

FERRY SERVICES – POLICY REVIEW BY SCOTTISH GOVERNMENT

1.0 EXECUTIVE SUMMARY

- 1.1 The Scottish Government has commenced a policy review into the legal, policy and financial implications relevant to the future procurement of the Scottish Government's ferry services. The review is still ongoing and this report provides Members with an update on progress.
- 1.2 The review is seen by the Scottish Government as an opportunity to give further consideration to future tendering options for Scottish Government ferry contracts.
- 1.3 Council officers attended meetings in Glasgow on 26th May and in Oban on 30th May this year as part of the Scottish Government's engagement process. Generally, island representatives present at the meeting considered it would be wise to tender services to generate interest from external organisations, and to promote a business-orientated ethos within in-house companies.
- 1.4 Further updates will be provided to Members as information from the Scottish Government becomes available.
- 1.5 It is recommended that Members a) note this report and b) if they are so minded, provide views on the procurement options being considered by the Scottish Government.

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2.0 INTRODUCTION

2.1 The Scottish Government commenced a policy review in February of this year into legal, policy and financial implications relevant to the future procurement of the Scottish Government's ferry services. The review is still ongoing and this report provides Members with an update on progress.

3.0 RECOMMENDATIONS

3.1 It is recommended that Members a) note this report and b) if they are so minded, provide views on the procurement options being considered by the Scottish Government.

4.0 BACKGROUND

4.1 A policy review into future tendering for Scottish Government ferry contracts was initiated by the Minister for Transport and the Islands Humza Yousaf in February of this year. It follows correspondence from the European Commission on the Teckal Exemption*. The response from the European Commission indicated that, in certain circumstances, public ferry services could be awarded to an "in house" operator without the need for tendering. The review by the Scottish Government is still ongoing.

*The Teckal exemption allows for public contracts to be awarded to in-house companies under strict conditions relating to the parent authority's control and the functions performed.

4.2 The review is seen by the Scottish Government as an opportunity to give further consideration to future tendering options for Scottish Government ferry contracts; it is also considered to be an opportunity to ensure that the best possible ferry services are provided to the island and remote mainland communities. Transport Scotland has stated that they have undertaken the review to address the potential implications of the European Commission's reply on the procurement of ferry services; it covers the application of the Teckal exemption in light of the Commission's latest advice, the requirement to ensure compliance with State aid rules, and all other legal, policy and financial implications relevant to alternative models for procuring the ferry services.

- 4.3 In April of this year, Mr Yousaf stated that:
“we cannot pre-judge the outcome of the review. However, should it conclude that it would be possible to apply the Teckal exemption and meet State aid rules then we would be minded to provide ferry services through an in-house operator, taking account of the communities they serve. This would, of course, be subject to wider policy and value for money implications and the views of those communities”.

5.0 DETAIL

- 5.1 The terms of reference for the review, with key milestones, is attached to this report in Appendix A. In summary, the review considers the following issues:-

- The possible application direct award of future ferry contracts to an in-house operator.
- The requirement to ensure compliance with State aid rules, and
- All other legal, policy and financial implications.

- 5.2 The review also comprises engagement with key stakeholders. Council officers attended meetings in Glasgow on 26th May and in Oban on 30th May this year. Attendees also included community representatives from Islay, Mull and Lismore. Attendees were asked to provide their views on whether they considered services should be tendered in future, or remain in-house. Generally, island representatives present at the meeting considered it would be wise to tender services to generate interest from external organizations, and to promote a business-orientated ethos within in-house companies.

- 5.3 Members are asked to note that, currently, the tendering exercise for the Gourock-Dunoon ferry service has been paused whilst the policy review is ongoing.

6.0 CONCLUSION

- 6.1 The policy review into the Scottish Government’s future procurement of Scottish ferry services is ongoing. Further updates will be provided to Members in due course.

7.0 IMPLICATIONS

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|------------|-------------------|-----------------------|
| 7.1 | Policy | None for the Council. |
| 7.2 | Financial | None for the Council. |
| 7.3 | Legal | None for the Council. |
| 7.4 | HR | None for the Council. |
| 7.5 | Equalities | None for the Council. |

7.6 Risk None for the Council.

7.7 Customer Services None for the Council.

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APPENDIX A

FERRY SERVICES PROCUREMENT POLICY REVIEW TERMS OF REFERENCE

Purpose

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

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

Remit

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

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

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

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

Structure and Process

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

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

- Scottish Government State aid Unit
- Scottish Government Procurement and Commercial Directorate

The review will be structured around three workstreams:

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

Stakeholder Engagement

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

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

Provisional Timeline

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

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

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