

Report to Partnership Meeting 13 April 2017

PARTNERSHIP

Scottish Government Review of Ferry Procurement

PURPOSE OF REPORT

The purpose of this report is to update Members on the announcement of a review to be undertaken into procurement processes and state aid requirements for the future funding of Scottish Government ferry services.

Background to Scottish Government Ferry Service Responsibilities

The Scottish Government currently supports the operation of three ferry service contracts. These are:

- Northern Isles Ferry Service Contract (NIFS)
- Clyde and Hebrides Ferry Service Contract (CHFS)
- Gourock to Dunoon Town Centre to Town Centre

The Ministerial portfolio also includes the ownership of David MacBrayne Group Ltd (DML) in which Scottish Ministers are sole shareholder. The DML group of companies include CalMac Ferries Ltd who were recently re-awarded the CHFS contract for an 8-year period commencing 1 October 2016 and Argyll Ferries who operate the Gourock to Dunoon Town Centre to Town Centre contract. The current Gourock - Dunoon ferry contract was due for renewal by end of June 2017.

Before the procurement of the first CHFS contract state owned Caledonian MacBrayne Ltd provided the majority of Clyde and Hebrides ferry services and owned the associated vessels and a number of the harbour facilities. The company was wholly owned by Scottish Ministers with these services requiring an annual revenue deficit grant from the Scottish Executive to maintain lifeline service levels. In order to comply with European guidelines on State Aids in Maritime Transport, an open public tender was deemed necessary in respect of these ferry services. The then Scottish Executive tendered the Clyde and Hebrides Ferry Services (CHFS) as a single bundle, with the exception of the Gourock-Dunoon service. In recognition of the uniqueness of the fleet and in order to ensure a level playing field for all bidders, on 1 October 2006 Caledonian MacBrayne Ltd was split into two companies. The operating company CalMac Ferries Limited and an asset owning company Caledonian Maritime Assets Limited (CMAL). CMAL continues to own the vessels and land-based assets (ports, harbours, etc) and makes them available to an operator through the tendering process. The CHFS operator is bound to use the CMAL vessels and infrastructure under the terms of the CHFS contract.

Since the commencement of tendering of Scottish Government ferry services there has been vocal support that the requirement to tender be challenged. Initially this focused on the Altmark case in Germany and in recent years the Teckal exemption that 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 has been promoted as the most appropriate vehicle to enable state aid compliant operation of these services by a state owned operator without the requirement to tender.

Announcement of Procurement Review

A policy review into future tendering for Scottish Government ferry contracts was launched by the Minister for Transport and the Islands Humza Yousaf on 2nd February 2017.

It follows correspondence from the European Commission on the Teckal Exemption, prompted by a joint approach from the Scottish Government and the RMT union. The response indicates that, in certain circumstances, public ferry services could be awarded to an “in house” operator without the need for tendering.

The review will look in detail at the implications of the Commission’s response on future tendering, the Teckal exemption and State aid rules. Key stakeholders will be engaged during the process.

The current Gourock – Dunoon procurement will be paused whilst the policy review is carried out. This will require an extension of the current contract in the order of 9 months. The review will also consider the potential implications for the Northern Isles services.

Mr Yousaf said:

“The reply from the European Commission provides welcome advice and information on the application of the Teckal Exemption. This gives us an opportunity to further consider future tendering options for Scottish Government ferry contracts. As always, our aim is to provide the best possible ferry services to our island and remote mainland communities, and we will take this opportunity to look again at how this is achieved.

“Transport Scotland will undertake this review to address the potential implications of the European Commission’s reply on the procurement of our ferry services. It will cover the application of the Teckal exemption considering 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.

“It is important to highlight the Commission has made it clear that any solution must comply with State aid law, as well as meeting the requirements of the Teckal exemption.

“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.”

“We need to give very careful consideration to the potential impact of any changes before final decisions are made. Pausing the current tendering exercise for the Gourock-Dunoon service will give us time to consider these complex issues so we’re clear on how best to deliver ferry provision in the future. The policy review will also consider the implications for the Northern Isles services. We have already started engagement with the current operators of both services to discuss the implications of the review.

“I’m also well aware that this review will be of key interest to ferry staff, users and local communities, so I have asked Transport Scotland to engage fully with trade unions and other stakeholders in the course of the review.

“Our ferry services are iconic transport links that play a vital role for our island economies. Making sure they continue to support the communities they serve, as well as delivering best value for taxpayer’s money, will always remain at the heart of our ferry operations.”

Review Process and HITRANS Input

The Review is intended to be completed as quickly as possible with an outline timetable suggesting the work will continue throughout most of 2017. Transport Scotland will lead the work and in line with the Ministerial ambition there will be a heavy emphasis on stakeholder and community engagement. To this end Transport Scotland Procurement Policy officials have contacted HITRANS officers to seek thoughts on how existing ferry consultation processes can be utilised to identify consultees and support a call for evidence. Transport Scotland are proposing to facilitate early stakeholder engagement by convening half day workshops covering the following geographic areas:

- Clyde and Kintyre / Islay
- Inner and Outer Hebrides
- Northern Isles

All RTPs with Scottish Government funded ferry services operating to and from their regions will be invited to participate in each session and are likely to have a supporting role in identifying a list of consultees at each session. In addition to this we may be asked to facilitate aspects of the workshop. The workshops will include a presentation on the Review from Transport Scotland that will provide background on Teckal and State Aids and the dialogue Ministers have had with the European Commission. There is also intended to be workshop issues designed to draw out opinions and concerns consultees have about different scenarios.

The outcome and recommendations of this review could have a wider impact and there are clear potential impacts on the operation (and possible transfer of responsibility to Transport Scotland) of local government operated ferry services. There could also be interesting observations from this work on the public operation and bidding for rail franchises particularly in a post Brexit scenario.

RISK REGISTER

RTS Delivery

Impact - Neutral

Comment – While the Review could have far reaching consequences on the operation of our ferry services it is to be assumed that the objectives and strategy that drive the development of these services will retain a similar emphasis to that already outlined in the Scottish Ferries Plan and which will be subject to development in lien with future refresh of this and that it would recognise RTS priorities.

Policy

Impact - Neutral

Financial

Impact – Neutral.

Budget line and value – The only costs HITRANS will allocate to this will take the form of staff time to support engagement and respond to calls for evidence.

Equality

Impact – neutral.

RECOMMENDATIONS

- 1. Members are asked to note the report.

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Designation: Partnership Director
Date: 4th April 2017