

Annex – Response to information request

Case reference: 202500488282

1a. What does the Scottish Government mean by stating that ferry services have been “taken into public ownership,” when CalMac Ferries Ltd was already owned by the Scottish Government?

The Scottish Government has stated that the operation of the Clyde and Hebrides Ferry Services (CHFS3) has been taken under “full public control”, as per Transport Scotland’s [news release](#) of 30 September 2025.

The previous CHFS2 contract was a commercial arrangement where a public contract was awarded to CalMac Ferries Limited (CFL) following a competitive tendering exercise on the open market. The CHFS3 services were awarded to CFL in accordance with the exemptions set out in [Regulation 13](#) of the Public Contracts (Scotland) Regulations 2015. Regulation 13(1) provides that the regulations do not apply where a contracting authority awards a public contract to a “controlled person”.

A new set of governance arrangements have therefore been established, as set out on Transport Scotland’s [website](#), to address the control requirements of Regulation 13 (sometimes referred to as Teckal control). This includes provisions enabling Scottish Ministers to have decisive influence over the strategic objectives and significant decisions of both CFL and its parent company David MacBrayne Limited (DML), thus enabling the operation of CHFS3 to come under “full public control”.

1b. Please provide any internal communications, ministerial briefings, or explanatory material prepared for public or parliamentary use that explains this phrase.

Information on what is meant by the Clyde and Hebrides ferry services coming under public control is explained above. This is also addressed in the [frequently asked questions](#) section of Transport Scotland’s website, which provides background information in relation to Regulation 13, highlighting that the direct award would enable the Scottish Government to have greater influence over strategic objectives and significant decisions relating to the provision of future Clyde and Hebrides ferry services. Thus an exemption under section 25 of FoISA (information otherwise accessible) is applicable.

1c. Has any change occurred to the corporate, legal, or operational structure of CalMac Ferries Ltd, David MacBrayne Ltd, or related public entities as a result of this direct award?

Legally, by virtue of the corporate governance arrangements put in place (and further explained in the answer to question 2a below), both DML and CFL have become companies controlled by Scottish Ministers in the context of the requirements of Regulation 13 of the Public Contracts (Scotland) Regulations 2015, which could not have been achieved merely on the basis of shareholding alone. In this context there has been a change to the corporate, operational and legal structure of both companies.

2a. Please outline any and all changes to the governance, oversight, and public accountability of CalMac Ferries Ltd under the new contract, compared to the previous arrangement.

A comparative exercise examining and documenting changes to governance, oversight and public accountability of CFL under the new contract compared to the previous arrangements has not been undertaken. Therefore an exemption under section 17 of FOISA (information not held) applies. Information in relation to the previous arrangements may be found in the publicly available [CHFS2 contract](#), and the [CHFS3 governance documents](#). The following table provides a summary of the purpose and main features of each governance document put in place under the new arrangements for direct award which may be useful to you.

Document	Parties	Core purpose and main features
Grant Agreement	Scottish Ministers & CFL	Legally-binding agreement setting out the specification for the CHFS3 services, together with reporting and monitoring arrangements that CFL will deliver against. Previously, the specification for CHFS2 was not set out in a grant agreement, but rather in a contractual document.
Grant in Aid letter	Scottish Ministers & CFL	Letter committing Scottish Minister's to funding the CHFS3 services, as set out in the grant agreement, that will be managed by Transport Scotland through an annual Budget Allocation and Monitoring letter. This is new to CHFS3, to reflect the fact that CFL will be a grant-in-aid funded organisation.
Shareholders' Agreement	Scottish Ministers, DML & CFL	This is a new document that was not in place for CHFS3. It is a legally-binding agreement, core to Teckal compliance. It provides arrangements for Scottish Ministers to have decisive influence over strategic objectives and significant decisions of CalMac. The document sets out a new 'purpose' and 'business' of CalMac so that it aligns with Scottish Government policies, priorities and purpose, aligning with the National Transport Strategy, Island Connectivity Plan and National Performance Framework. It also contains 36 reserved matters requiring 'consent' from Scottish Ministers, including approval of annual business plans, corporate plans, director and CEO appointments etc. It also provides Scottish Ministers with enhanced oversight and scrutiny via 'shareholder representative' attendance at full board meetings of each company and access to all information provided to company directors.
Framework Agreement	Scottish Ministers, DML & CFL	This is a new legally-binding agreement setting out governance and accountability arrangements, commonly in place for NDPBs, aligning with the Scottish Public Finance Manual. It's legally-binding nature reflects the additional control requirements required for the direct award. It covers a range of public body accountability and governance matters, including delegated financial

		authority limits and annual budget approval. Previously, under CHFS2, due to the commercial contractual nature of the arrangement, a framework agreement for CFL was not required. Under the new grant in aid funding arrangements for CHFS3, a new framework agreement has been put in place covering both companies.
Articles of Association	DML	Legally required document (required under the Companies Act 2006) that sets out the rules for DML's internal management and governance, agreed by the Shareholder. The articles have been updated so they are consistent with the Shareholders' Agreement and Framework Agreement, aligning Company's business and purpose with Scottish Ministers policies, priorities and purpose, recognising the need for the company to receive consent from Scottish Ministers on reserved matters as well as setting out provision for Scottish Ministerial shareholder representation on the boards of each company and rights of Scottish Ministers over board appointments etc. The new and previous Articles of Association are also available on Companies House website .
Articles of Association	CFL	Same as above and replicated in CFL's articles
CHFS Tripartite Memorandum of Association	TS, CFL & CMAL	This is a new document that is new non-legally binding high-level document setting out principles, behaviours and expectations of each of the organisations to enable effective and constructive working. It recognises the need for regular engagement at all levels, promoting opportunities for joint discussion at senior level and with Ministers.

2b. Has there been any change to CalMac's obligations under FOISA, Audit Scotland scrutiny, ministerial direction, or Scottish Parliament accountability?

There has been no change to CalMac's obligations under FoISA. We expect both DML and CFL to continue to be subject to the provisions of this act. As highlighted above, the new governance arrangements enable Scottish Ministers to directly intervene, where appropriate, in the business of DML and CFL, including new provisions directing both on reserved matters. CalMac, like Scottish Ministers, will continue to be subject to Parliamentary scrutiny, as has the case been to date.

2c. Are there any elements of public accountability, performance monitoring, or external reporting that previously applied but will no longer apply under this new contract? If so, please list them.

No. However, performance monitoring arrangements have been enhanced under the CHFS3 arrangements, as set out in the published Grant Agreement which can be found on the [CHFS3 Governance Documents](#) webpage on the Transport Scotland website.

3a. Please provide documentation (redacted if necessary) that explains the decision to make a direct award rather than proceed with a competitive tender process.

We have provided an excerpt below from the Summary of the CHFS3 business case, which provides an explanation of the decision for the direct award (option 2) versus option 3 (open procurement):

The Strategic Case highlights how the ICP contributes to the long-term vision of the National Islands Plan and supports transport connectivity and the sustainability and growth of island and remote peninsula communities. This also reflects the Government policies set out in National Transport Strategy 2 (NTS2), Strategic Transport Projects Review 2 and the National Planning Framework (NPF4). The Strategic Case further highlighted the unique circumstances faced by islands communities, where poverty is higher than the mainland, travel to access health and education can be the most prevalent form of non-leisure trips, and the percentage of the population over 65 has substantially increased over the past two decades.

The Economic Case confirmed the Value for Money (VfM) evaluations between Options 2 and 3, noting the challenges in quantifying some of the necessary data. This section highlighted the current operational costs and revenue per route noting that, as none of the individual routes operates profitably, it could, therefore, be less attractive to the private sector if an open procurement option was selected, potentially leading to a lack of interested bidders.

Previous CHFS1 and CHFS2 competitive procurements failed to generate strong interest from the market and consequently no data points were available from previous bidding to assist with benchmarking. In addition, market analysis was commissioned in February 2023 which, whilst it was related to a potential two-year extension to CHFS2 rather than the CHFS3 contract, highlighted that such an opportunity would likely be unattractive to the majority of operators identified.

In order to ensure that the lifeline services meet island communities' needs, the specification of services is tightly defined, in terms of the services to be run, the vessels to be used, the harbour and pier dues to be paid, crewing arrangements, and fares policy. However, the CHFS3 specification also stipulates that the operator must establish an Innovation Group. The Group will be responsible for identifying areas of positive change and providing guidance for innovation initiatives across the network by engaging with the community (including Ferries Community Board). The Group will also be required to evaluate the feasibility of emerging ideas and identify initiatives that could contribute to ongoing service enhancements.

The Commercial case noted that the preferred option has been supported by completion of the due diligence exercise which was carried out with support from wider Scottish Government specialist areas including finance, legal, tax, pensions and subsidy control. This case also noted the need for implementation of suitable governance and oversight arrangements, and potential operational consequences relating to the ability to hold financial reserves across financial years. An associated parallel workstream is already underway to examine future tripartite financing options. The contract duration would be extended from current 8 years to 10 years,

although under a Teckal direct award Ministers would not be locked into a set period, and the arrangement would be subject to regular performance reviews. The 10 year contract length was determined following consideration of a number of issues (e.g. findings from the Rural Economy and Connectivity Committee; Net Zero, Energy & Transport Committee; Project Neptune Report; and stakeholder engagement).

The Financial case noted that the underlying costs of operating the CHFS contract (i.e., costs associated with vessel lease/charter, overhauls, fuel, harbour dues, crew, etc.) are expected to be broadly similar whether awarded via an open procurement or under a Teckal exemption, on the basis that the specification to be delivered will remain the same under each scenario; i.e. there will be no difference to the frequency of services, number of routes, number of crew, and portfolio of fleet. For example, the fleet will be supplemented with new vessels over the coming years regardless of the procurement route taken for CHFS3. It also notes the increase in costs during CHFS2 which have been influenced by previous policy changes, including new routes being added to the network, the roll-out of Road Equivalent Tarriff (RET) Fares, and the addition of new vessels. Further cost increases highlighted include areas such as pension contributions and rises in harbour dues.

The Management case notes the significant steps that have been taken to successfully manage and progress the project. This highlights the internal governance arrangements, project controls and documentation in place to monitor and highlight issues which are further captured and handled through the appropriate risk management and assurance processes.

3b. Was legal advice sought in relation to the procurement process and direct award under relevant Scottish or EU procurement law? If so, please confirm that legal advice was obtained and summarise its key conclusions.

Yes. An exemption under section 36(1) of FOISA (confidentiality in legal proceedings) applies to all of the information requested because it is legal advice and disclosure would breach legal professional privilege.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption. We recognise that there is some public interest in release as part of open and transparent government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

3c. Were any other ferry operators, suppliers, or third parties considered, consulted, or invited to express interest prior to the direct award? If so, please identify them or summarise the process.

Consideration was not given to making a direct award to any other ferry operator, supplier or third party.

4a. Please provide a copy of the signed contract (in full or redacted form), or advise when and where this will be published.

The full contract is publicly available, therefore an exemption under section 25 of FOISA (information otherwise accessible) applies. The contract can be found on the [CHFS3 Governance Documents](#) webpage on the Transport Scotland website. The contract is contained in the Grant Agreement document.

4b. Please provide a summary of any key differences between the new contract and the previous contract in relation to:

- **financial terms and subsidies**
- **risk allocation**
- **performance obligations**
- **reporting requirements**
- **asset management**
- **termination or penalty clauses**

In relation to the above areas, these can be found in the [CHFS2 contract](#) along with the grant agreement and [suite of governance documents](#) that have been put in place for CHFS3, all of which are publicly available.