wished.