

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 13 February 2002
(Morning)

Session 1

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TRANSPORT AND THE ENVIRONMENT COMMITTEE

6th Meeting 2002, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Robin Harper (Lothians) (Green)

*Mr Adam Ingram (South of Scotland) (SNP)

*Angus MacKay (Edinburgh South) (Lab)

Fiona McLeod (West of Scotland) (SNP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Des McNulty (Clydebank and Milngavie) (Lab)

*John Scott (Ayr) (Con)

*attended

WITNESSES

Caroline Lyon (Office of the Solicitor to the Scottish Executive)

Lewis Macdonald (Deputy Minister for Enterprise, Transport and Lifelong Learning)

Andrew Watson (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Tracey Hawe

ASSISTANT CLERK

Alastair Macfie

LOCATION

Committee Room 2

Scottish Parliament

Transport and the Environment Committee

Wednesday 13 February 2002

(Morning)

[THE CONVENER *opened the meeting at 09:37*]

The Convener (Bristow Muldoon): I welcome members of the public and the press to this meeting of the Transport and the Environment Committee.

The committee should make prompt progress with business today as there is a special meeting of the Parliament at 12 o'clock when there is a motion of condolence for Princess Margaret. We should aim to finish considerably before then if possible. I therefore ask members to co-operate in making progress with our business.

I have received apologies from Fiona McLeod, who will be late. She should be here by about 10.30 am.

Before we proceed to items on the agenda, I advise members that I received a letter from the Deputy Minister for Environment and Rural Development this morning on the water industry charges exemption scheme for voluntary organisations. I do not propose to debate that issue today, as there will be plenty of opportunities to do so tomorrow at the stage 3 debate of the Water Industry (Scotland) Bill. However, I have asked the clerks to copy the letter and ensure that all members of the committee have copies so that they are equipped with the Executive's proposals in advance of tomorrow's debate.

John Scott (Ayr) (Con): Will you disclose—

The Convener: I would prefer not to disclose the content, Mr Scott. You will get a copy of the letter before the end of the meeting. I suspect that disclosing the content would provoke a debate on the issue. I am only advising members out of courtesy that I have received the letter.

John Scott: You are advising us that the letter is contentious.

The Convener: I am not advising you that it is contentious. I am trying to concentrate on the business that we have before us, as we will be able to discuss the water industry in tomorrow's plenary debate.

Item in Private

The Convener: The first agenda item is to consider whether to take item 3, on the aquaculture inquiry draft report, in private. Committees usually consider draft reports in private. Do members agree to take item 3 in private?

Members indicated agreement.

Subordinate Legislation

Forth Estuary Transport Authority Order 2002

The Convener: I welcome the Deputy Minister for Enterprise, Transport and Lifelong Learning to the meeting to debate agenda item 2, which is consideration of an affirmative instrument.

The Deputy Minister for Enterprise, Transport and Lifelong Learning (Lewis Macdonald): Do you want me to begin?

The Convener: No. First, I will say a few words to guide members on how we will consider the order. Members were circulated a covering note on the order. The order has been laid under affirmative procedure, which means that Parliament must approve the order before its provisions can come into force. The order, therefore, will go before the full chamber. The sponsoring minister, Ms Wendy Alexander, the Minister for Enterprise, Transport and Lifelong Learning, has lodged motion S1M-2651, which recommends that the Transport and the Environment Committee approve the order. We will consider whether to agree that motion. Lewis Macdonald supports the motion and is attending the committee to contribute to the debate.

The Subordinate Legislation Committee considered the order at its meeting on 5 February and agreed to raise points on the order with the Executive. Members were circulated yesterday with an e-mail copy of a note from the Subordinate Legislation Committee that includes correspondence between that committee and the Executive on the order.

The Subordinate Legislation Committee raised questions about the vires of provisions in the order. The Executive responded with its view on those vires questions. However, members of the Subordinate Legislation Committee at yesterday's meeting expressed lingering doubts about the vires of those provisions. I ask the minister, when he speaks on the order, to respond to those vires questions for the information of this committee's members.

The first provisions involved are article 6 and schedule 1, which set up a new board and set out procedure rules. They are dealt with in the first question that is referred to in the Executive's response, of which members have a copy. The second vires doubt is about article 11(1), which relates to tolls. That is dealt with in the fourth question in the Executive's response. The next vires doubt is about article 8, which authorises the board to make byelaws. That is dealt with in the sixth question in the Executive's response.

We are required to report on the order by 11 March. We will follow the standard procedure for handling Scottish statutory instruments. First, I will allow the minister to respond to the specific points that have been raised on the order and address other issues about it if he wants to. Then I will allow members to ask questions. After that, we will move into formal debate. I ask members to refrain from debating issues when we are in the questions mode. I will allow the minister to make introductory remarks, then we will have straightforward questions. After that, we will have the debate.

If members want to question the officials who are here to assist the minister, they must do so during the question-and-answer session, because only MSPs can take part in the formal debate. I ask members to bear that fact in mind when we are in the question session. The debate must last no longer than 90 minutes, but I hope that it will be considerably shorter than that. I invite the minister to make his introductory remarks.

Lewis Macdonald: I am conscious of the pressures on the committee's time and I do not intend to take more of it than is required. However, it will be useful to say a few introductory words about the order to place it in context. I am aware that since the committee considered the Transport (Scotland) Bill in 2000 there has been considerable change, with a couple of notable exceptions, in the committee's membership. It might therefore be useful to lay out the background to the order.

The order that is before the committee today represents an important step forward in our efforts to tackle congestion at the Forth road bridge. The bridge is one of the key arteries for this part of Scotland and existing levels of congestion are projected to continue increasing. The bridge already exceeds its notional capacity for vehicle carriage on more than half the days of the year, so it is already full. As a consequence, tailbacks are common, as members will know. Travellers coming from the north in the morning and those leaving Edinburgh in the evening face significant tailbacks, and annual traffic growth is projected to continue at a rate of 3.5 per cent per annum.

09:45

The order puts in place a new board with wider powers to deliver solutions to those problems. The existing Forth road bridge joint board is restricted by statute in what it can spend tolling revenue on. It is restricted to spending that revenue only on the management, maintenance and operation of the bridge. Section 69 of the Transport (Scotland) Act 2001 provided enabling powers to dissolve the joint board and replace it with a new body that is able to discharge a wider remit, to the benefit of bridge users.

It is important to say that management and maintenance of the bridge will remain the primary responsibility of those charged with its governance. Article 7(1) of the order asserts that that is the prime responsibility. However, our view is that that and that alone does not allow the board to take effective measures to manage traffic flows. As the bridge is there to provide quick and reliable journey times across the Forth estuary, what the board requires is the ability to implement measures that go beyond the bridge itself and have an impact on traffic flows to and from the bridge, affecting users of the bridge. The order allows the board to do that.

A number of measures are already in place to work towards that end. The Ferrytoll park and ride in Fife and rail improvements in Fife are reducing the amount of commuting by car across the estuary. On the other side, City of Edinburgh Council is taking measures to upgrade the A8000, and the Executive is supporting it in doing that. Traffic modelling has clearly shown the benefits to the operation of the bridge of modernising the link between the bridge and the motorway. The order will introduce another key player to the field and will allow the Forth estuary transport authority, working with local authorities and the Executive, to make a difference in those areas of improvement.

We have put a substantial amount of time and effort into getting those proposals right. The policy development that has produced the order is based on an extensive cycle of consultation, both in relation to the enabling legislation under which the order is being made—the Transport (Scotland) Act 2001—and in relation to the order itself. Discussion with key players and consultation on the draft order continued nearly until the end of last year, prior to the order's publication in January. We have listened to all the views expressed at the different stages of that process and believe that the order represents the consensus view.

I would like to respond to the points that Bristow Muldoon made about the Subordinate Legislation Committee's concerns. Our general view of the enabling character of the 2001 act is that it is precisely intended and so drawn as to enable orders of this kind to be introduced. Section 69 of the act is very clear on that. If that section is read together with section 81(2) of the act, which is a general enabling power, it is quite clear that the Executive has the power to constitute a board, by putting an order through Parliament. Whether there is a power to specify the membership of the board seems to be the most significant issue that has been raised by the Subordinate Legislation Committee. It is our clear view, and our legal advice, that the act is indeed designed for that purpose and is so drafted as to allow that.

We have listened to the views of the Subordinate Legislation Committee on a number of aspects of the order and we have made a number of amendments that take on board one or two of the key points. A reading of the relevant sections of the act will show that it is certainly within the powers provided by that act to constitute a board to replace the existing authority.

Bristow Muldoon's other points related to article 11 and article 8. As far as article 11(1)—which is on the power to compound for payment of toll—is concerned, our view is that it is simply a power to provide things such as season tickets; it is not a power to set tolls in the first place. There is a difference of interpretation, but our clear interpretation is that the powers to set tolls exist and are separate. Article 8 relates to the byelaws provision. We accept that the Subordinate Legislation Committee's comments have merit. We will consider how best to address the issue in future, but we do not see any immediate difficulty with the provision as it stands. We may return to that matter if there prove to be concerns in future.

Of the issues that the Subordinate Legislation Committee has raised with us, the central one is the intent of the 2001 act and the reading of sections 69 and 81 and we are clear about that. On that basis, I urge the committee to approve the order after full discussion and debate. It is clear that maintenance of the bridge will remain the overriding priority of the new authority. It is also clear that article 7(2) of the order specifies the authority's ability to support measures to cut congestion and improve public transport across the Forth. Those are central policy objectives, which were fully discussed in this committee and in Parliament in the passage of the Transport (Scotland) Bill. They will provide benefits to all bridge users.

It is worth mentioning in passing that the order extends the existing tolling provision to 2006 in order to allow the new authority time to devise the correct strategic approach that it may wish to adopt after that time.

The Convener: I thank the minister for those introductory remarks. I invite members to ask any questions that they have. I ask members to keep their questions to the point and to keep to questions at this stage. Robin Harper has indicated that he has a question.

Robin Harper (Lothians) (Green): It is not a question but a statement.

The Convener: We will keep it until later if it is a statement, as we will have a debate in a little while.

Mr Adam Ingram (South of Scotland) (SNP): I notice in the notes that accompany the order that the new authority will have the powers of a

charging authority. Does that mean that road charging could be introduced to roads leading to and coming from the bridge? Does the authority have that power?

Lewis Macdonald: No. It is a charging authority in the sense that it can use its existing powers for tolls on the bridge to provide for improvements to the infrastructure off-bridge, but the area in which it can raise tolls is confined to the bridge.

Angus MacKay (Edinburgh South) (Lab): Perhaps this information is already in circulation and I have missed it. Is it possible for the committee to know how much revenue is generated annually by the bridge and what the annual costs are of maintaining the bridge? Is the staffing of the bridge financed from the revenues generated by the bridge or is that financed from elsewhere?

You mentioned that a number of groups have been consulted. What consultation has there been of consumers of the bridge service?

Lewis Macdonald: According to the latest figures, annual tolling income from the bridge is about £9.2 million. Of that, the authority currently has a surplus of about £3.3 million, so the money that is reinvested is of the order of £6 million. That covers maintenance, staffing and all the other costs associated with the management of the bridge. The annual surplus varies from year to year depending on the maintenance demands on the bridge, but the cumulative surplus at the end of the financial year is expected to be about £10 million. That is the surplus accumulated over the years; it is coming in at the rate of around £3 million annually. A significant amount of money is being generated by the increasing use of the bridge. We want that to be reinvested to improve the services.

Andrew Watson will comment on the consultation process that he has managed on our behalf.

Andrew Watson (Scottish Executive Development Department): We have had quite a wide consultation throughout the development of the order. Both the draft order and the provisions of the Transport (Scotland) Bill that related to the Forth bridge were put out to widespread public consultation. At both stages we ensured that we consulted groups such as the Automobile Association, the RAC and the Freight Transport Association. That was to ensure that the views of private users of the bridge were taken into account. We certainly listened to all the views that were expressed.

Maureen Macmillan (Highlands and Islands) (Lab): Will the minister tell us what consultation there was on the title of the instrument? There is a bit of anxiety and I noticed that the Subordinate

Legislation Committee expressed disappointment that the title refers to the Forth estuary rather than the Firth of Forth. Firth is a geographical term that means a large inlet of the sea. We have many firths in Scotland, but I cannot think of many estuaries. I would prefer the word firth to be used rather than the word estuary. Perhaps there is still time to change the title.

Lewis Macdonald: We have the order before us with the title on it. As the committee is aware, the nature of such orders is that they stand as a whole. There were responses on that point in the consultation and some views that were expressed were similar to Maureen Macmillan's. Part of the difficulty was that a firth is a long inlet of the sea and the term refers specifically to the body of water. An estuary has a wider definition and refers also to the shores on either side.

We sought to provide an authority that would have a clear responsibility extending beyond the bridge itself to the approaches to it and the public transport improvements that could be made to them. The point is fair. The original title referred to a transportation authority and in response to consultation we simplified that term. Although there were some responses along the lines that Maureen Macmillan described, there was not an overwhelming number.

I wonder whether Karen Watson or Andrew Watson would like to add to that.

Andrew Watson: I do not have much to add. The minister has summed the matter up. We chose the title from a number of options, because we thought that it best captured the sense of what the new body would do. We used the title Forth estuary transportation authority as a working title for consultation and changed it to Forth estuary transport authority after a number of views about that were expressed. However, there was not a significant amount of representation to change the title to the Firth of Forth transport authority. Given that the majority of those consulted were content, we decided not to change the title in that way.

Des McNulty (Clydebank and Milngavie) (Lab): I preface my remarks by congratulating Adam Ingram on being nominated to replace Kenny MacAskill on the Enterprise and Lifelong Learning Committee, according to today's business bulletin. I make a plea that we do not get Kenny back here.

The issue that we raised about post-legislative scrutiny last week arises from the order. I am concerned that we are ending up with a policy for every river in Scotland. What is happening on the Forth is different from what is happening on the Clyde and the situation for the Kincardine bridge is different again. I wonder whether we need to devise a more coherent system of dealing with toll

bridges, rather than proceeding with this endless ad hocery.

When the minister reflects on the process that has led him to introduce the order, he may want to consider—particularly in the context of the Erskine bridge on the Clyde—how such different treatment for the Forth can be defended. There are equal claims in the area of Scotland that I represent for transport support on approaches to bridges and for maintenance arrangements. However, a fundamentally different system is being operated in the Forth. That point needs to be explored and considered as a policy issue.

We discussed toll bridges and other bridges when we were considering the Transport (Scotland) Bill.

The Convener: Please frame your question, Mr McNulty.

Des McNulty: I am just coming to that. I am anxious that the Executive and the committee examine the powers in the 2001 act and the issues that have been identified by the Subordinate Legislation Committee. I wonder whether the Executive might produce a report in due course on how it intends to proceed on the policy, over and above the order. We might want to know how to avoid repeating the order for another bridge in Scotland.

The Convener: Minister, pick out a question from that.

10:00

Lewis Macdonald: I will try. There is an important distinction to be drawn. Des McNulty is right to say that different regimes operate in different places. As is often the way, the policy process has to deal with what we find and consider how best that can be advanced. During the passage of the Transport (Scotland) Bill there was some debate on toll bridges. Under section 69 of the 2001 act, the Forth and the Tay bridges are the responsibility of local authorities. In respect of the Forth—we have taken the powers to act similarly in respect of the Tay at another time if we so wish—we are constituting authorities that will act as roads authorities and that bring together the four different local authorities with an interest in that crossing.

In this case, we are developing, under the 2001 act, a strategic approach to transport and the role of the bridge in the wider context of south-east Scotland and the Edinburgh travel-to-work area in order to allow the area to advance its priorities while addressing transport issues. I recognise that there are different issues in the Clyde and elsewhere. There is always room for debate about such matters. Today we are considering the

implementation of a decision that was taken by the Transport and the Environment Committee and the Parliament a year ago, which was to develop schemes of the sort contained in the order. I recognise the points that Des McNulty raises, but the key thing is the role that the new Forth estuary transport authority can play in improving public transport across south-east Scotland. That will be done in the context of the kind of scheme that the 2001 act encourages local authorities to pursue singly and collectively through regional strategies. That is something that the bridge authorities on the Forth and potentially the Tay can do in relation to their responsibilities as tolling authorities.

John Scott: You have assured us today that all is as it should be. Could you give us your assurance again that the order will not be subject to any legal challenge? We do not want to have to start again after another Erskine bridge debacle. If a legal challenge were mounted against the order, who would defend it? Would the bridge authority or the Executive, having passed the order, defend such a challenge?

Lewis Macdonald: Caroline Lyon from the office of the solicitor to the Scottish Executive will address the final point about the defence of any action.

It would be nice for politicians to be able to say that they could guarantee that a piece of legislation would never be subject to legal challenge. The 2001 act is clear about the powers that it gives us. Under section 69(2)(a), an order may

“transfer to a joint board comprised of such local authorities as may be specified in the order (such authorities being referred to in this section as the “constituent authorities”) such property, rights and liabilities of the relevant body to which the order relates as may be so specified”.

That is clear.

Section 81(2)(a) says that any power to make regulations under the act shall include

“different provision for different cases and for different classes of case”.

In other words, the act allows us to implement our power to create a board in a different way on the Forth or the Tay as circumstances dictate. It is quite clear that the intention of the Parliament when it passed the act was to give us the power to create a board in that way.

Caroline Lyon (Office of the Solicitor to the Scottish Executive): As the minister has said, legal challenge can never be ruled out. However, we believe that we have the necessary vires for this order and that it is as unchallengeable as we can make it.

I cannot answer the question of who would challenge the order and who would defend it. I do

not know who would want to challenge the order and the nature of the challenge would determine who responded to it. In certain cases, the new authority might be involved in the defence and, in others, the Scottish ministers might be involved. I am sorry that I can be no more specific.

Lewis Macdonald: That is a lawyer's answer, which, in some ways, is probably what John Scott was looking for. What is in the order is based on consensus and a wide consultation. It is hard to imagine why any of those who have been consulted and have consented to proceeding with the legislation would wish to challenge it in any way other than through parliamentary debate.

John Scott: The only reason I could see—

The Convener: If you have another question, you can ask it, John. If you have an issue for debate, we can deal with it after the minister has moved the motion.

John Scott: Okay.

The Convener: I invite the minister to move the motion.

Lewis Macdonald: I move,

That the Transport and the Environment Committee recommends that the draft Forth Estuary Transport Authority Order 2002 be approved.

The Convener: Members who wish to debate this issue should indicate their desire to do so.

Robin Harper: I am interested in the thinking behind the order and draw the attention of the committee to the Executive note. Paragraph 5 reads:

"The Scottish Executive does not favour a second Forth Road crossing. It would be incompatible with an integrated transport policy; it would encourage inappropriate use of the car for short journeys, including commuting. It would have a detrimental effect on the environment. Furthermore, such a development would be very expensive and could only be funded through charges very much higher than current tolls."

The inclusion of that statement in the Executive note brings much comfort. On the basis of that paragraph alone I am prepared to support the Executive's motion.

The Convener: In my constituency, there were initial concerns that other local authorities with an interest in the bridge would not be included in the composition of the board. As a West Lothian representative, I welcome the fact that the Scottish Executive took on board our views and included both Perth and Kinross Council and West Lothian Council in the board membership. I am happy to support the order.

Motion agreed to.

The Convener: I thank the minister, his officials and members of the press and public for their attendance. We will now move into private session to deal with a draft report on the first phase of our inquiry into aquaculture.

10:08

Meeting continued in private until 11:42.

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