LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

Tuesday 19 September 2006

Session 2

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LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
22ND MEETING 2006, SESSION 2

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

Dr Sylvia Jackson (Stirling) (Lab)
*Paul Martin (Glasgow Springburn) (Lab)
David McLetchie (Edinburgh Pentlands) (Con)
Michael McMahon (Hamilton North and Bellshill) (Lab)
*Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Tommy Sheridan (Glasgow) (Sol)
*Ms Maureen Watt (North East Scotland) (SNP)

COMMITTEE SUBSTITUTES

Mr Bruce McFee (West of Scotland) (SNP)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
*Dr Elaine Murray (Dumfries) (Lab)
Murray Tosh (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Tavish Scott (Minister for Transport)

THE FOLLOWING GAVE EVIDENCE:

Richard Evans (RSPB Scotland)
Linda Knarston (Anderson and Goodlad)
Paul Lewis (Scottish Natural Heritage)
John Thomson (Scottish Natural Heritage)

CLERK TO THE COMMITTEE

Martin Verity

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 2

Scottish Parliament

Local Government and Transport Committee

Tuesday 19 September 2006

[THE CONVENER *opened the meeting at 14:06*]

Item in Private

The Convener (Bristow Muldoon): I call the meeting to order and offer my apologies for being slightly late. I was meeting one of the Minister for Transport's ministerial colleagues, so I hope that he will excuse me. I also apologise to committee members who have been waiting.

David McLetchie and Tommy Sheridan have sent their apologies. Sylvia Jackson, too, is unable to attend and I understand that Elaine Murray is acting as her substitute.

Dr Elaine Murray (Dumfries) (Lab): That is correct.

The Convener: Mike Rumbles will be here, but he will be a little late.

Under agenda item 1, we must consider whether to take in private item 7, which concerns our approach to the Prostitution (Public Places) (Scotland) Bill, for which we are the lead committee. Do members agree to take item 7 in private?

Members *indicated agreement*.

Subordinate Legislation

Transfer of Functions to the Shetland Transport Partnership Order 2006 (Draft)

Transfer of Functions to the South-West of Scotland Transport Partnership Order 2006 (Draft)

14:07

The Convener: Agenda items 2 and 3 are subordinate legislation. Supporting Tavish Scott, the Minister for Transport, are Bill Brash, Ian Kernohan and Graham McGlashan of the Scottish Executive. The first order that we will consider is the draft Transfer of Functions to the Shetland Transport Partnership Order 2006. The second order is the draft Transfer of Functions to the South-West of Scotland Transport Partnership Order 2006.

I propose that the minister should cover both orders in his introductory remarks and that members should then ask questions on both orders together. Later, we will have a separate debate on each order and, if necessary, separate votes.

The Minister for Transport (Tavish Scott): I am pleased to be here, and I hope that the ministerial colleague whom you mentioned earlier was opening the cheque book. I am happy to talk about the Shetland and the Dumfries and Galloway transfer orders together; it will be helpful to do so because they are similar in effect and have largely the same wording.

The two orders will ensure the smooth transfer of certain statutory transport functions from Shetland Islands Council and Dumfries and Galloway Council to the Shetland transport partnership and the south-west of Scotland transport partnership respectively. The Transport (Scotland) Act 2005 fulfilled commitments that were given in the white paper "Scotland's transport future" to bring a new approach to the delivery of infrastructure and services in Scotland. The act placed a duty on ministers to establish regional transport partnerships throughout the country, and the Local Government and Transport Committee recommended the order that established the seven new RTPs on 1 December 2005. The Shetland transport partnership and the south-west of Scotland transport partnership were established by that order.

Section 10 of the Transport (Scotland) Act 2005 gives ministers the powers to transfer statutory transport functions to the RTPs. The two orders that the committee is considering today transfer certain statutory public transport functions from

Shetland Islands Council to the Shetland transport partnership, and from Dumfries and Galloway Council to the south-west of Scotland transport partnership. Those functions relate to local concessionary travel schemes; the making of quality partnership schemes and quality contract schemes; and ticketing arrangements and schemes. The orders also provide for the concurrent exercise of the functions of making traffic regulation orders and of providing and maintaining bus shelters.

Our intention is that the transport partnerships should take on additional functions as they develop and mature. From the outset, the south-west of Scotland transport partnership will take on significant transport functions from Dumfries and Galloway Council. Shetland transport partnership will take on the same functions now, with the aim of transferring internal air services next year and internal ferry services in 2008.

Strathclyde Partnership for Transport has already taken on all public transport functions, and the remaining RTPs will consider what functions they require as they develop their regional transport strategies. We will bring those to the committee at the appropriate time.

All those who are involved in planning the transfers have recognised the need to ensure continuity of services. The orders are designed to support a smooth transition of responsibility. No staff will be transferred, because the RTPs will use council staff to carry out functions on an agency basis. We have consulted the relevant local authorities, health boards and local enterprise companies on these matters, and all comments received have been favourable. I am grateful to the councils and the RTPs for their work to make the new partnerships a success.

The transfer of functions will come into effect in late October or early November this year, if the orders are approved by Parliament. I therefore ask and encourage the committee to approve the orders. I am happy to answer any queries.

The Convener: You are well aware that the committee had concerns about the proposed Shetland transport partnership. In particular, we wondered whether it was large enough to be an independent transport partnership and whether the area might lose some of the advantages that it gains from working with others in the Highlands and Islands transport partnership. However, Shetland Islands Council felt strongly that it should have a stand-alone transport partnership.

Given the committee's concerns, do you, as Minister for Transport, intend to review what the Shetland transport partnership achieves, to see whether any of the committee's fears are borne out?

Tavish Scott: We will review all the transport partnerships. The structure has to work for the delivery of transport not only in Shetland, but in the entire country. The review process of the next six months will ensure that transport partnerships produce meaningful, challenging and exacting transport strategies.

As the committee knows, we should have received strategies from all the RTPs by 1 April next year. We intend to examine them fully, and we hope to ensure that the work of each of the seven partnerships complements the national transport strategy. It will be important to examine the outputs of the partnerships in the future, rather than just to examine their structures now. However, I take your point about the committee's observations and I am sure that ministers will continue to keep such matters under review. This is the right time to be thinking about what we can get from our partnerships, rather than just thinking about where the lines are on a map.

Dr Murray: As the MSP for Dumfries, I have often felt that there were both advantages and disadvantages in Dumfries and Galloway going it alone. The council felt strongly that it should be given the opportunity to have a partnership with the local health board and with Scottish Enterprise Dumfries and Galloway.

How will you judge whether partnerships are not working in the way that is envisaged—and how will the partnerships themselves judge whether they are not working? What mechanisms will be in place to review the sizes of the partnerships, and the level of partnership within them?

14:15

Tavish Scott: I hope that members will acknowledge that any body that involves local agencies needs time to find a profitable structure, to analyse existing local transport services and to consider the capital and revenue aspects of any service that it might wish to take forward. It is fair to assess all partnerships on that basis. Indeed, I believe that that is important as far as the south-west of Scotland transport partnership is concerned. That part of the country has faced several quite challenging issues, some of which, such as the location of and transport links to the nearest airport, have had an impact across the border in Cumbria. There was also an issue about what the partnership expected—and how it could gain more—from the First ScotRail franchise. The partnership will simply need time to analyse those issues and to construct a long-term solution that is based on what is already there.

The relationship between partnerships and other bodies is an important issue not only to the south-west, but to the whole country. Members of the

committee and, indeed, the whole Parliament had a compelling debate that centred on how we can get the best out of the local enterprise network, the national health service and so on in, for example, locating primary health care facilities or aspects of the school estate. Given the size and structure of Elaine Murray's part of the world, I believe that the area will provide a testing ground for such local decisions and relationships, especially in view of certain sparsity issues that need to be addressed. The services will be judged ultimately on how well they work for local people, on how they meet local transport needs and on the basis of capital revenue. After all, we are only as good as the services that we provide, and our assessment of them will continue.

Paul Martin (Glasgow Springburn) (Lab): I do not mean to be personal, but I have a question that needs to be asked in the interests of objective scrutiny. Given that one of the orders relates to the transfer of functions to the Shetland RTP, I have to wonder about the minister's constituency interest in the matter. I know, for example, that other Cabinet members have had to dissociate themselves from decisions on certain issues. Was that taken into account when the decision was made on the order?

Tavish Scott: It was a collective Cabinet decision at the time.

Paul Martin: There must be a constituency conflict of interest. Has that matter been carefully considered?

Tavish Scott: I am sure that the First Minister and the Deputy First Minister have done so. When I was appointed as Minister for Transport, they knew fine where my constituency was and what transport business was coming up. In any case, in this, as in every decision, I am bound by collective Cabinet responsibility.

Paul Martin: I hope that you appreciate that, if we are to scrutinise the legislation objectively, the question needs to be asked. I appreciate that the First Minister, in appointing a minister, will take into account whether certain decisions will conflict with constituency interests. However, would a minister ever find himself in a situation in which his own ministerial interests had come into conflict with his constituency interests?

Tavish Scott: You would have to ask the First Minister that question, given that he appoints Cabinet ministers. In addition, ministers are subject to a ministerial code of conduct that is well understood and is in the public domain. Any questions about such matters are not for me as an individual minister to answer. Instead, as I have said, that is a matter for the First Minister.

Paul Martin: I appreciate the minister's position. Unlike the Minister for Health and Community Care, who was able to get a junior minister to make a particular decision, Mr Scott has no deputy minister who could take this decision in his place. However, in the interests of objectiveness, it is only fair that I ask the question. I wonder whether a civil servant or whoever could write to the committee to confirm the position.

The Convener: My judgment is that, rather than the committee making such a request, it would be appropriate for you to do so as an individual member. We are considering the order that is before us. However, I understand your general point about the way in which the health issue was handled.

As there are no further questions, we move to formal consideration of the two orders.

Motions moved,

That the Local Government and Transport Committee recommends that the draft Transfer of Functions to the Shetland Transport Partnership Order 2006 be approved.

That the Local Government and Transport Committee recommends that the draft Transfer of Functions to the South-West of Scotland Transport Partnership Order 2006 be approved.—[*Tavish Scott*.]

Motions agreed to.

The Convener: I thank the minister for his participation.

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2006 (SSI 2006/402)

Road User Charging Schemes (Keeping of Accounts and Relevant Expenses) (Scotland) Regulations 2005 Revocation Regulations 2006 (SSI 2006/431)

The Convener: Agenda item 4 is consideration of two further items of subordinate legislation. No member has raised any points on the instruments, no points have been raised by the Subordinate Legislation Committee and no motion to annul has been lodged. Do members agree that we have nothing to report?

Members *indicated agreement*.

Transport and Works (Scotland) Bill: Stage 1

14:22

The Convener: Agenda item 5 is consideration of further evidence on the Transport and Works (Scotland) Bill. I invite the first panel of witnesses to take their seats.

I welcome to the committee Richard Evans, who is sites policy officer at RSPB Scotland; Paul Lewis, who is planning advisory officer at Scottish Natural Heritage; and John Thomson, who is director of operations and strategy at Scottish Natural Heritage. First, you have the opportunity to supplement your written evidence by giving the committee your views on the Transport and Works (Scotland) Bill.

John Thomson (Scottish Natural Heritage): Thank you for inviting us to give evidence to the committee. As we state in our written submission, we warmly welcome the bill. We are dissatisfied with the private bill procedures, our main complaint being that they do not provide for the early enough engagement of statutory consultees such as Scottish Natural Heritage. As a result, we could end up formally objecting to measures that we support in principle, merely to ensure that the environmental issues are adequately addressed. That is an unsatisfactory situation. The bill should overcome that objection and enable the procedure to be integrated with other statutory regimes and requirements. Although the bill might seem to add to the complexity and cumbersomeness of the procedures, we are convinced that in practice the new approach will speed up the approval of major projects, which by their nature are complex and raise a range of environmental issues. The new procedures should reduce conflict in the passage of measures and lead to better outcomes.

Richard Evans (RSPB Scotland): I too thank the committee for its invitation to give evidence. Although our involvement in the private bills process has been limited since the re-establishment of the Scottish Parliament, in the past we were involved in several private bills. In particular, we were involved in proposals for developments at Cardiff Bay in Wales and Sullom Voe in Shetland.

I ask members to consider our interest in the bill's subject matter in the broader context of sustainable development. Our role in that agenda is to try to ensure that development projects that have economic and social benefits go ahead without damaging the natural environment. If the principles of sustainable development are embedded in consents regimes, future projects will be able to avoid having an unnecessary impact on the environment and the steps that are required of promoters in delivering sustainable projects will be understood from the outset.

The bill offers a significant opportunity to make that happen. Therefore, we want the bill to make clear reference to the regulations that transpose the European Union habitats directive into Scots law and to apply the regulations to orders made under the bill. Such an approach would ensure that projects that could have an effect on European wildlife sites—the best places in the EU for natural heritage—are properly assessed and that if there were an overriding need for projects to go ahead that could damage the sites, proper steps would be taken to compensate for the damage. The key principle of sustainable development is that development should not damage the environment, but if damage is required in the overriding public interest, it should be compensated for.

The Convener: Thank you. I invite questions from members.

Ms Maureen Watt (North East Scotland) (SNP): In your submission, under the heading "Inquiries", you say:

> "We would encourage the Committee to consider whether the list of persons in Section 9(4) is adequate."

Will you expand on that? Who should be included in the list?

Richard Evans: If a proposed project would cause a large enough amount of damage on a site that was in the sphere of interest of the Scottish Environment Protection Agency or SNH—a European wildlife site would be in SNH's sphere of interest, for example—and proposals to minimise and compensate for the damage as part of the scheme had not been agreed, the sustained objection of SEPA or SNH should trigger a local inquiry.

Ms Watt: You mention harbour authorities in your submission. Can you give examples of proposals in which you thought that you should have been involved at an early stage?

Richard Evans: Our interest in consents in harbour areas has been strongly influenced by our experience of proposals for ship-to-ship oil transfers in the Firth of Forth. The matter is complicated and has an interesting place in the context of the devolution settlement, in that some aspects are devolved and others are reserved to the United Kingdom Government. The ultimate responsibility to decide whether transfers go ahead rests with the statutory harbour authority, which has responsibilities to its shareholders under companies legislation as well as responsibilities under its establishing legislation and the Harbours Act 1964. The process is

opaque and slightly frustrating for everyone who is involved in it.

14:30

Ms Watt: I suspect that, if another member of the committee were here, he would raise the issue of Inverness harbour, which wants to undertake some developments but is being hindered, some believe, because of the consideration of the dolphins in the Moray firth. How can we reconcile the two? We obviously need consultation but, in many cases, development has to go ahead for the future well-being of the harbour and the hinterland.

Richard Evans: The Inverness case is not one with which I am familiar. I would like the clear process that is set out by the habitats regulations for certain types of consent regime to be applied more widely so that the promoters of schemes, including the Inverness Harbour Trust, know where they are and what steps have to be followed. One of the difficulties with harbour consents as they relate to the requirements of the habitats directive is the fact that they fall back on what is called a general duty merely to have regard to the requirements of the directive. In all cases, it is not clear that that is adequate, or helpful to the promoters of schemes.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I have a question on another issue. Under the terms of the bill, parliamentary approval of schemes will be limited to schemes of national significance. Do you think that that is appropriate? If so, what do you consider to be schemes of national significance?

John Thomson: I think that it is appropriate. For the most part, schemes of national significance will have been identified through the national planning framework.

Mike Rumbles: Which would be?

John Thomson: Major infrastructure projects of various kinds that could be seen as essential to the proper development of the nation.

Mike Rumbles: Can you give us some examples?

John Thomson: The sort of measures that have been included in the private bills procedure—for example, the Waverley line—would be seen in that light. It might be said to be of regional significance; nonetheless, it is the sort of project that would almost certainly figure in any statement of national transport priorities. Similarly, the airport rail link schemes would fall into that category. That is the sort of thing that we are talking about. We are not talking about minor transport improvements; we are talking about major new schemes.

Personally, I would not link the definition of a scheme of national significance to the nature of the site that might be affected. Plenty of schemes that have the potential to impact on nationally important sites are dealt with under other legislation—planning legislation, primarily—but they could not be said to be nationally significant schemes; they just happen to affect nationally important sites. I would not, therefore, make that direct connection. There must be some criterion that relates to the overall significance of the project in the context of its own objectives, not environmental objectives.

Mike Rumbles: I was a member of the Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill Committee, which considered the proposal for a wind farm in the Solway firth. Do you think that such a proposal would be subject to parliamentary scrutiny? Or would it simply go through on the say-so of a reporter and the minister? What are the implications of that for your organisations?

John Thomson: I would not regard that as a development of national significance. It obviously raises complex issues because it has impacts in Scotland and in England. That perhaps puts it in a slightly different category; however, I would not otherwise see that as a development with that degree of significance.

Richard Evans: I echo what John Thomson said about the importance of Robin Rigg as a renewable energy development. However, its overall capacity was small and the difficulties that led to it being considered under a private bill arose from its location in the sea in an area that straddled the border between Scotland and England. Normally, wind farms of that scale would be dealt with under the Town and Country Planning (Scotland) Act 1997 or the Electricity Act 1989, depending on which side of the 50MW cut-off line they fell.

Robin Rigg is perhaps a special case that would still have had to be considered under a private bill even if proposals similar to those in the Transport and Works (Scotland) Bill had been in place.

Mike Rumbles: That would not be the case, convener, would it?

The Convener: I am not sure how the bill's proposals would have applied to that particular wind farm. My understanding is that the bill focuses mainly on transport—for example, trams and railways. You would need to seek clarification on your point from someone else.

Paul Martin: In the SNH submission and in his oral evidence, Mr Thomson said that he welcomes the bill because it will mean that promoters must provide more detailed information prior to the start of a project. Do you not have sympathy with

promoters, Mr Thomson, who might have to provide a lot of information and spend significant sums of investment money at an early stage of a project, only for that to result in the project not progressing?

John Thomson: Inevitably, one must consider matters from the promoter's standpoint. However, the reality is that information will have to be assembled at some point, so there is much to be said for bringing it together at an early stage. One would hope that there would be constructive engagement with the statutory consultees and other interests, who could help to advise on the information that was needed and, indeed, on the direction of the project. I do not think that having to provide information before a project begins will add to the burden for a developer or promoter.

On the principle of developing a project, the national planning framework would probably signal whether a development was the sort that was likely to go ahead because it was sufficiently in the national interest. The promoter would get that signal before starting to invest significantly in pulling together the project's details. Beyond that, I think that a promoter will gain considerable advantage from investing up front. Our experience with proposals that have progressed under the private bill procedure is that developing a project in an iterative way—doing little bits here and there—certainly spins the process out and probably makes a project more expensive in the long run.

It is important that there is a clear understanding up front about the nature of the information that is required.

Paul Martin: There will obviously be difficulties in doing that. For example, the Parliament building project probably had to address at its outset different SNH requirements from those that SNH required for Queensberry house at a later stage. Is it not the case that a project will always have difficulties if it speculates at an early stage? Would it not be better to do that later in a project when more investigations will have taken place?

John Thomson: I ought to clarify that it was our sister body Historic Scotland, rather than SNH, that raised issues around the development of the Holyrood building.

Paul Martin: I apologise.

John Thomson: On the point about the principle of a project, I would argue the other way round. The costs of the Parliament building and the speed with which it was developed would probably have been improved if much of the information and the issues had been exposed and addressed up front. It was only because those issues were introduced late in the process that timescales slipped, and because adjustments had to be made, costs rose. If people could be clear what the specification is right at the start, they can plan on that basis.

Paul Martin: Obviously, a lot of the work would only be clarified after further investigations had taken place, even during the construction period. I appreciate that you have made a powerful argument in favour of more preparation at an early stage, but is it always possible for the promoter to provide that information at that stage? Is it not during the process itself that the promoter will uncover some of the information?

John Thomson: You are right—things do come to light at a later stage and there has to be some flexibility to allow for that. However, our experience with quite a number of major projects suggests that if sufficient homework has been done at the start, and if the right relationships—and I would underline that—have been established between the promoters, statutory consultees such as ourselves and other interests who may be involved, those issues can usually be worked round and there is a much better chance of doing so successfully. I will bring in Paul Lewis at this point, because he has been more involved in the detail of some of those projects than I have.

Paul Lewis (Scottish Natural Heritage): The problem will always be defining what level of detail is necessary for which project, because they will be different. It would have to be agreed in advance. When we ask for detailed information, we do not mean that we want highly specified technical drawings of each phase. For example, it appeared from the drawings that the reinstated Waverley railway line bridges or embankments could have impacted on the Gala water area of the River Tweed special area of conservation about 34 times. That could have led to a major adverse impact on a European site. What we wanted to know was quite simply where, in relation to the Gala water or the Tweed, the railway hard engineering from the embankments and the area of building operations would be situated, in order to identify whether there was going to be an impact, how serious it would be and how to avoid it. It was not terribly technical.

The Convener: I wish to ask a question of Richard Evans. In your written submission and in your introductory remarks you referred to the habitats regulations. Are you suggesting that there should be an amendment to the Harbours Act 1964? Is it necessary for that to be in the bill, or could it be covered in secondary legislation?

Richard Evans: It is not necessary for an amendment to the Harbours Act 1964 to form part of the bill. It struck me, however, that having hit upon various bits of the general environmental duty of harbour authorities that we felt could be updated, the bill—particularly bearing in mind the

precedent of the Transport and Works Act 1992, which inserted section 48A into the Harbours Act 1964 and gave statutory harbour authorities their environmental duty in the first place—might offer an opportunity to address that issue. It is not the only means of doing that, though, and indeed the committee may consider that it is not an appropriate vehicle to do that. We would understand if that were the case.

The Convener: I thank all three of you for your evidence, which has been very useful.

14:45

The Convener: I welcome Linda Knarston, who is here on behalf of Lerwick Port Authority and the British Ports Association. I believe that you work for Anderson and Goodlad.

Linda Knarston (Anderson and Goodlad): That is right.

The Convener: I will first give you the opportunity to make some remarks about the bill, and then we will move on to questions and answers.

Linda Knarston: I would like first to thank the committee on behalf of my clients and the British Ports Association for the opportunity to appear today. I am sure that you are aware of the amount of consultative bumf that comes through one's door—you will get more of it than we do. When one does reply, one sometimes feels that it goes into a black hole somewhere. It is exciting, if a bit unnerving, to be here to give evidence in support of what we said.

I will make a brief statement—I am sure that I would not be permitted to make a long one. Subject to the committee's approval, it is inevitable, given the evidence that was given at the meeting on 5 September, that I will refer to the on-going dispute between Shetland Islands Council and the Lerwick Port Authority. Although it would be illustrative to do so, I am conscious that I must be careful not to address the merits of the cases because there are, unfortunately, a number of court actions, some of which are finished and some of which are continuing. That does not, however, mean that I cannot refer to them, because the issues demonstrate where we are coming from.

The Convener: Before I let you continue, I say for members' guidance that we should try, because there are on-going court actions, to stay away from the merits of a particular project and instead deal only with process issues, which are most illustrative in our consideration of the bill. That will keep us all in safer territory.

Linda Knarston: I am conscious of the delicacy of the situation. The issues are clearly of interest, but many are sub judice. For that reason, the submissions to the committee make no mention of the on-going dispute.

In so far as the primary thrust of the bill is to declog—to use a not-very-posh description—the parliamentary processes of the inordinate number of orders that were mentioned at the 5 September meeting, I understand and welcome it. That is not why I am here, but everyone appreciates that when there is no other way for a body to get powers to build a railway, for example, there is no choice but to follow the private bill procedure.

Special parliamentary procedure is different and has a fairly narrow compass. The procedure is designed to deal with situations such as SIC's seeking to build a fixed link by bridge to Bressay—an island with a population of about 300, which is close to Lerwick. The fact that the bridge would cross navigable waters would trigger the SPP. The same would apply to a tunnel, although there would not be the same arguments, but that is another issue. The reason the SPP would be triggered is the involvement of two distinct public authorities that have been created by statute. On the one hand, Shetland Islands Council has every democratic right to build a bridge within its area of governance and, on the other hand, the harbour authority is charged under the Lerwick Harbour Improvements Act 1877 with conserving, deepening and improving the harbour, which I suppose would be described nowadays as conserving, dredging and developing the harbour, which includes economic development. The problem is that although the aspirations of both bodies are perfectly reasonable in isolation, they could conflict in practice. That is what the current unfortunate row is all about. The first Bressay bridge application was advertised in *The Shetland Times* on Christmas eve 2003. I remember that, because it was a difficult time to have to consider framing objections.

Under the present system, the promoter has to put in a series of applications for consent. In effect, the applications are made to the Scottish Executive, although nominally they are decided by the Scottish ministers. In the case of a bridge, the applications would involve planning consents for the landward bits, or the bits above the low water mark, and for a roads scheme under the Roads (Scotland) Act 1984. If, as is often the case, the applications for various consents are made piecemeal, rather than through one walloping application, it is not apparent in legal terms—although it might be in practical terms—whether the SPP would come into play.

In the example that I have given, if Lerwick Port Authority, as the navigation authority, had not objected on the grounds that the proposed bridge would interfere with its dredging and harbour

development functions and with the reasonable requirements of safe navigation, there would be no question of the SPP coming into play. If the objection had been made on other grounds, or had been made by other people, the matter would have been decided either by the relevant minister or through an inquiry.

The inquiry process itself is very strange. Under the present system, and under the bill, the minister has complete discretion when considering an application for an order to which there are significant objections—leaving aside vexatious and trivial matters and matters relating to compensation, which can be dealt with elsewhere, such as through the Lands Tribunal for Scotland. The minister can either go for a full-blown inquiry, appoint someone to hold a hearing for simpler cases or targeted issues, or do nothing at all.

I stress that under the present system, by virtue of the nature of the objections and the fact that they emanate from a harbour authority, the minister would not make the decision. The decision would be made where it should be made: the Scottish Parliament. However, under the new system, there might not even be an inquiry, which is regarded as being hugely important in Shetland. Unless a development is considered to be a national development within the terms of the proposed amendments to the Planning etc (Scotland) Bill—which I understand is still under consideration—the minister could just make a decision without any reference to an inquiry and with no parliamentary involvement.

I am sorry about this, but I will touch again on what has happened in practice. The first application that was lodged by SIC on Christmas eve—I must stop saying that—was for planning consent. Despite strenuous objections, which were repeated for most of the other applications and specifically for the roads scheme, there was no requirement for the council to apply to ministers for planning permission. As a consequence, deemed planning consent was given. To make the situation worse, the advice that was given and accepted was that the minister should be taken to judicial review, permission for which was granted. That illustrates how awful the present system is. The system will not get better under the proposed new legislation. In practice, what happened meant that the minister had to visit the matter anew, after which the decision was the same, although its wording was different. Surprise, surprise—a second petition for judicial review is going through the court. In the meantime, no progress is being made.

Ewan MacLeod referred to a "paralysis of process" arising from the SPP. I submit that it is not the system and that there is no paralysis of process other than one that might be seen as self-inflicted. That will certainly be the case once the bill has been passed, if it implements the main thrust, which is to take most, or all, private bills out of Parliament's remit and to transfer that function to the Scottish ministers. If that were the case, on the very odd occasion when SPP applied under the transitional arrangements as set up by the Westminster Government, the promoter—the council in this case—would have to introduce a private bill, which would have to incorporate the provisions of a special parliamentary order for the project for which the promoter sought authority. In the case that I described, as matters stand, authority would be sought for the building of a bridge.

It might seem strange to say it, but one of the great successes of SPP is not that it is so limited in scope, or that it is particularly important in focused situations but that, in the past 61 years, there has been no SPP application in relation to harbours. The only two that we could find were in the Westminster Parliament, one of which related to the National Trust. I cannot remember the other one, but it had nothing to do with harbours.

It is difficult and daunting to prepare bills for Parliament. Large amounts of preparation and detail are required, which is perhaps why parties in such cases do what they ought to do and find ways to resolve differences without involving other people, whether those people be members of the Scottish Parliament or a reporter or the Scottish ministers.

15:00

The Convener: I ask you to draw your remarks to a close, after which we will move to questions.

Linda Knarston: I will do that. I was going to give one example of the importance of the clash between the different functions. It is referred to in our submission and concerns offshore decommissioning work. As I understand it, only one North sea oil offshore decommissioning contract has been awarded in the UK, and it went to Lerwick. Geographically, Shetland is obviously in pole position to attract such work. However, if it is to do it, it must provide the facilities. It is all about time and money. Dredging and land reclamation would be involved. In one of the current disputes with Shetland Islands Council, a judgment relating to an interim interdict against dredging in the vicinity of the proposed bridge across the entrance to Lerwick harbour is awaited.

I think that I have said more than enough.

The Convener: Thank you very much for those introductory remarks. We will now move on to questions.

Mike Rumbles: In your written evidence, as well as in what you have said just now, you say on behalf of your clients that the strongest evidence that you have received is against the proposed new procedure. In your written evidence, you go as far as to say that you hope that Parliament will be

"prepared to reject the TWB as introduced".

You offer three suggestions if that does not happen. I will focus on the first one. Correct me if I am wrong but, if I understand your view correctly, your objection is that, if there is an issue of national importance, there will be parliamentary scrutiny, whereas all other issues will not be scrutinised under Parliament's democratic process. You give the example from your neck of the woods, which would be a local issue, rather than a national one, and would not be subject to parliamentary procedure under the new system. You suggest that the bill should be amended to ensure that if, following a local inquiry or hearing, ministers reject the recommendations of the independent reporter—which they will be entirely entitled to do under the bill—the matter should be referred to special parliamentary procedure.

Linda Knarston: That is right. However, I must stress that that is a fallback position. What I and my client authority are really trying to say is that the existing special parliamentary procedure should be retained, and that the special procedure that is envisaged under section 13 is not really parliamentary scrutiny. It would be rude to describe it as a joke but, if an issue is brought before the Scottish Parliament, either because it is of national importance or because the minister feels that it is an appropriate issue to bring to Parliament, all that Parliament is able say about the proposal, using the affirmative procedure, is yea or nay. It cannot amend the proposal; it would not be scrutinising it at all. It is a matter of take it or leave it. That seems to be a difficult issue for Parliament to resolve. To reject a development that might have a lot of good points because of some things that Parliament does not like about it would be quite a big deal that could have immense ramifications.

Mike Rumbles: One reason why the bill has been introduced is that there seems to be all-party support for speeding up the system. There is a balance to be struck, is there not, between democratic control of the process and the speed at which a proposal goes through? You feel that losing the current democratic scrutiny under the new procedures would be too big a price to pay.

Linda Knarston: Yes, but I go further than that. There is a very good document called "Scotland's Transport—Proposals for a New Approach to Delivering Public Transport Infrastructure Developments", which was published in February this year. What that paper envisaged forms the bulk of part 1 of the bill—that is to say, the abolition of the private bills procedure for the cases to which it currently applies, although I am not talking about the specific involvement of the SPP in that. If that abolition, which is the bill's original objective, were to be agreed to, that would sort out any perceived concerns about delay—which is an important issue—because Parliament would not scrutinise projects. However, the plain historical fact is that such matters have not come up.

The second point is the assumption that the new system will be faster and more efficient. My colleagues at the British Ports Association—of which Lerwick Port Authority is a member—are unhappy with the way the English system works. As far as I can tell, part of that unhappiness is due to how their system deals with objections. The bill will make some amendments that will ease that, but the association is not satisfied that it will make the system faster. It is talking about 12 or 13 harbour revision orders, which are a bit different, being clogged up in the system. The transfer of functions will mean that more reporters will be needed, so the system will not necessarily be faster, particularly if people like me go round raising court actions every time they are dissatisfied with ministers' decisions.

Mike Rumbles: Let us assume that the new system was in place in your example, that there had been an inquiry and that the minister had rejected the independent reporter's recommendation. From a legal perspective, would you have a case for judicial review? What chance would you have of having the decision overturned?

Linda Knarston: It is horses for courses, but it would be a jolly good starting point for a solicitor if the minister were to instruct an independent reporter on a project that, as was envisaged at the committee's first evidence-taking session on the bill on 5 September, related to a manifesto commitment, the reporter were to produce a nice reasoned judgment and the minister were then to say no. I would be a happy solicitor in that situation.

I have a personal worry that is nothing to do with my remit today. At the meeting on 5 September, Mr Ewing, the deputy convener, said that if he were a minister and a reporter were to decide against a manifesto commitment, the reporter would get short shrift from him. That is understandable, but where does it leave the poor objector if the project is a manifesto commitment, which is not the case in my example? Would it be worth objecting if the outcome was predetermined unless resolved otherwise by the courts?

The Convener: Did we not have an example recently in which a minister—

Linda Knarston: The M74.

The Convener: Indeed. As I understand it, those who were pursuing the court case withdrew their opposition quite late on, either just before or just after the case started to be heard. If the case would be as strong as you imply it would be as a result of a minister's not accepting a reporter's view, is it not surprising that that case did not proceed to full consideration?

Linda Knarston: I should have said that it is always an encouraging starting point. The problem is that nobody—solicitors, reporters or ministers—has a monopoly on wisdom. A minister might have a perfectly good reason for turning down a recommendation by his reporter, because their decision was flawed. However, this is an encouraging starting point.

Mike Rumbles: I am trying to establish how effective the system would be. The convener has given one example, but I understand that the case was not pursued because the organisation involved said that it simply could not afford the legal costs. A hefty financial commitment is required to challenge such a judgment.

Linda Knarston: It depends very much on the decision in question. If someone has made a Horlicks of it and legally the matter is completely clear, that is not too bad. However, life is not usually like that.

The Convener: The fact that the special parliamentary procedure has been employed only twice in the past 61 years suggests to me that it is not of much general merit. It is at least reasonable for us to consider introducing a procedure that will update the law for dealing with major transport projects. There may be greater merit in some of your suggestions for amending the bill than in rejecting it altogether and retaining the existing procedure.

Linda Knarston: I appreciate that although I have come a long way it is an uphill task for me to get the committee to do everything that I want and to ditch half the bill. If the committee is not prepared to recommend everything that I suggest—I know that I am asking a lot—I have mentioned the sort of amendments that would be necessary. The bill does not acknowledge at all the role of harbour authorities, which are vital where, for example, a bridge is being built over a harbour. If section 9 were amended, harbour authorities would, in areas where orders would affect their work, be put on an equal footing with the National Trust for Scotland, local authorities and persons who come within the ambit of compulsory purchase provisions. If a harbour authority was to state in an objection that it wanted an inquiry to be held, the minister would have to order it. That is not the situation at the moment—an objection could just be ignored.

At the risk of trying the committee's patience, I will make one more point. The fact that there have been very few applications in the past 61 years is a good thing. We have had experience of the provisional orders procedure, which is similar. That procedure is an alternative to harbour revision orders and was confirmed by an act of Parliament. It was used frequently and demanded a higher degree of precision, because it had a definite timetable and there was finality at the end of the process. People reacted by sorting out the issues, which is what they should do. I regard the fact that there have been so few applications not as a failure but as a resounding success. It is not the result of a lack of interest.

Ms Watt: At the beginning of the meeting we discussed Shetland transport partnership. Is Lerwick Port Authority a member of the partnership?

Linda Knarston: As far as I know, it is not. I do not think that it has been asked to join. However, I cannot really answer the question.

Ms Watt: Could we find out?

Linda Knarston: Yes.

Ms Watt: It would also be interesting to find out whether other harbour authorities are members of local transport partnerships.

Linda Knarston: At present, membership might or might not be thought to be desirable. Although efforts continue to sort out the issue about the proposed fixed link to Bressay, relations between the parties are not the best that they have been.

15:15

Ms Watt: I understand the local situation, but it seems a grave omission not to have harbour authorities as members of the transport partnerships.

Your submission draws the committee's attention to the Harbours Bill, which is going through the UK Parliament. Does that build on the modernising trust ports agenda? Do you know anything about that?

Linda Knarston: Is that mentioned in the British Ports Association submission?

Ms Watt: Yes.

Linda Knarston: I have had a terrible time trying to understand precisely what the problem is in England, apart from a belief that the authorities are underresourced. The Harbours Bill seems to relate to the requirement that if just one objection is lodged to a harbour revision order, it is

necessary to have an inquiry. According to the submission, that seems to be the issue that the bill will address. I tried to check out the issue with my colleague in the British Ports Association, but he was somewhere in darkest Gothenburg and I could not find him.

Ms Watt: Some documentation that we have received raises doubts about whether pilotage is a devolved matter. Has the British Ports Association come to a decision on that?

Linda Knarston: That is still in doubt. My point will be mercifully brief. We are at one with the British Ports Association in taking the view that the current legislation on pilotage works. The Perth (Pilotage Powers) Order 2006 went through no bother. I suppose that our message is: if it ain't broke, don't fix it. I promise I will be short, but the concern is about the ambiguous terms of schedule 5 to the Scotland Act 1998. Under the heading "Reserved Matters", the act states that marine transport is a reserved matter. However, exceptions to that are

"Ports, harbours, piers and boatslips, except in relation to"

certain matters such as dealing with wrecks and dangerous vessels and aviation and maritime security. Navigational rights and freedoms are reserved, but the exception is the

"Regulation of works which may obstruct or endanger navigation."

Given that navigational rights and freedoms are reserved and obviously involve pilotage and safe navigation, which it is the harbour authorities' duty to promote, I cannot understand why the

"Regulation of works which may obstruct or endanger navigation"

is not a reserved issue. That is merely an observation. I do not understand the issue, and that creates doubt.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am sorry that I was late, convener, but I was detained on personal matters. I apologise to the witness, too, for missing her opening remarks.

Linda Knarston: That is maybe just as well.

Fergus Ewing: Not at all. I am impressed by your substantial contribution, and I say that not just because I, too, am a solicitor.

The committee is aware of the importance to the economy of ports and harbours. We visited Grangemouth as part of our recent inquiry into freight transport. Ports such as the one at Mallaig in my constituency are absolutely essential to the economy. I am persuaded that the voice of the harbours—by which I mean working ports, not places such as marinas—must be heard. However, I want to find out the exact rationale for the particular proposals that you make.

If I may, I will assume that the Executive is unlikely to scrap the bill after this meeting.

Linda Knarston: Indeed.

Fergus Ewing: To be fair, I have given the bill broad, principled support, particularly if it will speed up the process, although that might be an optimistic hope. However, there is broad consensus that the current parliamentary procedure is not appropriate.

I am concerned that the committee should explore the issue more fully at stage 2 and hear what the civil servants say about your analysis.

I have one basic question. You argue that a special procedure should be in the bill and should apply to harbours. Of course we accept that harbours are important—that is a given—for the reasons that you spell out eloquently in your submission. However, why do you assume that if no such special procedure exists, it is inevitable that ministers in a Scottish Executive of whatever hue will not consider harbours properly?

Linda Knarston: At the very least, I am concerned that that possibility exists. The bill basically provides a blank cheque to ministers. Although I have conceded that the first objective of the bill is to take the private bills procedure out of the Parliament, and not the abolition of SPP—for which page 7 of "Scotland's Transport—Proposals for a New Approach to Delivering Public Transport Infrastructure Developments" states that there is no impetus—it could simply be excised and the fact remains that considerations could be totally ignored, because the whole process could be followed without any inquiry. A proposal certainly would not see the light of day in Parliament unless it were deemed to be a matter of national significance or the relevant minister felt that Parliament ought to consider it. I suppose that the special procedure that the bill will introduce is better than nothing, but I regard it as a sop more than a matter of substance.

Fergus Ewing: I am not here to speak for the minister; I am not usually willing to perform such a role. However, I would expect any minister to say that they treat with the utmost gravity the factors that you describe. Scotland's share of the decommissioning industry could be £11 billion, which would mean that any transport project that could impede it fell into the national significance category, although some ambiguity exists about how that will be defined. We can ask the minister whether such a scheme would be of national significance; it will be interesting to see whether we get a straight answer. If we do not, I might start to support you.

Your argument is eloquently put, but I am not clear about how it is anything more than special pleading, albeit for a very important group. Many

other important groups could come here to ask to be included with local authorities and national parks, as you do in point 3 of your suggested amendments to the bill. Many other groups could argue the same thing and if we accepted your case, why should we not accept the case for canals, airports or railway stations and Network Rail? We would also get into chambers of commerce and trade unions, I have no doubt. Before we knew where we were, we would have a whole procession of what I believe are called stakeholders who would all clamour for their voices to be heard, which would mean that projects that might take 10 or 11 years would take 20 years. You have an extremely strong case, but do you accept that an element of special pleading might be perceived?

Linda Knarston: Of course. On the first day on which the committee took evidence, Mr Rumbles fairly upset Mr MacLeod by asking him whether Shepherd and Wedderburn was a firm of lobbyists. I would be a bit insulted if he asked that about Anderson and Goodlad. However, if you ask me to say honestly why I am here or why any other witness who is part of or represents a body is here, the answer is that they come here to approach the critical issues from their body's point of view. That is what I am doing. Your comments about opening the floodgates or the thin end of the wedge are undoubtedly relevant.

Fergus Ewing: At that successful point, I will terminate this Tavish Scott performance.

The Convener: As there are no further questions, I thank Linda Knarston for her interesting evidence this afternoon, which certainly opened up and analysed an area of the bill into which we have not delved in great detail. I am sure that you have put into members' minds questions that we will ask the minister and consider at later stages of the bill.

Linda Knarston: I repeat my thanks to you for inviting LPA here in the first place and for your courtesy. I apologise for the length of my opening statement.

Regulatory Framework Inquiry

15:26

The Convener: Item 6 is to finalise our response to the Subordinate Legislation Committee's inquiry into the regulatory framework in Scotland. The only response that we received from members was Mike Rumbles's proposal that any MSP should be able to amend instruments when they are considered by the lead committee. In the draft letter to Sylvia Jackson, I state that the committee broadly supports the Subordinate Legislation Committee's report, but also that we have discussed amendments to subordinate legislation and that at least one member of the committee believes that members should be able to lodge amendments to instruments.

Is the draft letter acceptable to members?

Members *indicated agreement*.

The Convener: That brings us to the final agenda item, which we agreed will be taken in private.

15:27

Meeting continued in private until 15:32.

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