

# **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

Wednesday 29 November 2000  
*(Morning)*

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## TRANSPORT AND THE ENVIRONMENT COMMITTEE

29<sup>th</sup> Meeting 2000, Session 1

### CONVENER

\*Mr Andy Kerr (East Kilbride) (Lab)

### DEPUTY CONVENER

\*Nora Radcliffe (Gordon) LD)

### COMMITTEE MEMBERS

\*Bruce Crawford (Mid Scotland and Fife) (SNP)

\*Helen Eadie (Dunfermline East) (Lab)

Donald Gorrie (Central Scotland) (LD)

\*Robin Harper (Lothians) (Green)

\*Janis Hughes (Glasgow Rutherglen) (Lab)

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)

\*Fiona McLeod (West of Scotland) (SNP)

\*Des McNulty (Clydebank and Milngavie) (Lab)

\*Mr Murray Tosh (South of Scotland) (Con)

\*attended

### THE FOLLOWING ALSO ATTENDED :

Sarah Boyack (Minister for Transport)

Colin Miller (Scottish Executive Secretariat)

Allan Wilson (Deputy Minister for Sport and Culture)

### CLERK TO THE COMMITTEE

Shelagh McKinlay

### SENIOR ASSISTANT CLERK

Richard Walsh

### ASSISTANT CLERK

Alastair Macfie

### LOCATION

The Chamber



## Scottish Parliament

### Transport and the Environment Committee

*Wednesday 29 November 2000*

*(Morning)*

[THE CONVENER *opened the meeting at 10:36*]

**The Convener (Mr Andy Kerr):** I welcome everyone to the 29<sup>th</sup> meeting this year of the Transport and the Environment Committee, including the Minister for Transport and her officials, who are here to speak to one of the two statutory instruments that we are discussing today. The Deputy Minister for Sport and Culture will attend the meeting later to speak to the second instrument.

I have received apologies from Donald Gorrie.

I ask members to agree to take item 4 in private, so that we can discuss some of the practical arrangements for our water inquiry, such as the specifications for our adviser and the details of our meeting in the north of Scotland. It is usual practice for such discussions to be taken in private. Do we agree to take that item in private?

**Members indicated agreement.**

**The Convener:** We hope to consider the first draft of our report into genetically modified organisms at our next meeting and I suggest that we consider that in private, too. Is it agreed that we do that?

**Members indicated agreement.**

### Subordinate Legislation

**The Convener:** The first Scottish statutory instrument for consideration is the Scotland Act 1998 (Modifications of Schedule 5) Order 2000, which is accompanied by an Executive note. The instrument was laid on 9 November 2000. The Parliament designated the Transport and the Environment Committee as the lead committee for consideration of the instrument. As the covering note indicates, the Enterprise and Lifelong Learning Committee—the secondary committee on the instrument—was content with the draft order in principle. However, the committee drew attention to the fact that some post offices in Scotland—on the border—are administered in England, which may create difficulties in future in relation to the financial assistance possible under article 2 of the draft order.

The Subordinate Legislation Committee considered the instrument on 21 November and noted that the order superseded an earlier draft that contained defects. The committee noted that no provision had been made to make the redrafted order available free of charge to those who had purchased the first draft. However, the Executive has indicated that, as the first draft orders were not available for purchase, it would not be appropriate to make the relaid orders available without charge.

The draft order was laid under affirmative procedure, which means that the Parliament must approve the order before it can come into force. The time allowed for parliamentary action expires on 18 December 2000 and the committee is required to report formally by 11 December.

We will follow the standard procedure for handling affirmative SSIs. Members may ask the minister and her officials questions about the instrument. The minister will then move motion S1M-1346, which may be debated prior to the committee taking a decision. I remind members that Executive officials cannot contribute to the formal debate after the minister has moved the motion. Any technical questions should be put to the officials before the motion is moved.

**The Minister for Transport (Sarah Boyack):** It might be helpful if I give the committee a sense of the purpose of the order. If I give a full introduction, I hope that we will need less time for formal debate.

Schedule 5 to the Scotland Act 1998 forms part of the definition of the legislative competence of the Scottish Parliament and sets out the matters that are reserved for the purposes of the act. The devolution settlement was always intended to be flexible. Therefore, section 30 of the Scotland Act 1998 gives us a mechanism whereby schedule 5 can be modified by an order in council, subject to the approval of both Parliaments. That allows the boundaries of the Scottish Parliament's legislative competence to be adjusted, by removing current reservations in whole or in part, or by adding new ones.

I will focus on those aspects of the order that are of particular interest to the committee. I hope that members have read the Executive note, which explains the order in detail. The order amends sections E2 and E4 of part II of schedule 5 to the Scotland Act 1998, to allow the Scottish Parliament to legislate to allow Scottish ministers to require Scottish public authorities with mixed functions—that is, both devolved and reserved functions—to produce joint transport strategies, covering the provisions of rail and air services. If we are to promote meaningfully an integrated transport system in Scotland and to tackle our problems effectively, it is important that we can

encourage local authorities to work in partnership to plan for all the needs of their local communities.

As members will be aware, such matters are covered in part 1 of the Transport (Scotland) Bill. If part 1 is to work effectively, it is vital that Scottish ministers are able to require public authorities to produce joint strategies specifically covering air or rail services, in the parts of Scotland where those services play a major role. In west central Scotland, the role of the Strathclyde Passenger Transport Authority is key. An integrated approach in the area cannot fail to cover rail services. Similarly, the importance of lifeline air links in the Highlands and Islands makes it essential that joint strategies in the region cover air services. The order ensures that the Scottish Parliament has the necessary powers. The order would not cover bodies such as the strategic rail authority, the Civil Aviation Authority or cross-border public authorities. It will not add to or subtract from the current UK policy framework for rail and air services.

The amendment to section E2 of part II of schedule 5 to the Scotland Act 1998 also enables the Scottish Parliament to legislate to confer the same rail responsibilities as any other passenger transport executive on any Scottish transport authorities. That delivers a crucial element of the McLeish settlement for devolving rail functions to Scotland. If we are to achieve true integration of transport in Scotland, it makes sense to give the Scottish Parliament powers over the rail responsibilities of the SPTA and any similar body that the Scottish Parliament may decide to establish in due course.

The order will make it possible for the Scottish Parliament to include responsibilities for rail among the functions of any new trans-unitary transport authority in Scotland, and to transfer those functions in their entirety between established and new Scottish bodies. The functions will continue to be determined by UK legislation. However, when combined with the Scottish Executive's devolved responsibility for defining the shape of Scotland's passenger railways, that legislative competence provides a further means of securing a fully integrated transport system for Scotland.

Those are the key transport issues. I also have a brief note on pesticides to which I will refer if members are interested.

**The Convener:** Are you tempting us with that one?

**Sarah Boyack:** I hope not.

**The Convener:** Do members have any questions for the minister and her officials?

**Bruce Crawford (Mid Scotland and Fife) (SNP):** Clearly, minister, the additional powers are useful and I welcome them. On the functions of the Scottish public authorities in relation to railway services, you specifically mentioned transport strategies relating to the strategic rail authority. However, you did not mention the SRA in relation to article 3(2) of the order, which amends section E2 of part II of schedule 5 to the Scotland Act 1998. Where does that leave us in respect of the McLeish settlement and the SRA?

There has been an argument—I do not fully understand it at this stage—about whether the minister has the powers to direct and guide the SRA in Scotland or to instruct it. Given certain squabbles that we have had in the Parliament, those words are important. I want to know whether the new powers that the minister will inherit under the McLeish settlement will allow for more powers over the SRA. If they do not, I want clarification as to the current situation with the SRA.

**Sarah Boyack:** It is important to clarify that those powers will come via the Transport Bill that is going through the UK Parliament. We are getting those powers, but by another means.

10:45

**Bruce Crawford:** Which do you have: the power to direct and guide or the power to instruct? What happens if the Westminster bill is not passed, given the arguments about air traffic control that I heard this morning?

**Sarah Boyack:** We already have the shadow strategic rail authority, which is dealing with new franchises. We will have specific powers to set the framework for the new ScotRail franchise. We will tell the SRA what we want in that franchise—I launched a consultation exercise on that yesterday. Even if the UK Transport Bill were to be delayed by a matter of months, powers will come to us and we will still be able to work with the strategic rail authority to deliver the new ScotRail franchise.

**Bruce Crawford:** For the third time, I ask you specifically what will be available. Will you be able to guide the SRA or will you be able to instruct it?

**Sarah Boyack:** As I have said in Parliament on several occasions, we will be able to give the SRA guidance and advice on what we want the ScotRail franchise to contain. However, those powers will come through the UK Transport Bill, not through the order.

**Bruce Crawford:** That is useful—thank you.

**Mr Murray Tosh (South of Scotland) (Con):** As you said, convener, the Enterprise and Lifelong Learning Committee had concerns about post offices. I do not think that the minister touched on

financial assistance for the provision of non-postal services. Will she respond to what the Enterprise and Lifelong Committee said, indicate how the Executive sees the matter and assure us that any form of assistance to post offices in Scotland will also be applicable to those that are administered from England?

**Sarah Boyack:** I will pass that question to my official, Colin Miller.

**Colin Miller (Scottish Executive Secretariat):** The point about that reservation is that it is not intended to provide any new power. The reason for the specific reference to financial assistance is to ensure that the reservation does not cut across the Parliament's current powers. The Parliament has a power to provide financial assistance to post offices, but that would require legislation. The purpose of amending the reservation to take account of the Postal Services Act 2000 is to preserve the power for the Parliament to provide financial assistance. The order does not impose a duty on it to do so and, as you say, it does not specify any particular area. It leaves the power for the Parliament to exercise as it chooses.

**Mr Tosh:** I understand that, but I do not understand the point that the Enterprise and Lifelong Learning Committee made. It appeared to be concerned that certain post offices would not qualify for that theoretical assistance because they were administered from south of the border. Can you reassure us that there is no difficulty there?

**Colin Miller:** When we gave evidence to the Enterprise and Lifelong Learning Committee, we said that if the Scottish Parliament were to legislate, that issue would have to be addressed. It was pointed out that some postal areas straddle the border between Scotland and England. Obviously, the Scottish Parliament's legislative power to provide financial assistance could go only as far as the border. If it were to exercise that power, it would have to do so in a way that did not stray across the border. The minister acknowledged that that was a fair point, which would have to be addressed in the context of providing any such financial assistance to post offices.

**Mr Tosh:** I have a small procedural point. In such circumstances, it might be useful if the minister's remarks at a previous committee meeting were included with the papers for the subsequent committee meeting. I did not think to check the website to see whether the matter had been discussed with the minister. That is helpful—thank you.

**The Convener:** Murray Tosh has made a useful point. We should perhaps attach the *Official Report* of the discussion in the relevant committee, which on this occasion is the Enterprise and

Lifelong Learning Committee.

Does the minister want to add anything?

**Sarah Boyack:** On Bruce Crawford's point about the strategic rail authority, it might be worth clarifying that we have different powers in relation to the east coast and west coast main line franchises. We have the power to advise the SRA. You will remember that we published our guidance to the SRA in the Scottish Parliament information centre. We can direct the ScotRail franchise because it is entirely within Scotland. It is a minor point, but it may be useful to draw that distinction to the committee's attention.

**The Convener:** I thank the minister and her officials for their comments and invite the minister to move the motion formally.

*Motion moved,*

That the Transport and the Environment Committee recommends that the draft The Scotland Act 1998 (Modifications of Schedule 5) Order 2000 be approved.—  
[Sarah Boyack.]

*Motion agreed to.*

**The Convener:** I thank the minister and her officials for appearing before the committee. It is not yet 11 o'clock, which is the scheduled time for the Deputy Minister for Sport and Culture, Allan Wilson, to join us. I therefore offer members a short break.

10:51

*Meeting adjourned.*

11:03

*On resuming—*

**The Convener:** I welcome Allan Wilson to the committee for the first time in his new role as Deputy Minister for Sport and Culture. I also welcome the officials who accompany him.

I refer members to the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (No 2) Order 2000 (SSI 2000/draft)—I was going to say the Transport (Scotland) Bill, which we have been discussing for the past five weeks—the Executive cover note, and the committee paper.

The instrument was laid on 9 November and the Parliament has designated us as the lead committee on it. The Justice and Home Affairs Committee and the Rural Affairs Committee, which are the two secondary committees on the instrument, have not made any comment. The Subordinate Legislation Committee considered the instrument at its meeting on 7 November, but in its 39<sup>th</sup> report had no comment to make on it. The draft order was laid under affirmative procedure,

which means that the Parliament must approve it before it comes into force. The time limit for parliamentary action expires on 11 December 2000 and the committee is required to report formally by 4 December.

First, as before, we will allow time for members to put questions to the minister and officials on the instrument. The minister will then move motion S1M-1338, which may be debated prior to a decision. I remind members that the officials cannot contribute to any formal debate and that after the minister has moved the motion only MSPs can participate in the debate. The debate must last no longer than 90 minutes. Minister, do you wish to make any introductory remarks?

**The Deputy Minister for Sport and Culture (Allan Wilson):** No.

**The Convener:** This will be brief. Do members have any comments or questions for the minister?

**Members:** No.

**The Convener:** Okey-dokey. Minister, will you move the motion?

**Allan Wilson:** Before I go into the detail of the order, it might help if I put it into context. In the preparations for devolution, it was recognised that some public bodies would have a remit that included devolved matters in Scotland but was not confined to Scotland. Section 88 of the Scotland Act 1998 provides the mechanism to designate public bodies as cross-border public authorities.

Such a designation means that ministerial functions in relation to the body do not transfer automatically to the Scottish ministers, as they would for bodies operating wholly in a devolved area. Instead, the Scottish ministers have a right to be consulted on appointments to, or removals from, the body, and on the exercise of any functions in relation to the body that might affect devolved matters. However, those default arrangements will not necessarily be suitable for every cross-border public authority, so section 89 of the act allows arrangements to be tailor made for a particular body.

I will concentrate on those aspects of the order that will be of particular interest to members of the committee. Members will have seen the Executive note, to which the convener referred; it explains in some detail what the various entries in the order are about.

The British Waterways Board and the Inland Waterways Amenity Advisory Council operate on a Great Britain basis and were specified as cross-border public authorities, as responsibility for inland waterways in Scotland is devolved to the Scottish ministers. The order will modify the British Waterways Act 1975, the Transport Act 1962 and the Transport Act 1968 to give the Scottish

ministers the same functions—by and large—with regard to the British Waterways Board and the Inland Waterways Amenity Advisory Council as those held by UK ministers. I refer members to paragraphs 7 and 8 of the Executive note, which lay out in explicit detail the functions and the duties that are imposed on ministers and other relevant parties.

The Royal Commission on Environmental Pollution advises on environmental issues in relation both to matters that are the responsibility of the UK Government and to those that are devolved. Under the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999, which specifies the body as a cross-border public authority, ministerial functions in relation to the commission remain with UK ministers, but Scottish ministers have to be consulted about the exercise of any ministerial functions that affect Scotland. The commission can inquire into matters that are referred to it by one of Her Majesty's secretaries of state or by one of her ministers. However, referral by the Scottish ministers is not allowed for at present. The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (No 2) Order 2000 rectifies that situation.

The Fire Services Examination Board is responsible for administering the statutory examination whereby fire service personnel qualify for promotion in both Scotland and the rest of the UK. In the past, a proportion of its expenses was paid for by the Scottish Office; that must now be met by the Scottish Executive. Power to meet expenses did not transfer to the Scottish ministers. The order will now provide the statutory authority for payments to be made from the Scottish consolidated fund and further stipulates that reports and accounts be presented to the Scottish ministers rather than to the secretary of state, as was the case previously.

I draw the committee's attention to the fact that a payment has been made without such authority. In June this year, £45,615 was paid in the mistaken belief that, although there was no specific authority for it, it was covered by other means. It is now apparent that that payment was ultra vires. However, that does not mean that the sum falls as an additional charge on the Scottish consolidated fund. It simply means that we account for it differently.

The order also makes arrangements for consultation between the Home Secretary and the Scottish ministers on the appointment of the chairman and four members of the board, and on their period of appointment. Consultation on such issues previously took place between the Home Secretary and the Secretary of State for Scotland.

The power to make orders in relation to the



controller of plant variety rights, the plant varieties and seeds tribunal and the plant variety rights office under paragraph 6(2)(c) of schedule 2 to the Plant Varieties Act 1997 is now exercisable only with the consent of Scottish Office ministers.

As paragraph 19 of the Executive note makes clear, provision was previously made for the regulation-making function to be exercisable with the consent of the Scottish ministers. The order makes similar provision for the order-making function.

I am happy to respond to any comments that the committee may have.

**The Convener:** I would like to clarify one point: when you said Scottish Office ministers, did you mean Scottish Executive ministers?

**Allan Wilson:** Yes.

**The Convener:** Before we proceed to allow the minister formally to move the motion, are there any questions for the minister? There are none.

**Mr Tosh:** I thought that the motion was moved.

**The Convener:** I did not let the minister do that, so I ask him now formally to move motion S1M-1338, in the name of Sam Galbraith.

*Motion moved,*

That the Transport and the Environment Committee recommends that the draft The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) (No.2) Order 2000 be approved.—[*Allan Wilson.*]

*Motion agreed to.*

**The Convener:** The committee will report on the instrument by 4 December. I thank the minister and his officials for appearing this morning.

I now inform members of the press and public that the committee is moving into private session for the final agenda item, which is on our water inquiry. I thank them for attending today.

11:11

*Meeting continued in private until 11:46.*



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