CLYDE AND HEBRIDES FERRY SERVICES: SERVICE SPECIFICATION

A CONSULTATION PAPER

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CLYDE AND HEBRIDES FERRY SERVICES: SERVICE SPECIFICATION – A CONSULTATION PAPER

Introduction

1. The Minister for Transport announced on 25 June 2004 there should be a further round of consultation on the service specification for the Clyde and Hebrides Ferry Services. This will provide all of those with an interest a final opportunity to provide comment on the draft service specification prior to the services being tendered.

2. This consultation seeks views from interested parties to assist the Executive in finalising the service specification for the Clyde and Hebrides lifeline ferry services (CHFS).

3. Issues of principle in relation the service specification were consulted on in 2002. Ministers’ proposals for key issues such as the prescribed approach to fares and timetables were widely supported by consultees. A summary of key changes to the services and the service specification following the 2002 consultation is outlined at Annex B, with a more detailed summary of responses to the consultation at Annex C.

4. Please send your response to:

john.b.davidson@scotland.gsi.gov.uk

or

John Davidson
Transport Division 4
Enterprise, Transport & Lifelong Learning Department
The Scottish Executive
2-F (dockside)
Victoria Quay
Edinburgh
EH6 6QQ

5. If you have any queries contact John Davidson on 0131 244 0623.

6. We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

7. This consultation, and all other SE consultation exercises, can be viewed online at http://www.scotland.gov.uk/consultations. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.
8. Consultees may wish to read this consultation paper in conjunction with the draft Invitation to Tender (ITT) which includes the service specification. However, the draft ITT is a substantial document (running to over 200 pages) and much of it may not be of interest to many consultees. The main changes to the specification, since 2002, are set out in Annex B. However, for those consultees who wish to read the draft ITT it is available electronically on the Scottish Executive website at www.scotland.gov.uk. Copies are also available at CalMac port and ticket offices and local libraries. Further copies of both the consultation paper and the draft ITT are available from John Davidson at the address above.

9. We will make all responses available to the public in the Scottish Executive Library and on the Scottish Executive website unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

10. All respondees are requested to complete a Respondee Information Form which will help us to ensure that consultees' responses are handled appropriately. A copy has been included with all consultation documents sent directly to consultees. Further copies are available from John Davidson at the address above. Respondees will wish to note that if they do not complete a Respondee Information Form it will be assumed that their views are confidential.

11. The distribution list for this consultation document is attached at Annex D.

12. Further information about the Scottish Executive Consultation Process is attached at Annex E.

Previous Consultation

13. In April 2000, the Scottish Executive published the consultation document, Delivering Lifeline Ferry Services. We sought views on options for putting subsidised lifeline ferry services out to tender in order that they could continue under European Union rules. Following consideration of responses, provisional proposals were announced in January 2001 and submitted to the European Commission for consideration (as required under the rules). We announced in November 2001 that the Commission had advised the Executive that the way was clear to tender the network as a whole (as set out in the Executive’s proposals). In 2002 the Scottish Executive consulted widely on the key principles of the tender process when the consultation document, Proposals for Tendering Clyde and Hebrides Lifeline Ferry Services, was published. Consultees views were sought on a number of complex issues including standards of service, timetabling options and the proposed performance regime which the successful bidder would be required to meet. Around 600 copies of the consultation paper were issued and it was also available on the Scottish Executive website.
By the end of the consultation period in September, 440 responses had been received as follows:

- Substantive responses: 189
- Standard letters (relating to Gourock-Dunoon): 95
- Coupons (relating to Gourock-Dunoon): 156
- Petition, relating to Gourock-Dunoon and submitted by Alan Reid MP and George Lyon MSP: 5,500 signatures

14. A detailed analysis of responses to the 2002 consultation is attached as Annex C.

15. The majority of responses to the 2002 consultation were in relation to the Executive’s proposals for a passenger only service on the Gourock-Dunoon route. Following further discussion with the European Commission in late 2002 Ministers concluded that it would be possible to tender the Gourock-Dunoon route with a passenger only subsidy, as at present, in a way that gave operators the choice as to whether to provide a passenger only or combined passenger and vehicle service. This was on the basis that the service was tendered separately from the rest of the network. These proposals were set out in the consultation paper, *Proposals for Tendering Gourock to Dunoon Ferry Services*, published in March 2003. There was a strong response to this second consultation, much of it arguing that the proposal did not go far enough to guarantee a vehicle service. Ministers are announcing their conclusions on this issue separately.

16. The 2002 consultation committed Ministers to a separate consultation on future arrangements for consulting ferry users including those in the Northern Isles. A consultation paper, *Clyde and Hebrides, and Northern Isles Ferry Services: Future Consultation with Ferry Users*, was published in October 2002. Views were sought on proposals which reflected Ministers’ wishes for more robust and efficient arrangements for consulting ferry users, including those in the Northern Isles. Ministers’ conclusions are set out at paragraphs 21 to 23 of Annex C.

17. There have also been events at European level which have required consideration in relation to the tender process. These issues, including the 2003 decision of the European Court of Justice in the Altmark case, are set out in more detail at Annex A.

**Issues on which consultees views are requested**

**Timetables and Services**

18. Following the 2002 consultation a number of refinements and enhancements have been made to the CHFS services. These are set out at Annex B. CalMac has also continued to regularly consult users about the services. We are therefore of the view that, given the restrictions of the fleet and financial considerations, and without a wholesale review of the services, the services...
and timetable work well to meet the varying needs of the communities which CHFS serves. However, respondents are invited to consider whether there are further changes which might be made to services and/or timetables which would benefit users. These will be considered by Ministers before the service specification is finalised.

19. Views on any timetabling or service issues are requested. However, consultees views in relation to proposals for the Small Isles, Lismore and Mallaig-Lochboisdale are specifically requested.

The Small Isles

20. Two respondents to the 2002 consultation asked for provision to be made to allow school children to return home at weekends. In summer there are currently 2 sailings on a Saturday and in winter 1 sailing on a Saturday which services all the islands in the Small Isles grouping. There are no Sunday services to or from the Small Isles. The service on a Friday is early and children would miss that day’s schooling if they were to use it. Likewise, on a Monday, the late return to Mallaig would mean that that day’s schooling would be missed. CalMac has suggested the following possible solution:

An additional Sunday run from Mallaig. However, this would provide only a part solution i.e. a 24 hour home trip for school children. CalMac has therefore suggested that a late run could also be provided on the Friday afternoon but that this could only be achieved, due to Hours of Rest regulations, by dropping one of the Saturday sailings during the summer timetable. However, the double run on the Saturday is specifically valued because of the accessibility it offers tourists.

21. We would be grateful for consultees views on the following options:

Option A - additional Sunday sailing only. This would allow a 24 hour home trip for school children and would not disrupt the double Saturday sailing which benefits tourists and tourism providers.

Option B - additional Sunday sailing and additional late sailing on Friday. This would give school children a full weekend at home but, in the summer, would mean the loss of the double Saturday sailing.

22. If there is no clear preference from the Small Isles communities for one of these options then the timetable will remain as it is. We would therefore strongly encourage islanders to seek to find a mutually acceptable solution.

Lismore

23. The 2002 consultation sought views on the potential rationalisation of services between Lismore and the mainland. The response was not conclusive:

Option 1 – 19 respondents favoured the status quo (vehicle service to Oban and passenger service to Port Appin)
Option 2 – 12 respondents favoured semi rationalisation (passenger service to Oban and a vehicle service to Port Appin). However, 5 of these respondents also supported option 1 as their main concern was the passenger service to Oban, and 2 also supported option 3

Option 3 – 6 respondents favoured rationalisation (no service to Oban and a vehicle service to Port Appin)

24. The convenience of the link to Oban was seen to be its chief advantage particularly for the elderly, infirm and disabled. It was said that the main community on Lismore is located at Achnacroish, at the south end of the island, making a Port Appin service less convenient, and pointing out that travellers do not want to reach Port Appin, but Oban. Quality of life was often cited by respondents who did not wish increased vehicle traffic on the island as cars drove north for a vehicle link and/or increased traffic from tourists. The proposal for a vehicle service to Port Appin was seen as favouring car users rather than public transport. The requirement for substantial investment in infrastructure (roads and pier works at both Port Appin and on Lismore) was also cited.

25. On the other hand, some respondents advocated the change to a shorter more sheltered sea route as overdue, allowing more frequent, reliable services which would boost the economy and encourage tourism and other business.

26. It should be noted that no detailed cost-benefit appraisals have been done for any of the various options and that, even if there was agreement on alternative options to existing provision, such detailed studies would need to be undertaken before any changes could be seriously considered. In addition, it is clear that the introduction of a vehicle service to Port Appin would require significant infrastructure investment.

27. With two separate services, Lismore is already fairly well served compared to other islands of similar size in the CHFS network. Given that there did not appear to be a clear consensus from the local community and that any change to the current provision would have potentially significant cost implications further consideration of the future provision of services to Lismore is required. There has been recent further locally-led consultation on this issue and the Executive supports this consensual approach. The most recent survey again showed a mixed response although the option for an enhanced Oban – Achnacroish vehicle ferry service had the most support. The Executive intends to take the results of this survey into account when considering future provision for Lismore. However, any further views that consultees have on this issue are invited.

28. Consultees will wish to note that Ministers intend to tender on the basis of the existing CalMac services to Lismore. Any change to the services would be considered in relation to the next contract or beyond and would have to be
considered with other long term service development and infrastructure needs across the network.

**Mallaig - Lochboisdale**

29. Some respondents to the 2002 consultation sought the introduction of a direct Mallaig-Lochboisdale service. Consultees will wish to note that Ministers intend to protect the current level of service across the existing network and there can, therefore, be no commitment to a Mallaig-Lochboisdale service until it is clear what the financial and other consequences might be. However, CalMac will be taking forward an appraisal, using the Scottish Transport Appraisal Guidance (STAG) approach. Thereafter, the Executive intends to work with CNES, Highland Council, HIE and CalMac to develop proposals.

**Planned Research**

30. As set out in the 2002 consultation the Executive will, during the first contract, carry out research into the services (including the long standing proposals for the Mull and Islay-Jura overland routes) and fares. Consultees are invited to suggest service and fares issues which might be looked at as part of the proposed research for the provision of the service in the longer term. It is intended that this research will feed into the second contract. Final decisions about which issues are taken forward through research will, of course, lie with Ministers.

<table>
<thead>
<tr>
<th>Issues on which Consultees views are sought:</th>
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<tr>
<td>– suggested changes to the services and timetables including specific issues relating to the Small Isles, Lismore and Mallaig-Lochboisdale</td>
</tr>
<tr>
<td>– suggestions for issues to be considered as part of the planned research during the first part of the contract</td>
</tr>
</tbody>
</table>

**Next Steps**

31. Following consideration of responses to this consultation the Executive intends to begin tendering in 2005. However, this will be subject to progress being made on the restructuring of Caledonian MacBrayne.

32. Consultees will wish to note that it is not intended that the services and timetables will be set in stone during the contract period. During this time there would, in principle, be the opportunity for changes to be approved provided that the operator has agreed these with the local communities concerned through the consultative mechanism and that the financial consequences are acceptable to the Scottish Executive.
EVENTS SINCE THE 2002 CONSULTATION

1. This Annex sets out key events since the 2002 consultation and key changes which have been made to the CHFS services.

EU Issues

2. The summer 2003 decision of the European Court of Justice in the Altmark case raised speculation by commentators about the possible implications for tendering of the Clyde and Hebrides ferry services. The Minister for Transport met with the European Commission in April 2004 to discuss the possible effects of Altmark on the Executive’s plans for those services. Following that meeting it is now clear that there continues to be a requirement on the Executive to tender the services. The reasons for this are:

- The Altmark case concerned the question of whether a payment constituted state aid. The requirements for public tendering of ferry services stem from the Maritime Cabotage Regulation\(^1\). This regulation has a different Treaty base to the State aid rules. The Altmark judgement therefore does not affect the issue of whether public tendering is required.

- The Maritime Cabotage Regulation states that, where a Member State concludes public service contracts or imposes public service obligations, it shall do so on a non-discriminatory basis in respect of all Community shipowners. The Commission could not envisage any circumstances in which the requirements of this regulation could be satisfied in relation to the Clyde and Hebrides services without tendering. The Altmark judgement did not change its view on this issue in any way.

3. The European Commission also published, in December 2003 and January 2004, revised guidance\(^2\) on the interpretation of the Maritime Cabotage Regulations. We broadly welcome the thrust of the proposals which seek to introduce greater flexibility for Member States in relation to public service obligations and contracts. It is helpful that the rules now recognise mainland-to-mainland routes, tendering the routes as a single bundle and the need to ensure the availability of vessels where these are unique. This represents significant progress and recognises representations the Executive made to the Commission. There has been some public debate about the proposals for small islands. However, given the requirement to aggregate carryings where several small islands are served by a single operator, most of Scotland’s routes are unlikely to benefit from the flexibility proposed.

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\(^1\) Council Regulation (EEC) No. 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)

KEY CHANGES TO THE CHFS SERVICES AND SERVICE SPECIFICATION SINCE 2002

1. This Annex sets out the key changes to the CHFS services and the draft service specification since the 2002 consultation.

Changes to the Services

2. The Clyde and Hebrides ferry services have not stood still since the 2002 consultation. Since 2002 MV Loch Portain and MV Coruisk have joined the fleet, Ministers have confirmed funding for a new Sheltered Water Vessel for the Wemyss Bay-Rothesay route and work is going ahead at Oban to develop the facilities there.

3. Careful consideration was given to all responses to the 2002 consultation and, where improvements and enhancements to the services could be made without significantly affecting the subsidy requirement or disadvantaging other services, those changes have been made as follows:

- in December 2003 the Minister for Transport announced that from the start of the 2004 summer season, regular users of four ferry routes would no longer pay a supplement to travel on peak-time sailings. The new arrangements mean that books of six and ten multi-journey tickets can be used on designated sailings at the standard fare. The routes affected are Ardrossan-Brodick (car), Oban-Craignure (car), Kennacraig-Islay (car) and Largs-Cumbrae (passenger and car).

- as announced in the 2002 consultation paper the Mallaig-Armadale winter vehicle service and the Tarbert-Portavadie winter service were brought within CalMac’s approved services in winter 2002/03. The 2002 consultation paper also proposed new or enhanced ferry services - the Sound of Barra service, enhanced Sound of Harris service, winter passenger service between Kilchoan and Tobermory, and enhanced services out of Oban in summer. Following consideration of responses Ministers announced in March 2003 that the winter Kilchoan-Tobermory service would be extended to also carry vehicles. And, where possible within safety constraints (i.e. that the route must be operated in daylight), additional services on the Sound of Harris were included in the winter 2003/04 timetable. All of these services are now in operation. The Sound of Barra service commenced in April 2003 and a Kilchoan-Tobermory passenger and vehicle service was part of the winter 2003-04 timetable.

- the summer timetable for Colonsay now ensures that school children can return to the island at weekends. Consideration was given as to whether it would be possible to provide for school children to return to Coll and Colonsay at the weekend during the winter timetable. Following discussion with CalMac it is clear that a reliable service would not be possible given the early loss of daylight and the winter weather conditions.
In particular, it is likely that some sailings returning children to Oban late at night would have to be abandoned.

- Caledonian MacBrayne has also continued to consult users, through the Shipping Service Advisory Committees, to further refine and develop the services with the latest round of consultation by the Company taking place early in 2004 for the winter 2004/05 and summer 2005 timetables.

**Changes to the Service Specification**

4. The Executive’s proposals for tendering were generally welcomed by consultees. However, following consideration of responses to consultation, a number of changes have been made to the service specification:

- the service specification has been strengthened to require the successful tenderer to consider the needs of disabled travellers and, in particular, service and information accessibility.

- developments in relation to Gaelic (encouraging employment of at least one Gaelic speaking crew member on relevant routes).

- strengthening of requirement for ability to speak English among crew members who deal with passengers.

- in relation to the performance regime, the right to step in after 7 days of no service has been reduced to 4 days (this was reflected in the 2003 Gourock-Dunoon draft service specification).

- also in relation to the performance regime, the thresholds for acceptable reliability and punctuality have been raised.

- emphasising the need to maintain and improve integration with other transport modes.

- tighter contract monitoring arrangements.

- catering services will not have to precisely reflect current provision. Instead there will be flexibility for tenderers with the proviso that, as a minimum, light refreshments should be provided on short journeys with hot meals available on longer journeys.

- the summer timetable will be prescribed to start at the beginning of the majority of Scottish school Easter holidays, or Good Friday, whichever is earlier, and to last for not less than 28 weeks each year. A fixed summer timetable would not be appropriate due to the movement of the Easter holiday.

- the Gourock-Dunoon route was stripped out to meet the local communities’ concerns about a continued vehicle service and, under the proposals published in 2003, will be tendered separately. However, discussions are ongoing in relation to the Gourock-Dunoon route and Ministers will announce their conclusions separately.
SUMMARY OF RESPONSES TO 2002 CONSULTATION ON PROPOSALS FOR TENDERING CLYDE AND HEBRIDES LIFELINE FERRY SERVICES AND SCOTTISH EXECUTIVE RESPONSE

1. This Annex provides a detailed summary of responses to the 2002 consultation and sets out the Executive’s response.

Tendering the routes as a single bundle

2. A key part of the Executive’s proposals is the single bundle, and this option received overwhelming support. 28 respondents commented on the single bundle, with 23 respondents specifically welcoming it. These respondents mentioned the advantages of flexibility, marketing and security of service. Those critical of the single bundle were concerned that this approach would not allow competition and the promotion of innovation. We are clear that there are great advantages in maintaining an integrated network of services and confirm that the network will be tendered as a single bundle. The Gourock-Dunoon service is, of course, currently stripped out of the bundle whilst Ministers consider the issue further.

Mainland to mainland routes

3. Fourteen respondents unanimously welcomed the inclusion of the mainland to mainland routes Tarbert-Portavadie and Gourock-Dunoon.

Gourock-Dunoon ferry service

4. There were 88 substantive individual responses commenting on the proposals for Gourock-Dunoon, and of these 86 were opposed to the proposals. Additionally 95 standard letters, 156 coupons and a 5,500 signature petition were received opposing the proposals. The main thrust of these responses was the community’s strong desire to retain a combined passenger and vehicle service between Gourock and Dunoon town centres. Particular issues raised included the economic prosperity of the area, Western Ferries’ capacity and traffic issues, concern at the vehicle service being delivered by a single provider, and doubt that a passenger only service would be reliable. Other respondents questioned the Executive’s interpretation of EU law or suggested solutions to the issue of subsidy leakage on a combined service.

5. As discussed at paragraph 15 of the main part of this consultation paper, the proposal that the Gourock-Dunoon ferry service should be restricted to a passenger-only service was the most controversial part of the consultation paper and this led to a further consultation paper in March 2003 on revised proposals. Ministers are announcing their conclusions on this issue separately.

VesCo

6. The Executive proposed that Caledonian MacBrayne Ltd should be restructured into separate vessel owning (VesCo) and operating (OpsCo) companies, and set out detailed proposals for the VesCo. 34 respondents
commented on these proposals, with 10 respondents specifically welcoming the VesCo, 11 expressing concern about aspects of it, and 13 commenting on particular issues such as the possible location of the company’s HQ. Those who welcomed the proposals approved of the vessels remaining in public ownership and safeguarding the custom designed vessels for use on the network.

7. Criticisms related to concern that splitting CalMac into operating and vessel owning companies could blur responsibility for safety issues, that the operator would be unable to invest directly or to be innovative, and that the vessel crews should be employed by VesCo not the operating company. The restructuring proposals for the company are complex and we are determined to get them right. Importantly the current proposals ensure the fleet remains in public ownership and control, safeguarding that investment for future contracts. We believe that, given the short term nature (6 years) of Public Service Contracts (PSCs) required under the EU rules, long term investment decisions must lie with the VesCo and ultimately Scottish Ministers. Some respondents suggested that the current CalMac crews should be attached to the vessels. However, following discussions with the European Commission we have concluded that this is not possible and that VesCo will lease vessels to the operator under a bareboat chartering arrangement. The Executive attaches importance to the future of staff of CalMac OpsCo should another operator be successful in its bid. Paragraph 14 below sets out the Executive’s views in relation to the transfer of staff.

8. There was little comment regarding the proposals for VesCo’s role as Operator of Last Resort except to support its quick implementation. This will be an early priority for VesCo to ensure that suitable arrangements are in place before the new contract begins.

Fares

9. Fares received considerable comment (raised by 55 respondents) with most respondents seeking reduction of fares or suggesting revised approaches to fares which would provide reductions. Having reviewed the proposals it appears to the Executive that at this stage substantial additional subsidy would be required to implement them and it has therefore decided to confirm that the approach will be to prescribe the current fares and fare structure as the maximum fares, with increases in net fares limited to increases in the Consumer Price Index in subsequent years. The Executive is clear that it would not be appropriate to allow the operator to increase fares above this maximum level. However, there will be freedom to reduce fares through the tender and, where this makes commercial sense, for example where there are opportunities to increase traffic to compensate for lower ticket prices, operators will have an incentive to make this type of innovation.

10. 18 respondents supported minor changes to the fare structure, chiefly more concessionary fares, particularly for young people, and the removal of the peak fare structure. In December 2003 the Minister for Transport announced that with effect from the start of the 2004 summer season, regular users of
Annex C

12. Four ferry routes would no longer pay a supplement to travel on peak-time sailings. The new arrangements mean that books of six and ten multi-journey tickets can be used on designated sailings at the standard fare. The routes affected are Ardrossan-Brodick (car), Oban-Craignure (car), Kennacraig-Islay (car) and Largs-Cumbrae (passenger and car).

Levels of Service

11. The consultation document explained that the Executive proposed prescribing the current timetables and services. There was clear support for this prescriptive approach among the 45 respondents who commented on it, although many of them also saw a need to allow flexibility and to encourage innovation. We believe that a careful balance is needed to allow flexibility whilst ensuring that the benefits of the timetables that have developed over the years are not lost. We would be concerned that without safeguards to ensure that changes occur only after appropriate consultation, changes that seem attractive may in fact diminish the service to other users. The Executive is also constrained in encouraging innovation by the requirement that we accept the compliant bid which requires the lowest financial compensation. Given that rigidity, it is important to be able to be sure that every compliant bid provides the current level of service as a minimum.

Integrated Transport

12. The consultation paper made clear the priority the Executive attaches to integrated transport and the 24 respondents who commented on this unanimously endorsed it as a priority. While there was support for integrated ticketing, respondents placed greater importance on maintaining and improving transport connections. We agree that this approach is appropriate in the short term and the service specification has been strengthened to make it clear that the successful tenderer will be expected to work closely with connecting public transport operators. The subsidy contract will also require the successful tenderer to participate fully in any integrated ticketing initiatives which are judged by the Scottish Ministers to benefit the public.

Gaelic

13. 11 respondents commented on the provision for Gaelic in the draft service specification with mixed views as to its effectiveness: 1 respondent opposed the provision, 5 were satisfied and a further 5 wished to see greater provision. We have considered whether greater provision is possible. However, the EU rules lay down very strict requirements on what may or may not be required through the subsidy contract. We have concluded that there are no safety grounds on which we can require a proportion of Gaelic speaking crew on vessels. Nevertheless the final service specification will:

- require tenderers to consider whether there are benefits attached to ensuring a number of sea-going or shore-based jobs for competent Gaelic speakers for the purposes of dealing effectively with CHFS customers as
well as acting as a source of local expertise on the area’s geography, culture, history and tourist information.

- suggest that, as a minimum, the successful tenderer could ensure that there is at least one Gaelic speaking crew member on the relevant routes.
- require the successful tenderer to retain the bi-lingual (Gaelic and English) taped “Welcome” announcements currently provided on the seven CHFS routes serving the Hebrides.
- require the successful tenderer to provide bilingual (Gaelic and English) literature and signage in passenger areas of vessels serving the seven routes servicing the Hebrides.
- require the continuation of the current practice of displaying ships names both in Gaelic and English.

Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE)

14. 18 respondents commented on the provisions in relation to the transfer of staff and all agreed that protection of security and continuity of employment was essential. We shall ensure that this protection is as robust as possible. The Executive attaches importance to the future of staff of CalMac OpsCo should another operator be successful in its bid. The Executive believes that ensuring the continued employment of the current crew with their strong local roots is likely to be best met through the TUPE Regulations. Similar circumstances have been considered recently by an Employment Tribunal and it is, therefore, the Executive’s view that TUPE is likely to be applicable. Further, the Executive intends to maintain the requirement that tenderers cost their bids as if TUPE applies and that if TUPE is subsequently found (as a matter of law) not to apply there would be a reduction in subsidy throughout the contract equivalent to any reduction in the operator’s costs as a consequence of that decision. The tender process will also include questions about bidders’ employment policies to allow these to be assessed.

Pensions

15. 6 respondents commented on the provision for pensions, all welcoming it. Some respondents recommended that a new operator should be required to continue the existing pension schemes and we are investigating whether we can promote that as a possibility. As with the transfer of staff we shall ensure that our proposals on this issue are as robust as possible.

Branding Issues

16. The consultation paper proposed that operators should be required to operate the network under the Caledonian MacBrayne livery, to ensure continuity of the brand and long term marketing. These proposals received a mixed response but were welcomed by the majority of respondents on this issue. The Executive has concluded that the new operator should be required to operate under the CalMac brand.

Performance Regime

17. The proposals for a performance regime attracted comments from 34 respondents, and the greatest single issue was the length of time without a
service before the Executive had the right to step in. This was set at seven
days in the consultation paper and respondents strongly considered that this
should be reduced. The Executive is sympathetic to the dependence of many
communities on lifeline ferry services. But it is also important that such
processes are realistic and acknowledge the time required to put contingency
arrangements in place. The operator must also be allowed a reasonable
period to resume service. The final service specification will therefore reduce
the period after which the Executive has the right to step in from seven to four
days.

18. 10 respondents raised concerns that the reliability and punctuality targets
were not sufficiently stringent. Some of these comments were based on a
misunderstanding of how these admittedly complex targets will operate, and
how they will be effective. Respondents with shipping experience were
concerned that minute by minute penalties were unrealistic and noted
concerns with some of the relief events. The section in the service
specification which describes how the regime will work has been revised to
make it clearer and there has also been some tightening of the requirements.
The table below shows how the revised proposals for the regime would work
in practice using examples of 3 routes with different frequencies of sailings.

<table>
<thead>
<tr>
<th>Number of scheduled sailings per week during 2004 peak summer timetable</th>
<th>Wemyss-Bay Rothesay</th>
<th>Claonaig-Lochranza</th>
<th>Ullapool-Stornoway (not including the overnight freight service)</th>
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</thead>
<tbody>
<tr>
<td>Over a rolling 4 week period (8%)</td>
<td>20</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Over a rolling 12 week period (4%)</td>
<td>10</td>
<td>5</td>
<td>1½</td>
</tr>
<tr>
<td>Average number of late sailings (other than for relief events*) per week required to trigger dispute resolution procedures</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Over a rolling 4 week period (2%)</td>
<td>5</td>
<td>2½</td>
<td>¾</td>
</tr>
<tr>
<td>Over a rolling 12 week period (1%)</td>
<td>2½</td>
<td>1¼</td>
<td>½</td>
</tr>
</tbody>
</table>

* A relief event is an event which allows one or other of the parties to the contract ‘relief’ from the usual
consequences of not fulfilling their part of the agreement. In relation to the CHFS services such events will include
those relating to safety or the protection of life, bad weather, tidal conditions and social needs.
19. Caledonian MacBrayne is currently dry running the regime to ensure that it works effectively. There may therefore be some further refinement of the regime before it is finalised. The performance regime will also be carefully monitored during the contract period.

Users’ Charter

20. 9 respondents commented on the Users Charter, largely welcoming it. There were some concerns that it should be fair to employees as well as users and we would expect the operator to consult employees on its content appropriately.

Consultative Arrangements

21. The 2002 consultation committed Ministers to a separate consultation on future arrangements for consulting ferry users. We reviewed existing arrangements, including those in the Northern Isles, and published a consultation paper in October 2002. Views were sought on proposals which reflected Ministers’ wishes for more robust and efficient arrangements for consulting ferry users, including those in the Northern Isles. There were 33 respondents, all of whom largely supported the proposals.

22. Ministers have now decided that:

- a new two-tier structure should address the need for effective consultative mechanisms covering all lifeline ferry services provided under the Executive’s powers, separating strategic issues from local service delivery.
- a new Scottish Ferry Committee (SFC) with a wide-ranging membership should consider strategic interests.
- new and separate Shipping Services Advisory Committees for Orkney and Shetland should consider relevant local ferry issues.
- the 3 existing Shipping Services Advisory Committees (covering the Clyde, the Hebridean Isles North and Hebridean Isles South) should continue to consider local Clyde and Hebridean Isles ferry issues.
- the Rail Passengers Committee (Scotland) should cease to consider ferry matters, in effect ceasing the role of the Caledonian MacBrayne Users’ Committee (CMUC).

23. Ministers have decided that the 5 Shipping Services Advisory Committees (SSACs) should consider local ferry operational issues and investigate local users’ complaints about service delivery issues, as presently dealt with by the CalMac Users Committee (CMUC). Ministers value the contribution that local community organisations, such as island ferry committees, can make in expressing the views of local businesses and residents and expect the SSACs to consult them and take their views into account. Ministers intend that the new-style SSACs and the SFC should come into operation in 2005. The SFC will concentrate on strategic issues such as route configurations and fares structures, comments to Ministers on research projects, route development issues and consider strategic or unresolved complaints referred to it by
SSACs. Ministers would consider any customer complaints unresolved at SFC level. Membership of the SSACs will continue to reflect local users and interested parties. Membership of the SFC will include representation from the SSACs, local authorities in areas served by ferry services supported by Scottish Ministers, national bodies with an interest in ferry operations and representatives of other users. Ministers intend that there should be reasonable balance between the varying interests, such as business and community representations and those with specialist knowledge.

Safety

24. The safety of the services was raised by some respondents as a critical issue. The Executive shares this view and can assure consultees that the safety record of bidders and their proposals for maintaining the safety of the services during the contract period will be key criteria in the evaluation of bids. However, the tendering proposals have no impact on the robust statutory safety regime administered by the Maritime and Coastguard Agency (MCA) which regulates all ferries operating in UK waters. Respondents appeared reassured on this point since only 10 commented on safety issues. Of those respondents, 6 did express some concern and these concerns centred around fears regarding losing the expertise and local knowledge of the current crews and fluency in English. The Executive’s proposals secure, as far as we possibly can, that there will be no immediate change in the crew. And the service specification has been strengthened with a specific requirement that the crew are able to communicate in English with passengers and each other, meeting standards set down in safety regulations, and that crew and shore staff who deal directly with users of the services must be proficient in English. The division of responsibility between the operator and VesCo will ensure that there is no blurring of responsibility for safety. Tenderers will also have to ensure that their proposed crewing arrangements provide a suitable level of expertise, experience and training to provide the services.

25. Some respondents asked that the VesCo fleet continue to be UK flagged throughout the contract period. We are clear that EU rules do not allow the Executive to do this through the subsidy contract although flagging must be restricted to EU/EEA states. However, VesCo will consider whether it might be appropriate to include this requirement through the leasing contracts with the operator.

Timetables and Services

26. Respondents made a wide range of suggestions relating to the current services rather than the tendering proposals. All proposals have been carefully considered (with CalMac where appropriate) to ensure that any changes which are justified or can be made will be included in the minimum standard prescribed in the final service specification. In many cases, improvements to one service could only have been made at the expense of another.
27. The consultation paper proposed that the Mallaig-Armadale winter vehicle service and the Tarbert-Portavadie winter service, previously operated by Caledonian MacBrayne outwith their statutory undertaking, would be part of the required minimum standard and this was unanimously welcomed by respondents.

28. The consultation paper also proposed new or enhanced ferry services which would become part of the minimum standard. The Sound of Barra service, enhanced Sound of Harris service, winter passenger service between Kilchoan and Tobermory, and enhanced services out of Oban in summer were also unanimously welcomed. 5 respondents supported further enhancements of the winter Kilchoan-Tobermory service and it was announced in March 2003 that this service would be extended to carry vehicles. All of these services are now in operation. The Sound of Barra service commenced in April 2003 and a Kilchoan-Tobermory passenger and vehicle service was part of the winter 2003-04 timetable.

29. Proposals for overland routes, which would replace some ferry services with a network of shorter sea crossings and overland journeys were reflected in the consultation paper, proposing that research on these long term possibilities should be carried out during the first contract period. 15 respondents commented on the Mull and Islay-Jura overland routes, largely welcoming the research, and with slightly stronger support for the Mull route. The advantages of frequency and shorter, more reliable, services were raised although there was an appreciation of the substantial infrastructure investment that would be required, concern at increased road traffic on the islands and lack of convenience for public transport users. These issues will be covered by the planned research.

30. Possible proposals for the rationalisation of ferry services to Lismore were also outlined in the 2002 consultation paper. This emphasised that there were a number of unresolved issues and invited initial views on reconfiguration. A substantial and divergent response was received with the greatest concerns that reconfiguration would disadvantage pedestrian users who relied on the direct service to Oban and it would not promote the use of public transport. It is clear that the matter requires further detailed consideration. There has been recent further locally-led consultation on this issue and the Executive supports this consensual approach. The most recent survey again showed a mixed response although the option for an enhanced Oban – Achnacroish vehicle ferry service had the most support. The Executive intends to take the results of this survey into account when considering future provision for Lismore. **However, any further views that consultees have on this issue are invited.** (see paragraphs 23 to 28 of the main part of this consultation document).

31. Some respondents sought the introduction of a direct Mallaig-Lochboisdale service. As set out at paragraph 29 of the main part of this document, Ministers intend to protect the current level of service across the existing network and there can, therefore, be no commitment to such a service until it is clear what the financial and other consequences might be. The Executive
intends to work with CNES, Highland Council, HIE and CalMac to develop proposals. Thereafter a STAG\textsuperscript{3} appraisal will be carried out.

32. Key changes to the services and the service specification are set out in Annex B.

**Other Issues**

33. Respondents to the consultation also raised a number of other issues relating to the service itself and changes or improvements which they wished to see. Given the constraints on the subsidy and the need not to disadvantage other services these issues will not form part of the minimum service requirement. However, we intend to list many of the suggestions in the final service specification and to encourage tenderers to consider whether they might wish to take them forward with regard to their own commercial interest. It is intended that this list will be updated following the 2004 consultation exercise. The suggestions made in the 2002 consultation are listed below for information. Consultees will wish to note, however, that it is not within Scottish Ministers’ powers favour a bid which offers additions to the minimum standard.

Representations made in relation to fares structures:

- 7 day (rather than 5 day) return ticket
- discount for islanders (presumably beyond the current arrangements)
- APEX tickets
- season tickets (quarterly or annual)
- patients should get reduced price travel (currently doctor issues a travel warrant)
- concessions should apply across local authority boundaries
- unaccompanied vehicles to carry a driver charge common to all routes
- coffins and hearses carried free of charge
- cheap day returns on shorter crossings
- young Scot card extended to ferry services/reduce fares for young people
- charge from Islay should be same regardless of which port is used
- freight charges should not be greater than a competing operator would offer on a freight only service
- special rates negotiated for transport of waste for recycling should be included
- global approach to concessionary bus fares should be extended to ferry passengers
- boundaries of Western Isles should be extended to mainland sea port so concessionary fares are the same on both sides of the Minch
- companion for blind people should be included with blind person concession

\textsuperscript{3} Scottish Transport Appraisal Guidance
Annex C

− half price travel cards for – people aged over 60, people with disabilities, unemployed, government training schemes, students and young people, charitable groups based on islands, school groups, island residents. Cards to be used on all CalMac routes and connecting bus services
− cheaper family tickets
− inter island travel should be free for the local population outside the main tourist season
− discounted fares for advance booking
− universal travel pass providing discount on all public transport (incl. ferries) should be considered as part of a national scheme for low income citizens and students
− more use of promotional fares
− concession for people aged over 60 should be included without relying on local authority provision
− more flexible coach fares

Representations made in relation to services:

− more night freight services to reduce pressure on the first morning sailing
− more separate freight sailings generally to free up car spaces during tourist season
− more affordable loose freight services throughout the network
− later sailings, particularly on Fridays
− more inter-island links
− more stops on services from Oban (e.g. Tobermory)
− more vessels berthing at islands allowing later and earlier sailings to augment the timetables

Representations made in relation to other issues:

− improvements in relation to handling and assistance with personal luggage particularly for elderly, and those with young families. Suggestions involved making trolleys available or airline style baggage check-in.

− the operator should co-operate with the current practice of reserving contingent space for medical emergencies on long and infrequent crossings – releasing these prior to sailing if not required.
DISTRIBUTION OF THIS CONSULTATION DOCUMENT

1. This consultation document has a similar distribution to the 2002 consultation document:
   - MSPs (with a constituency interest and/or on the Scottish Parliament Local Government and Transport Committee)
   - MPs (with a constituency interest)
   - MEPs for Scotland
   - Local Authorities (Highlands & Islands, Argyll & Bute, Western Isles, Inverclyde and North Ayrshire)
   - Councillors (with a constituency interest)
   - Community Councils (for relevant areas)
   - Enterprise companies (for relevant areas)
   - Tourist Boards (for relevant areas)
   - Shipping Service Advisory Committees, Caledonian MacBrayne Users Committee and local Ferry Committees
   - Harbour Authorities (for the CHFS network)
   - Ferry and other transport operators
   - All respondents to Delivering Lifeline Ferry Services, Proposals for Tendering Clyde & Hebrides Lifeline Ferry Services and Proposals for Tendering Gourock to Dunoon Ferry Services

2. Copies have also been sent to local libraries, SPICe (the Scottish Parliament Information Centre) and CalMac offices and vessels.
THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

1. Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

2. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

3. Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

4. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

5. If you have any comment about how this consultation exercise has been conducted, please send them to:

Name:  John Davidson
Address:  Transport Division 4
          Enterprise, Transport & Lifelong Learning Department
          The Scottish Executive
          2-F (dockside), Victoria Quay
          Edinburgh EH6 6QQ

Telephone:  0131 244 0623
E-mail:  john.b.davidson@scotland.gsi.gov.uk

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4 http://www.scotland.gov.uk/consultations
6. The Scottish Executive now has an email alert system for SE consultations (SEconsult\(^5\)). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult complements, but in no way replaces SE distribution lists, and is designed to allow stakeholders to keep up to date with all SE consultations activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.
