20 July 2017

Dear Convener

FERRY PROCUREMENT – POLICY REVIEW

I am writing to inform the Rural Economy and Connectivity Committee about the progress of the policy review on the procurement of lifeline ferry services. I should also mention that I have today answered a Parliamentary Question (S5W – 10393) in similar terms to those outlined below. I have also written in similar terms to the trades unions, the STUC and opposition party spokespersons.

Since my announcement on 2 February, officials have met with counterparts from the European Commission, undertaken a series of meetings with a range of stakeholders across the Clyde and Hebrides (including Gourock – Dunoon) and Northern Isles ferry networks and considered legal and policy implications related to the application of the Teckal exemption and State aid rules.

The combination of this engagement with the Commission and consideration of the legal and policy implications has led to the conclusion that a direct award of an operating contract to a Teckal compliant body would be compatible with the Maritime Cabotage Regulation. This still necessitates a review of David MacBrayne Ltd. and its main operating companies to determine any changes which would be required to the structure and governance of those companies to ensure that they were fully compliant with the strict control and functions tests of the Teckal exemption.

It will also be necessary to undertake a more detailed consideration of State aid rules before determining whether it would be possible to make a direct award to an in-house operator. This will require a full analysis of the Altmark criteria, namely the fourth criterion – which, in the absence of a public tender procedure, requires that compensation for delivering the public service obligation does not exceed the cost of a typical, well-run and adequately equipped undertaking.
The fourth Altmark criterion is a particularly challenging requirement to satisfy. Any proposed in-house operation will require to be benchmarked against a number of typical comparator operators in the ferry sector and will most likely require further legal and financial consideration and more detailed discussion with the Commission.

The level of engagement and detailed information required will almost certainly lead to an extended timeline to that initially envisaged for the full consideration and completion of the review. This will extend the timeline for the review beyond the autumn period, when a report on the emerging findings of the review is due for publication.

In terms of stakeholder engagement, officials have held meetings with the STUC and trades unions to discuss the purpose and progress of the review. I too met with the unions to discuss the review. Officials have also met with a range of key stakeholders in Glasgow, Oban, Benbecula, Stornoway, Orkney and Shetland. Initial soundings were that there was, in general, more local support for a direct award to an in-house operator for the Clyde and Hebrides networks, while Northern Isles stakeholders expressed either a more neutral stance on the issue, or a preference for the tendering of future contracts.

I should emphasise that the review is also considering the case for continued tendering of the ferry services, including the cost of tendering, the wider economic and financial implications, the empirical evidence collated from the recent Clyde and Hebrides tender and the views of local communities and key stakeholders.

While the government's preference is to award the contract to an in house provider, it is important that the outcome of the review is not prejudged, or to create expectations that further consideration of State aid rules, and the Altmark criteria in particular, will necessarily result in a direct award to an in-house operator on any, or all, of the ferry services supported by the Scottish Government.

My letter to the Committee is intended to highlight that which will be included in the report to be published in the autumn, that which will require further consideration before a final decision can be taken in relation to the award of lifeline ferry service contracts and the additional time now required to reach that decision, be that a direct award to an in-house operator or a competitive tender procedure.

A copy of my News Release is also attached.

I hope that you find this update on the progress of the policy review helpful and would be grateful if you could draw it to the attention of members of the Committee. I would, of course, be pleased to answer any questions that the Committee may have when Parliament returns after recess.