

UNDERTAKING
by
THE SECRETARY OF STATE
with the consent of
the Treasury
and the agreement of
CALEDONIAN MACBRAYNE LTD in
respect of assistance to Caledonian
MacBrayne Ltd. Under the Highlands and
Islands Shipping Services Act 1960.

WHEREAS the Secretary of State has agreed, with the consent of the Treasury, to undertake to make advances under the Highlands and Islands Shipping Services Act 1960(a) (hereinafter referred to as “the Act”) to Caledonian MacBrayne Ltd., a company registered under the Companies Acts and having its registered office at The Ferry Terminal, Gourock (hereinafter referred to as “the Company”) in accordance with the provisions hereinafter contained and subject to the provisions of the Act;

AND WHEREAS the Company by its execution hereof has agreed to comply with and observe the various terms and conditions hereinafter specified;

NOW THEREFORE, in exercise of the powers conferred upon him by section 2(1)(a) of the Act, the Secretary of State, with the consent of the Treasury and with the agreement of the Company, hereby makes the following Undertaking:-

GENERAL

Advances

1. (1) For the purposes of maintaining and improving sea transport services serving the Highlands and Islands, the Secretary of State hereby undertakes, in accordance with the provisions of this Undertaking, to make advances to the Company by way of grant or loan (or partly in one of those ways and partly in the other) and, in respect of advances by way of grant, such advances may be partly by way of revenue grant and partly by way of capital grant.

(2) The advances referred to in paragraph (1) above are for the support of sea transport services provided by the Company which in the opinion of the Secretary of State are necessary to maintain or improve economic or social conditions in the Highlands and Islands and which he may approve for the purposes of advances under this Undertaking (referred to as “approved services”).

2. The advances which may be made by way of revenue grant by the Secretary of State from time to time to the Company shall be made in support of approved services in respect of which the Secretary of State is satisfied that –

- (a) in any period not less than one year as may be determined by the Secretary of State from time to time (“a determined period”), the Company will be likely to incur a deficit in providing such services during that period and;
- (b) that deficit could not be eliminated except by increasing the charges to be made in respect of those services in that period to an extent which

(a) 1960 c.31. Section 5 and the Schedule were amended by the Local Government (Scotland) Act 1973 (c.65) Schedule 19, paragraphs 14 and 15 and Schedule 29.

would be unacceptable, having regard to the social and economic effects of those charges on persons residing in the areas for which those services are provided.

3. For the purposes of assisting the Secretary of State to estimate the amount of any deficit which the Company is likely to incur in providing approved services during a determined period, the Company shall submit to the Secretary of State, not less than three months before the commencement of that period, estimates in respect of that period which shall have been prepared in accordance with such methods and principles and in such form and containing such information as may be agreed from time to time between the Secretary of State and the Company.

Revenue grant

4. (1) Subject to the provisions of this Undertaking, the amount of a revenue grant which may be made in any determined period shall be the amount of the deficit which the Secretary of State estimates that the Company is likely to incur in providing approved services during that period.

(2) Revenue grant in respect of any determined period shall be payable in such instalments during that period as may be agreed between the Secretary of State and the Company.

Capital grant or loan

5. Any capital grant or any loan which the Secretary of State may make to the Company shall be made –

- (a) in respect of the acquisition, provision or improvement of a facility (“approved facility”) approved by the Secretary of State for the purposes of this Undertaking prior to such acquisition, provision or improvement as being necessary for the purposes of maintaining or improving approved services; and
- (b) on such terms and conditions as are specified in this Undertaking and on such other terms and conditions as the Secretary of State may specify when approving a facility in accordance with paragraph (a) above.

6. The amount of any capital grant or any loan shall be determined in each case by the Secretary State by reference to the amount of the capital expenditure to be incurred by the Company or any of its subsidiaries in acquiring, providing or improving, as the case may be, the approved facility, but shall not in any case exceed 75% (as respects a grant) or 25% (as respects a loan) of the actual capital expenditure incurred by the Company in doing so.

7. The amount of any capital grant or any loan shall not be payable by the Secretary of State to the Company until the approved facility, in respect of which the capital grant or the loan is made, has been acquired, provided or improved as the case may be and has been brought into use by the Company:

Provided that the Secretary of State may, before the date when any grant or any loan is payable in terms of this Article, pay to the Company instalments at such times and of such amounts and on such conditions as he considers to be expedient.

TERMS AND CONDITIONS

Application of advances

8. The Company shall apply any grant or any loan received under this Undertaking for the purposes of maintaining or improving approved services during the determined period in respect of which the grant or loan is made.

9. (1) The Company shall operate the approved services for the purposes of this Undertaking.

(2) If the Company proposes to discontinue any approved service or to make any alteration in the places to be served by any approved service any such proposal shall not be put into effect without the written consent of the secretary of State, which consent may be given subject to such terms and conditions, including suspension or termination of any obligation to make advances to the Company, reduction in the amount of those advances and repayment of the whole or part of those advances, as the Secretary of State may specify.

Accounts

10. The Company shall present to the Secretary of State, as soon as possible after the end of every accounting year of the Company, a copy of the annual accounts of the Company for that accounting year together with an Auditors Report.

Information

11. The Company shall furnish the Secretary of State with such information as he may reasonably require from time to time relative to any approved service.

Commencement and manner of determination and termination

12. (1) This Undertaking shall come into force on 1st April 1995 and subject to the following provisions of this Article shall continue in force until determined in the manner hereinafter provided.

(2) If the Company at any time when the Undertaking is in force, ceases to be eligible for assistance under the Act, the Undertaking shall thereupon be deemed to be determined.

(3) This Undertaking may be determined by agreement between the Secretary of State and the Company, or by not less than six months' prior notice in writing given either by the Secretary of State to the Company, or by the Company to the Secretary of State.

(4) Without determining the Undertaking itself, any obligation upon the Secretary of State arising from any of its provisions to make advances to the Company, may be terminated at such time and in like manner as the Undertaking itself may be determined.

(5) In the event of any failure by the Company to comply with any of the obligations which are imposed upon it by or by virtue of the provisions of this Undertaking the Secretary of State may –

- (a) overlook such failure; or
- (b) determine the Undertaking; or
- (c) terminate any obligation upon him under this Undertaking to make advances of any nature to the Company.

and in the event of any determination or termination under this paragraph, it shall be sufficient for the Secretary of State to give to the Company notice in writing to the effect that the Undertaking is determined or the obligation is terminated as the case may be from such date as may be specified in the notice, which date shall not be earlier than the date on which the failure occurred, or, in the case of a continuing failure, the date on which the failure first occurred.

Effect of determination or termination

13. (1) In the event of this Undertaking being determined by agreement between the Secretary of State and the Company, or, in the event of any obligation of the Secretary of State to make advances to the Company being terminated by such an agreement, the effect of such determination or termination, as the case may be, shall be as agreed between the Secretary of State and the Company.

(2) Subject to the foregoing paragraph, in the event of this Undertaking being determined at a time when a revenue grant is payable or in the event of any obligation of the Secretary of State to make a revenue grant being terminated -

- (i) the obligation of the Secretary of State to pay any further instalments of that revenue grant shall cease immediately upon the date of such determination or termination as the case may be;
- (ii) the amount of the revenue grant which has been paid in advance in respect of the period before the date of such determination or termination as the case may be, shall not be recoverable by the Secretary of State, but without prejudice to his right to recover any amount of the relevant grant which has been paid in advance in respect of any period after such date;
- (iii) the amount of the revenue grant which is payable in respect of the period before the date of such determination or termination as the case may be, shall be recoverable by the Company; and
- (iv) the determined period in relation to which the revenue grant was payable shall be deemed to have terminated.

Interpretation

14. (1) In this Undertaking, except insofar as the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them: -

“approved services” shall have the meaning assigned to it in Article 1(2);

“determined period” shall have the meaning assigned to it in Article 2;

“facility” shall include (but without prejudice to the generality of that expression) a vessel employed or to be employed in an approved service, a pier, landing stage or jetty and any other facility whether thereupon, adjacent, or annexed thereto or not, by means of which vessels so employed are moored or their freight, vehicles or passengers are taken on or off board; and

“year” means any period of twelve months.

(2) Any reference in this Undertaking to an Article shall be taken as referring to an Article of this Undertaking.

(3) The Interpretation Act 1978(a) shall apply for the interpretation of this Undertaking as it applies for the interpretation of an Act of Parliament.

(a) 1978 c. 30

IN WITNESS WHEREOF these presents consisting of this and the four preceding pages are executed as follows: they are sealed with the common seal of the said Caledonian MacBrayne Limited and subscribed for and on its behalf by Colin Stuart Paterson [Managing Director] and Gordon White McKenzie [Company Secretary], all together at Gourock on 7 April in the year Nineteen Hundred and Ninety-five: and they are subscribed in terms of the Treasury Instrument (Signature) Act 1849 by Derek Conway and Andrew Mitchell, two Lords Commissioners of Her Majesty's Treasury at London on 19 April in the year last mentioned and they are sealed with the Seal of the said Secretary of State for Scotland and subscribed for him and on his behalf by Ian Patrick Hetherington, an Assistant Secretary being an officer duly authorised to act in that behalf at Edinburgh on 21 April in the year last mentioned before these witnesses Michael Jan Lowndes and Robin James Millar both Civil Servants with The Scottish Office Industry Department, New St Andrew's House, Edinburgh.

SEAL

C S Paterson, Managing Director
G W McKenzie, Company Secretary

D Conway Two Lords
A Mitchell Commissioners of
 Her Majesty's
 Treasury

M J Lowndes (witness)
R J Millar (witness)

SEAL I P Hetherington

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