

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 4 April 2001
(Morning)

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

† 10th Meeting 2001, Session 1

CONVENER

*Mr Andy Kerr (East Kilbride) (Lab)

DEPUTY CONVENER

John Farquhar Munro (Ross, Skye and Inverness West) (LD)

COMMITTEE MEMBERS

*Bruce Crawford (Mid Scotland and Fife) (SNP)
*Robin Harper (Lothians) (Green)
*Maureen Macmillan (Highlands and Islands) (Lab)
Fiona McLeod (West of Scotland) (SNP)
*Des McNulty (Clydebank and Milngavie) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*Mr Murray Tosh (South of Scotland) (Con)

*attended

CLERK TO THE COMMITTEE

Shelagh McKinlay

SENIOR ASSISTANT CLERK

Tracey Haw e

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 1

† 9th Meeting 2001, Session 1—held in private.

Scottish Parliament

Transport and the Environment Committee

Wednesday 4 April 2001

(Morning)

[THE CONVENER *opened the meeting at 10:07*]

The Convener (Mr Andy Kerr): Okay, colleagues, let us begin. I welcome the press and public to the 10th meeting this year of the Transport and the Environment Committee. I also welcome the trainee official reporters, who have joined us to see in action the committee by which all the Parliament's committees are benchmarked.

I have received apologies from Fiona McLeod. We will be joined by other members during the meeting.

Items in Private

The Convener: The committee is invited to agree to consider item 6 in private. That would allow us to consider in private our approach to evidence taking, as we have done previously in relation to trunk roads and other matters. Do members agree to consider item 6 in private?

Members *indicated agreement.*

The Convener: Do members also confirm their agreement to considering in private at our next meeting, following the Easter recess, the first draft of our report on our water inquiry?

Members *indicated agreement.*

Subordinate Legislation

The Convener: Agenda item 2 is consideration of the Environmental Protection Act 1990 (Amendment) (Scotland) Regulations 2001 (SSI 2001/99). The instrument was laid on 14 March and the Transport and the Environment Committee has been designated as the lead committee for consideration of the instrument.

We have received an Executive covering note and a committee covering note on the instrument. We will follow the standard negative procedure, under which the Parliament has power to annul the order by resolution within 40 days, excluding recess. The time limit for parliamentary action is 4 May 2001. The committee should therefore report back on the instrument prior to 30 April 2001.

The Subordinate Legislation Committee considered the instrument on 27 March 2001 and drew the Parliament's attention to that committee's doubts as to whether the instrument is *intra vires*, with regard to the Scotland Act 1998. That committee also took the view that the order raises devolution issues. The relevant extracts from the Subordinate Legislation Committee's report on the instrument have been circulated to members with the covering note. I seek members' views on the instrument.

Mr Murray Tosh (South of Scotland) (Con): I think that we can, theoretically, agree to the instrument. If the instrument is *ultra vires* and anybody finds that their rights would be infringed by it, it is open to them to take action and they would be able to cite in evidence the reservations of the Subordinate Legislation Committee. We should note in passing that committee's reservations, but we should agree not to take exception to the instrument.

The Convener: That is a view with which I concur. Are members happy with that?

Members *indicated agreement.*

The Convener: We can therefore forward that view to the Executive and say that the committee has nothing to report on the matter.

Public Petitions

The Convener: Agenda item 3 is consideration of public petitions. We have two petitions to consider: PE295, from Mr A I Murray, on behalf of Silverknowes residents action group; and PE323, from Mr M R Watkin.

Both petitions relate to planning matters, of which members will be aware from reading them. A committee covering note, which deals with both petitions, has been circulated. The note provides background information on the petitions and suggests possible courses of action that are open to the committee.

I seek members' views on the petitions. Members will recall that the committee has taken the view previously that it should not become involved in the detail of specific planning applications. We continue to express views on third-party processes and appeals, but obviously there are also fairly significant legal matters that must be resolved. I offer that as a steer to the committee, but I am interested to hear members' views.

Mr Tosh: There are two issues to consider. The first is that petition PE295 alleges all sorts of procedural shortfalls in the City of Edinburgh Council's handling of the matter. There is, in such circumstances, a right of appeal to the Court of Session to have a decision reduced—I believe that that is the expression—which requires that the decision be taken again using proper procedures. I think that the petitioners have that right of appeal. That option may be timed out, however, although I have no idea whether that is the case.

There seems to be a clear difference of opinion between the objectors and the City of Edinburgh Council. We might agree with the petitioners, but it is not the committee's role to become involved in a planning decision. The Executive has a responsibility to monitor the ways in which decisions are made, but it is not clear from the petition whether the petition relates to development by a third party or a notice of intention to develop by the City of Edinburgh Council.

There might be a wider issue than merely the specifics of this case in relation to the effectiveness of notification procedures. However, with respect, I suggest that we should examine that in the round when we examine all such issues after the Crown properties appeal. We cannot take decisions on local planning matters, but we can consider broad law and practice and we will do so in due course. I suggest that we do what the officials recommend and advise the Public Petitions Committee of the correct position.

I would like to add something to that. If the

Public Petitions Committee feels that it must continue to send us planning appeals, it could usefully carry out some background investigation and advise us whether the petition involves a planning application or a notice of intention to develop and whether the application or intention has been approved or appealed so that we know what the issues are. In this case, unless the Transport and the Environment Committee investigates the case for itself, we do not know what has happened procedurally. If we knew what procedure the petition was complaining about, that would add to our ability to draw general points from such petitions, which is all that we can do with them.

The officials have summed up the position and option A appears to be reasonable.

Robin Harper (Lothians) (Green): I support what Murray Tosh said. It is not in our remit to get involved in detailed discussion of individual cases.

A general problem has been flagged up for many years about the rights of developers and objectors and the way in which the whole system works. There are serious concerns about that and it would be appropriate for the committee to discuss those concerns at the right time, when the matter comes before us.

Maureen Macmillan (Highlands and Islands) (Lab): The committee cannot be a court of appeal for planning decisions. Many petitioners think that we can be. We must get the message across to those petitioners that there is no point in sending us their complaints about specific planning decisions because we cannot do anything about them. We can consider procedures in general and, in particular, how—and how widely—people are consulted before a decision is taken.

10:15

The Convener: I think that those points have been made before.

Do you want to add anything, Bruce?

Bruce Crawford (Mid Scotland and Fife) (SNP): I am content with what I have heard.

The Convener: There is a fair amount of agreement on how to deal with such matters and, in particular, the two petitions that are before us today. We will follow Murray Tosh's suggestion. We should advise the Public Petitions Committee that, when it forwards such petitions to us, we should have clarification of the status of applications, if they are applications.

Do members agree to option A, with Murray Tosh's addendum?

Members indicated agreement.

Mr Tosh: Should we deal separately and specifically with PE323? Our recommendations were based on PE295. We should state for the *Official Report* that the same points apply to PE323. It is not appropriate for the committee—and the committee has no remit—to consider the specific circumstances of the case.

The Convener: Yes. That will be noted in the *Official Report* and notified to the petitioners.

Ministerial Responsibilities

The Convener: As members will be aware from the papers that were circulated, I have received correspondence from Robin Harper on the change in ministerial portfolios.

Robin Harper: It would be appropriate for the committee at least to make some observations about our relationship to the new set-up and for me to express my concerns.

I feel deeply that we should have had a dedicated environment minister from the start. The fact that Sarah Boyack, as Minister for Transport and the Environment, did not have a junior minister was not the best of starts. Despite that, she did extremely well.

The move that gave Sam Galbraith responsibility for the environment with a junior minister, although he had other responsibilities too, was at least some progress. However, I have grave concerns about the new set-up. My comments are not meant to be any reflection on Ross Finnie's commitment to his job, which is absolute. Irrespective of the current grave problems that are faced in agriculture, to combine environment and agriculture responsibilities is, if you like, to have prosecuting and defending counsel doing the same job. Agriculture is, and will be for a considerable time, a major polluter of the rural environment. To have one person in charge of both environment and agriculture—and now, I believe, water—is an unconscionable way to proceed. That is not a rational way to look after Scotland's environment and to arrange ministerial responsibilities.

Bruce Crawford: Obviously, for individual ministers, there are issues about work loads. Those aside, the potential conflict of interest that arises from the amalgamation of rural development with environment and water responsibilities gives me the greatest concern. It has been well known for years that there has been a drive at Westminster to separate the environment—or indeed consumer protection—from issues that are dealt with by the Ministry of Agriculture, Fisheries and Food.

In this case, we seem to be moving in a direction that is against the natural trend. We have real problems in various areas; for example, we must tackle such issues as salmon fishing and the potential pollution of our lochs, and organophosphates and the conflict between the farmers' needs and the impact on wildlife. Indeed, that latter problem touches on a number of areas such as raptors and hedgerows.

The issue of genetically modified foods is already in Ross Finnie's basket. I have always been concerned at the way that he has pushed

that matter with his agricultural and rural development hat on, while there has been no one to champion the environmental aspects. However, wider issues of conflict are bound to crop up soon. For example, the common agricultural policy review and the common fisheries policy review are both under way in Europe at the same time as meetings of working groups such as the European Union high-level working party on environment and development, which officials are required to attend to deal with environmental issues. The question is, does the Minister for Transport and Planning or Ross Finnie, with his general responsibility for the environment, attend those meetings? Furthermore, who chooses which officials beneath the ministers should attend?

Is it within the committee's remit to write to the Executive asking it to review its decision? The difficulty that we will face in interrelating with the ministers can be overcome, as it is an administrative matter, but we must resolve the real issue of conflict of interests.

Bristow Muldoon (Livingston) (Lab): I share some of Robin Harper's concerns. I have always felt that the ideal link was between the transport and environment portfolios, which after all is this committee's area of responsibility. However, we must be careful not to overstate potential conflicts of interest; such conflicts have existed in the way that portfolios were set up in the past. For example, transport companies are just as much polluters as those who are involved in agriculture. Furthermore, in Westminster, we have the Department for Environment, Transport and the Regions. It is the minister's job to balance such portfolios.

Environmental issues figure largely in many different areas for which the Executive is responsible and must be taken into account in any industrial, transport and agricultural policy. Ministers must ensure that any environmental concerns or requirements are given due consideration.

That said, we could seek further clarification from the Executive about individual ministers' specific responsibilities. As the committee is responsible for issues ranging from transport and planning to the environment and renewable energy, we need to find out which minister is responsible for which area. However, it is not our role to comment directly on how the Executive splits the various portfolios.

Maureen Macmillan: I agree with many of Bristow Muldoon's comments. Obviously, there was room for conflict when transport and the environment were in the same department, but creating a separate department for the environment would make it seem as though it was separate from other developments. Environmental

concerns should be totally cross-cutting, particularly in rural development, with all the moves that are being made towards eco-farming, eco-tourism and cultural tourism. In addition, the new CAP seems to be moving away from traditional support for traditional farming towards support for environmental projects. As a result, there is a strong link between rural development and the environment, and I am not unhappy that those portfolios have been merged.

Mr Tosh: Potential conflicts of interest exist. There could have been a conflict between transport and the environment, but when Sarah Boyack had both portfolios, she dealt with the development department on transport and planning issues and the environment department—which is part of the Scottish Executive rural affairs department—on environmental matters. With Ross Finnie's new portfolio, he is dealing with different divisions within the one department. As a result, the minister faces the difficult task of separating out the two sets of interests and resolving any conflict.

Bringing together environment and rural development is neither the best nor the most natural combination of ministries. It is quite remarkable to think that just a month ago, four ministers were dealing with rural development and the environment; now we have only two. Those matters seem to rise and fall like some kind of soufflé.

I agree that it is up to Henry McLeish to balance his ministerial team and allocate responsibilities, but we are entitled to our opinion, which is implicit in the fact that even when the transport and the environment portfolios were separated at first, no member of the committee suggested that we should have a separate transport committee and environment committee. However, the whole idea behind subject committees in the Parliament was to shadow ministerial briefs. We have chosen to keep the committee remit intact and I assume that we will defend it, which implies that our view of the situation is different from Henry McLeish's. In the unlikely circumstance that I were ever the First Minister, I would consider transport and the environment a better marrying of portfolios than environment and rural development.

Robin Harper made a valid point. Part of the reason for Sarah Boyack coming in for a lot of criticism was because she was a minister on her own in charge of everything. Now she has much less than her initial brief and a junior minister to share the work load, which is a remarkable reworking of circumstances. I rather suspect that, if she had had a junior minister in the first place, many of the criticisms of overload and overwork would not have been made and the whole episode would have been more of a success story for

everyone. Although I think that the Executive has got it wrong, I do not know what else we can do but pass an opinion.

The Convener: Before I invite Robin Harper to sum up, I will try to bring together some of the committee's views. We can make our views on the matter known to the First Minister, but obviously we have no jurisdiction over how he allocates portfolios. As Bristow Muldoon pointed out, we must establish our position in relation to specific aspects of each portfolio, because we must ensure that we are content with the information that we have already gleaned on issues such as the sustainable energy policy and the water portfolio.

I share members' concerns that there are potential conflicts in bringing environment and rural development together, although such conflicts existed when one minister was in charge of transport and the environment. That said, since the committee was formed, we have always felt that there was a balance to the transport and environment portfolios that we could work with. We always felt that the then Transport and the Environment Minister, who was doing a sterling job, required support. As a result, we might now have lost some focus on the environment. Although different channels of conflict have been opened up, we must ensure that our views reflect the fact that conflicts existed before. Both the Parliament and committee members have also expressed a short-term concern about work load.

We should take a fairly light touch in any correspondence with the First Minister, as it is his job to allocate responsibilities, but we should state that we are all in favour of the committee's integrity with regard to transport and the environment. We want to reduce the risk of any possible conflicts, and I am sure that the First Minister can address those himself. Finally, we can express our concerns about loss of focus, potential conflicts and work load. As long as we do that in a proper manner, I hope for a positive response from the First Minister. I have tried to include the various views that have been expressed. We must remember our position as a committee and Mr McLeish's position as First Minister and respect both those roles.

10:30

Robin Harper: I will have one last bite of the cherry.

The points that were made by Maureen Macmillan and Bristow Muldoon underlined the argument for a dedicated environment minister; they did not do anything to weaken it.

On the move to more ecologically friendly ways of managing our countryside through the CAP,

what Maureen Macmillan said was based on hope rather than on the current situation.

My final point, which has been echoed in many of the letters and phone calls that I have received, concerns access to ministers. When Ross Finnie is in charge of agriculture, rural affairs, environment and water, how will people from outside have access to him? The queue at his door will stretch halfway down the corridor.

Maureen Macmillan: Ross Finnie has a deputy minister.

Robin Harper: So there will be two queues.

The Convener: I am less inclined to the view that Robin Harper expressed in his final point than to what was said previously. Every minister suffers from that problem in some shape or form, whether they have a single brief with multifarious aspects underneath it or the more widely spread brief that some ministers have now.

I think that that final point would weaken our argument. I seek guidance from the committee, but I think that if we stick to the issues that we discussed previously, we will cover more succinctly the points that members have raised.

Bruce Crawford: The approach that the convener has outlined gives us a constructive way forward that would allow us to put on record, sensitively, the committee's feelings on the matter. That is what we need to do. We can record in correspondence with the First Minister that, as the convener outlined, there are concerns; I could use different language, but I am trying to be careful. As the Transport and the Environment Committee, it is our responsibility—in fact, our duty—to do just that.

The Convener: If members are content, I suggest that I prepare a draft, e-mail it round to get members' comments, then send off the letter. I will do that to a strict timetable to ensure that we are able to have input. Robin Harper wrote to me almost immediately that the new ministerial responsibilities were announced, but unfortunately, because of the way that business had been organised, I had to wait until today to get the matter on our agenda.

I hope that we can reflect the committee's views appropriately and we will proceed on that basis.

Budget Process 2002-03

The Convener: Agenda item 5 is the budget process. We continue our consideration of the audit process for 2002-03. The Finance Committee has produced guidance for subject committees on areas of inquiry into the budget process; that guidance has been circulated to members. Members should also have received the Executive's spending plans, which are fairly large documents.

Elaine Thomson MSP has been appointed as a reporter to the committee, from the Finance Committee, on the budget process.

The Executive's budget proposals were published only late last week, so the information is new. The purpose of placing the item on the agenda today was to enable members to highlight, at an early stage, any issues that they would like the staff from the Scottish Parliament information centre, clerks and advisers to develop with the Executive or with other organisations that may be concerned. That can be done during the Easter recess, so that we do not lose time.

During the recess, SPICe staff will prepare, as they did last year, an analysis of the figures, examine spending trends and highlight key issues that may be of concern to the committee. If members have other issues that they want to be included in that work, Shelagh McKinlay and I would find it useful if they specified them now, so that we can use the two weeks of the recess to ensure that the work is done on their behalf. If members have no comments, we will proceed as we have in previous years.

As agreed, we will take the final two agenda items in private to discuss our approach to evidence taking for the trunk roads inquiry and to consider the contents of our draft report on the water inquiry. I thank members of the press and public for their interest in today's proceedings.

10:34

Meeting continued in private until 12:47.

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