



## The Scottish Parliament Pàrlamaid na h-Alba

Màiri McAllan MSP  
Cabinet Secretary for Wellbeing  
Economy, Net Zero and Energy

By email only

**Public Audit Committee**  
Room T3.60  
The Scottish Parliament  
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28 February 2024

Dear Cabinet Secretary,

On behalf of the Public Audit Committee, congratulations on your recent appointment as the Cabinet Secretary for Wellbeing Economy, Net Zero and Energy.

The Committee has in recent months been engaging with the former Cabinet Secretary for Wellbeing Economy, Fair Work and Energy on a number of outstanding matters relating to its scrutiny of new vessels for the Clyde and Hebrides. These matters are set out below in full for ease.

### **Forensic analysis of FMEL's financial records**

In its report, "New Vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802", the Committee unanimously agreed to call on the Auditor General for Scotland (AGS) to use his powers to undertake a forensic analysis of how £128.25 million of public money paid to Ferguson Marine Engineering Limited (FMEL) for the vessels was spent.

While the AGS agreed that there would be value in such an analysis, he does not consider that he has the necessary statutory powers as FMEL is not a specified body

subject to powers under section 23 of the Public Finance and Accountability (Scotland) Act 2000.

The AGS however confirmed that if Scottish Ministers were to make a competent order to specify FMEL as a body on which he could initiate an examination under section 23, this would allow him to undertake the forensic analysis of FMEL's records. The Committee therefore wrote to the former Cabinet Secretary for Wellbeing Economy, Fair Work and Energy in September 2023, urging him to consider making such a competent order under the 2000 Act.

Correspondence received from the former Cabinet Secretary in October 2023 confirmed that legal advice had been commissioned and that an update would be provided to the Committee once a decision had been made. The former Cabinet Secretary's most recent correspondence in January 2024 provided no further clarity on this matter.

**The Committee acknowledges that due consideration must be given to this matter, including seeking robust legal advice. We are however disappointed that there are little signs of progress despite almost five months elapsing since we first raised the issue. We therefore request details of the timetable to which Scottish Ministers are working to make a decision on this important issue.**

### **Shareholder Authorisation**

The Committee also concluded in its report that, where the board of a company wholly owned by Scottish Ministers consider it necessary to seek and receive shareholder authorisation, such occasions should be a matter of public record.

The former Cabinet Secretary's correspondence of 26 January 2023 stated that "no decision has yet been taken on whether the broad principle of publishing shareholder authorisation can be accepted".

**The Committee seeks confirmation of when a decision on publication will be made.**

### **Use of Non-Disclosure Agreements**

As you will be aware, the Committee has carried out detailed scrutiny of both the AGS report, "New Vessels for the Clyde and Hebrides: Arrangements to deliver vessels 801 and 802" and his subsequent report, "The 2021/22 audit of Ferguson Marine Port Glasgow (Holdings) Limited". This has raised questions regarding the appropriateness of the Scottish Government entering into non-disclosure

agreements (NDAs) with commercial external advisers, given they would appear to restrict its ability to be open and transparent about the information it holds.

The former Cabinet Secretary has confirmed through correspondence that the Scottish Government has entered into ten NDAs with external private companies in relation to Ferguson Marine Port Glasgow. In December 2023, the Committee sought to establish general information about each of these NDAs, including the reason they were required, the private company that was involved and the date on which the NDA was entered into.

The Committee notes that the former Cabinet Secretary's most recent response in January 2024 refers to an NDA that was signed "in preparation for confidential information being shared ahead of a contract award relating to the due diligence report on the costs for vessels 801 and 802". We further note that the remaining nine NDAs "remain active and relate to ongoing commercially sensitive work", meaning that no information can be shared with the Committee.

**In the interests of openness and transparency, the Committee seeks a commitment from the Scottish Government that it will publish as much information as possible about each of these NDAs, at the earliest opportunity.**

The Committee would be grateful for a response by **27 March 2024**.

Yours sincerely,  
**Richard Leonard MSP,**  
**Convener**