TRANSPORT AND THE ENVIRONMENT COMMITTEE

Wednesday 8 January 2003
(*Morning*)

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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TRANSPORT AND THE ENVIRONMENT COMMITTEE
1st Meeting 2003, Session 1

CONVENER

*Bristow Muldoon (Livingston) (Lab)

DEPUTY CONVENER

*Nora Radcliffe (Gordon) (LD)

COMMITTEE MEMBERS

*Bruce Crawford (Mid Scotland and Fife) (SNP)
*Robin Harper (Lothians) (Green)
*Angus MacKay (Edinburgh South) (Lab)
*Fiona McLeod (West of Scotland) (SNP)
*Maureen Macmillan (Highlands and Islands) (Lab)
*John Scott (Ayr) (Con)
*Elaine Thomson (Aberdeen North) (Lab)

COMMITTEE SUBSTITUTES

Helen Eadie (Dunfermline East) (Lab)
David Mundell (South of Scotland) (Con)
Iain Smith (North-East Fife) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Des McNulty (Deputy Minister for Social Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Alastair Macfie

ASSISTANT CLERK

Rosalind Wheeler

LOCATION

The Chamber

Scottish Parliament

Transport and the Environment Committee

Wednesday 8 January 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:39*]

The Convener (Bristow Muldoon): I welcome everyone to the first meeting of the Transport and the Environment Committee in 2003 and wish you all a happy new year. I hope that it is a successful year—for most of us, anyway.

I have received no apologies for absence from today's meeting, but Fiona McLeod said that she would be late. If the meeting is still progressing at 11:30, Elaine Thomson will need to leave to attend another committee.

Item in Private

The Convener: I ask members to agree to take agenda item 7 in private. Item 7 is consideration of a paper on the committee's approach to the examination of telecommunications developments, following its report in 2001 and the subsequent action taken by the Executive.

Members *indicated agreement.*

Building (Scotland) Bill: Stage 2

The Convener: I ask members to ensure that they have copies of the marshalled list of amendments and the bill.

Sections 22 and 23 agreed to.

Section 24—Building warrant enforcement notices

The Convener: Amendment 57 was debated with amendment 11.

The Deputy Minister for Social Justice (Des McNulty): I wish everyone a happy new year.

Amendments 57 and 58 moved—[Des McNulty]—and agreed to.

The Convener: Amendment 59 is in a group on its own.

Des McNulty: Amendment 59 would amend and broaden the provision on building warrant enforcement notices to reflect changes made by amendment 21, which removed the restriction on what an amendment to a building warrant might include.

I move amendment 59.

Amendment 59 agreed to.

Amendments 60 to 66 moved—[Des McNulty]—and agreed to.

Section 24, as amended, agreed to.

Section 25—Defective buildings

The Convener: Amendment 107 is grouped with amendment 108.

Angus MacKay (Edinburgh South) (Lab): Amendment 107 is intended to be a tidying-up exercise to grant local authorities power to carry out emergency repair work. Examples of such work include work on blocked drains and the right to erect scaffolding to facilitate repairs, such as those needed by Ryan's Bar, which has been much quoted during the committee's deliberations.

Amendment 107 has no hidden agenda or greater intent beyond the wish to transfer the powers contained in the Civic Government (Scotland) Act 1982 to the bill, where they would be placed alongside local authority powers to serve defective building notices.

I move amendment 107.

Elaine Thomson (Aberdeen North) (Lab): I support amendment 107. Following a fire in Aberdeen, the Poundstretcher building in Union Street was left in a dangerous condition. Although the owners of the property collected insurance

money, they failed to carry out repairs to return the building to a safe condition, with the result that a workman who went into the building was killed. The local authority had major problems with being able to bring enough pressure to bear on the owner of the building to make it safe. The amendment might tackle such problems. I ask the minister to consider the important approach of giving local authorities adequate powers to tackle dangerous buildings in such circumstances.

09:45

Maureen Macmillan (Highlands and Islands) (Lab): I ask Angus MacKay to explain further the implications of amendment 107, which begins:

"Where it appears to a local authority to be necessary".

What criteria would the local authority use? I am anxious about the amendment's resource implications, were we to agree to it. In principle, we want to ensure that buildings are as safe as possible, so what would be the effect of the amendment?

Bruce Crawford (Mid Scotland and Fife) (SNP): My question is for Angus MacKay and the minister. I am interested in the minister's response to amendment 107, which has the sort of rationale that we should get on to the statute books.

Proposed subsection (15) says that the local authority may recover costs from the owner of a building if it wants to. It may also remit any sum, or part of any sum, if it wishes. I want to ask about circumstances in which a building becomes unsafe, not because of lack of repair or proper building upkeep but because of something happening outside. For example, an adjacent building or an earth tremor—God forbid—might undermine the building in question and place it an unsafe condition. In such circumstances, would an individual be expected to bear the cost, or would that be an insurance matter? I wonder about some of the unseen things that can happen to property. Would a local authority be able to seek redress—and perhaps costs—from an owner for action that the owner had taken, despite the fact that the owner has no right of appeal or any other mechanism to use against the local authority?

Robin Harper (Lothians) (Green): We are talking about a sensible strategy for emergencies. How would competitive tendering fit in? Would councils be able to take immediate action without putting the work out to tender?

Angus MacKay: I shall answer those questions as well as I am able to and in the order in which they were asked.

Maureen Macmillan raised the cost implications, which would be minimal because amendment 107 proposes to incorporate in the bill existing law from the Civic Government (Scotland) Act 1982. Therefore, I do not expect a significant additional cost.

On Bruce Crawford's point about costs being recovered by local authorities from an individual owner, or several owners, there would be a need to test the circumstances against the provisions of insurance policies. Without knowing the specific circumstances that Bruce has in mind, it is difficult to envisage what they might be. The details of a property owner's insurance policies would determine whether they were covered for certain costs. If an individual felt that the authority was pursuing them unreasonably or unfairly for costs that were not covered by insurance policies, the matter might have to be contested through law. If such an action were raised, a local authority would certainly have to defend its position in law. I find it difficult to conceive of an explanation that would meet all the circumstances that Bruce Crawford described.

On Robin Harper's point, we must consider the amendment for what it is. There is nothing fantastical and new in it; it would simply bring together existing provisions from the Civic Government (Scotland) Act 1982. Therefore, I do not envisage that any material change would be created.

Nora Radcliffe (Gordon) (LD): I am concerned that we may be creating a responsibility for local authorities. If a local authority does not act in the way in which people perceive it should have done, the authority will be held liable for not having done so.

Des McNulty: I am grateful to Angus MacKay for lodging amendments 107 and 108. I accept that there is merit in suggesting that we tidy up the provisions. However, the professional advice that I have received is that the best way of doing so may not be simply to import sections from the Civic Government (Scotland) Act 1982 that contain different legal language and have not been worked through in so far as the legal consequences of the bill are concerned.

If Angus MacKay were willing to withdraw amendment 107 and not to move amendment 108, I would be happy to consider lodging amendments at stage 3 to achieve the effect that he seeks. Executive officials have already had discussions with officials from the City of Edinburgh Council, which has a particular interest in the matter. We will consult both the council and Angus in developing the amendments that we want to lodge at stage 3.

Angus MacKay: I am happy with the minister's suggestion, as, I am sure, the City of Edinburgh Council will be. On that basis, I am happy to withdraw amendment 107.

Amendment 107, by agreement, withdrawn.

Section 25 agreed to.

Section 26—Dangerous buildings

The Convener: Amendment 88 is grouped with amendments 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 105 and 106.

Des McNulty: As drafted, the bill requires local authorities to remove occupants from a building only when the work that it intends to do relates to dangerous buildings. It does not cover danger from work that a local authority intends to do in other circumstances. The amendments are intended to rectify that situation. They would provide that a local authority must require the occupants to leave a building if such work might endanger them. That logical change to the bill would ensure occupants' safety.

Amendment 105 would insert a new section to cover work relating to various enforcement notices. The other amendments are consequential to amendment 105. I do not propose going through each amendment, although I will be happy for Lorimer Mackenzie to answer questions about the detail. However, I draw the committee's attention to amendments 102 and 103, which would ensure that the protection for tenants who were required to remove themselves from a building was extended in line with the new section.

Amendment 106 would provide a definition of "dangerous building" in section 51. It states that the term should be construed in accordance with section 26(1), on dangerous buildings, because, if the amendments were agreed to, the phrase would be used more widely in the bill. We are proposing to tidy up the process and extend the provision to take account of eventualities that we have recognised might arise.

I move amendment 88.

John Scott (Ayr) (Con): May I ask for clarification? If such a notice of temporary removal were given to occupants of a building and, through no fault of their own, they were forced to evacuate, would compensation be available?

Des McNulty: We are talking about the protection of occupants' rights, which the provision was drawn up to cover. The issue of compensation is not really for the bill. In that context, we are concerned with ensuring that people can be removed from a building under the various enforcement circumstances that may arise. The issue of compensation, where appropriate, would arise out of the particular circumstances of the enforcement.

Lorimer Mackenzie reminds me that if a building became dangerous, redress would be sought against the owner rather than the local authority. We are seeking to give local authorities the power to ensure that people can be removed from a building safely.

Amendment 88 agreed to.

Amendments 89 and 90 moved—[Des McNulty]—and agreed to.

Section 26, as amended, agreed to.

Schedule 3

EVACUATION OF DANGEROUS BUILDINGS AND ADJACENT BUILDINGS

Amendments 91 to 103 moved—[Des McNulty]—and agreed to.

Schedule 3, as amended, agreed to.

Section 27 agreed to.

Section 28—Dangerous building notices

The Convener: Amendment 67 is in a group on its own.

Des McNulty: Amendment 67 is a sensible amendment that seeks to expand the remit of the building standards advisory committee in reviewing regulations, as set out in section 28. Under the bill as drafted, the committee can keep under review only the operation of building regulations in addition to its advisory role for ministers. We now believe that the committee could play a useful role in keeping under review all regulations made under the bill, including procedure regulations and regulations on fees and charges. Consequently, amendment 67 would permit the committee to carry out that broader role.

I move amendment 67.

Amendment 67 agreed to.

Section 28, as amended, agreed to.

Sections 29 and 30 agreed to.

Schedule 4 agreed to.

Section 31 agreed to.

Section 32—Scheduled monuments, listed buildings etc

Amendments 68 to 70 moved—[Des McNulty]—and agreed to.

Section 32, as amended, agreed to.

Section 33 agreed to.

Section 34—Service of notices etc

The Convener: Amendment 104 is in a group on its own.

Des McNulty: The purpose of amendment 104 is to ensure that people are given appropriate

notice of the notices that are served under sections 22 to 26, which are building regulations compliance notices, continuing requirement enforcement notices, building warrant enforcement notices, defective building notices and dangerous buildings notices. Amendment 104 would provide that, when such notices are served, copies should be served on the owner, the occupier and others who it appears to the local authority might have an interest in the building. The amendment would therefore ensure that those who might be affected by work—in particular owners and occupiers, on whom the effect might be significant—would be informed of the existence and requirements of a notice.

Amendment 104 follows on in part from amendments that were agreed to at the committee's previous meeting, which will allow people other than an owner to apply for warrants, undertake work and submit completion certificates. Those amendments will also allow enforcement action to be taken against those people.

I move amendment 104.

Bruce Crawford: I understand why amendment 104, which is a good amendment, has been lodged. It would protect people's rights and would ensure that what the local authority is trying to achieve is clear and transparent. However, what about the person who does a midnight flight and disappears off the scene because they find themselves in a difficult situation with their own building, such as a shop owner who has gone bankrupt and whose property is falling into disrepair? If the local authority were unable to serve the notice, would that prevent the work required on the building from being done? A local authority constituent of mine tried to repair an unsatisfactory building but could not trace the owner or anyone who was responsible for the building. I would not like what the Executive is sensibly trying to achieve with amendment 104 to put a brake on work being done if the relevant person cannot be traced.

10:00

Des McNulty: The amendment would allow additional people, above and beyond the owner, to be notified. Nothing in the requirement to serve additional notices would delay work being undertaken. Where the owner is a midnight flier, as Bruce Crawford described them, the local authority could act through compulsory purchase or other mechanisms to undertake the work.

Bruce Crawford: I am concerned about compulsory purchase. One of the problems with compulsory purchase is that, if the owner cannot be traced, advertisements have to be placed in the press to allow them time to come forward. The process is lengthy and time consuming. That is exactly why I asked those questions. Compulsory purchase can take a long time. If the local authority cannot act until compulsory purchase has been achieved, we may be building in a delay mechanism that could create even more danger and raise even more health and safety issues for members of the public.

Des McNulty: I am happy to look into the circumstances of owners who cannot be found when compulsory purchase mechanisms are invoked, but such circumstances do not pertain to amendment 104. The amendment is about extending the serving of a notice to a range of people. I am happy to write to Bruce Crawford about compulsory purchase and the time issues that are associated with it, but those issues do not relate to amendment 104.

Amendment 104 agreed to.

Section 34, as amended, agreed to.

Sections 35 and 36 agreed to.

Schedule 5 agreed to.

Section 37—Work required by notice: right of entry

Amendments 71 to 74 moved—[Des McNulty]—and agreed to.

Section 37, as amended, agreed to.

Section 38—Tests of materials

The Convener: Amendment 75 is in a group on its own.

Des McNulty: Amendment 75 expands the definitions of "materials test" in section 38(3) to provide that it

"includes a test of materials in combination with other such materials and the test of the building as a whole".

Fragmentation was raised earlier. Amendment 75 will allow verifiers to test whether the materials that have been put together fulfil certain functions, such as thermal or sound requirements. The materials test can include a test of a whole building, where such a test would be relevant.

I move amendment 75.

Amendment 75 agreed to.

Section 38, as amended, agreed to.

After section 38

Amendment 105 moved—[Des McNulty]—and agreed to.

Sections 39 and 40 agreed to.

Section 41—Sale of materials from demolished buildings

Amendments 76 and 77 moved—[Des McNulty]—and agreed to.

Section 41, as amended, agreed to.

Section 42 agreed to.

Section 43—Penalties for offences

Amendment 78 moved—[Des McNulty]—and agreed to.

Section 43, as amended, agreed to.

Sections 44 to 49 agreed to.

Section 50—Meaning of "building"

The Convener: Amendment 79, in the name of the minister, is grouped with amendment 87. I invite the minister to move amendment 79 and to speak to both amendments in the group.

Des McNulty: If possible, I would like to hear what John Scott has to say about amendment 87 before I speak to it.

The Building (Scotland) Act 1959 includes "any railway line" in the list of exceptions. It was an oversight not to include that in the bill; therefore, amendment 79 is simply a technical amendment to include "any railway line" in the list of exceptions.

I move amendment 79.

The Convener: I invite John Scott to speak to amendment 87. He may speak to the other amendment in the group if he wishes to do so.

John Scott: The minister will be pleased to know that I had not considered railway lines.

Amendment 87 is designed to broaden the scope of the bill a little, but not too much. In evidence, the committee heard of the need to include in the bill areas of the built environment that are by definition not buildings, such as car parks, footpaths, street lighting, roads, and so on. We heard of the need to bring those important complementary features into the scope of the bill, and my amendment 87 seeks to achieve that. I note what is said in the minister's letter to the committee, and I lodged amendment 87 with a view to complementing that. The introduction of the expression "the built environment" would also allow ministers to include in the scope of the bill such areas as they saw fit. I would welcome the views of the minister and other members of the committee on that.

The Convener: I seek clarification from the minister on the exception of "any railway line". Am I correct in assuming that the reason for that exception is that railway lines would fall under the jurisdiction of the Health and Safety Executive and UK legislation rather than the Building (Scotland) Act 1959?

Des McNulty: On the convener's point, railway lines have never been incorporated in building legislation, so to incorporate them in the bill would take them away from the legislation that currently deals with them and would require a change to the bill. We want to promote consistency and not to give ourselves additional problems by not excepting something that we had intended to except, and which it would have been an oversight not to except—if you see what I mean.

I recognise the argument behind what John Scott is saying in amendment 87. However, I ask him not to move the amendment for a couple of reasons. First, the phrase "the built environment" is vague. I set up the cross-party architecture and the built environment group in the Scottish Parliament, which chose the phrase deliberately because it was vague and could encompass many interests. Some uses of the phrase "the built environment" in planning are a long way from the purposes of the bill. Therefore, it would not aid clarity in the bill to change the phrase in the long title.

Secondly, the mechanics of the bill are tied to the definition of the term "buildings", and to change that now might have a number of implications for the bill's substance. Therefore, if John Scott wants to go down that route, he should be mindful that it is a long and complicated means of changing the nature of the definitions in the bill. In that sense, amendment 87 would not add much.

There are no other amendments whose substance would justify amendment 87. My letter makes it clear that the Executive is aware of the relationship between buildings and their surrounding environment, such as roads and footpaths. However, amendment 87 does not tackle the problem sensibly and would cause unnecessary complications. On that basis, I ask John Scott not to move amendment 87.

Amendment 79 agreed to.

Section 50, as amended, agreed to.

Section 51—Interpretation

Amendment 106 moved—[Des McNulty]—and agreed to.

Section 51, as amended, agreed to.

Sections 52 and 53 agreed to.

Schedule 6

MODIFICATION OF ENACTMENTS

Amendment 108 not moved.

Schedule 6 agreed to.

Section 54 agreed to.

Long Title

Amendment 87 not moved.

Long title agreed to.

The Convener: That brings us to the end of our stage 2 consideration of the Building (Scotland) Bill. An announcement will be made in tomorrow's business bulletin about lodging amendments for consideration at stage 3. I thank members, the minister and the Executive team for the swift progress that was made on stage 2 and I look forward to considering further amendments at stage 3.

Des McNulty: I am very grateful to members of the committee. This might be the first stage 2 that has gone through without a vote.

The Convener: You will provoke Bruce Crawford during stage 3, I suspect.

Subordinate Legislation

Smoke Control Areas (Authorised Fuels) (Scotland) Amendment Regulations 2002 (SSI 2002/527)

The Convener: There are two negative instruments for consideration. No members have raised points about the first instrument and no motion to annul has been lodged.

Bruce Crawford: I appreciate that no one has lodged a motion to annul the instrument. The legislation gives certain companies the authority to produce a product for smoke control areas. It is a good idea, and I understand the Executive's reasoning, but I am concerned by proposed new paragraph 11A, which authorises Tower Colliery Ltd to manufacture Dragonglow briquettes. It also mentions the address of the production area of the briquettes. Given that the legislation states specifically where the company can produce the briquettes, if it were to move, could it no longer produce briquettes for smoke control areas? I am concerned that including the company's address would make it more difficult for it to relocate and that that would require us to pass another statutory instrument that would allow it to produce briquettes at a different location.

I am not sure that it is worth stopping the legislation, but that level of detail is unnecessary. If the wording was "Dragonglow briquettes, manufactured by Tower Colliery Limited", that might have allowed enough flexibility to ensure that such circumstances do not arise.

The Convener: The clerks advise me that we would have time to write a letter to ask such a question, which we could consider at our next meeting. However, I take it that Bruce Crawford does not oppose the measure and that it therefore might not be necessary for us to delay consideration. We could still write the letter to bring the matter to the Executive's attention and to ask for its response, which the committee would consider. We could take either approach.

Bruce Crawford: I do not want to cause any delay, unless the Executive's response is that what I have to say has some merit and that it wants to produce another negative instrument. However, that would mean restarting the process, and I suspect that the chances of that happening are limited, given the available time. I am happy for us to write to say that we have some drafting concerns and that the Executive should ensure that such problems do not recur, unless somebody wants to take a stronger line.

10:15

Nora Radcliffe: The end of the explanatory notes says that the place of manufacture of

several briquettes is now different. That implies that it is normal to include the place of manufacture. As Bruce Crawford says, there might be a good reason for that, because it looks as though that has been done previously and that designation is now required again. It would be interesting to know about that.

The Convener: On that basis, do members agree to make no comment that would affect the instrument's progress—we will not oppose it—but to ask the Executive to explain the inclusion of the manufacturer's address? We will ask the Executive to write to the committee to share its views on why that was necessary and whether it creates a problem for the instrument. Is that agreed?

Members *indicated agreement*.

Removal and Disposal of Vehicles Amendment (Scotland) Regulations 2002 (SSI 2002/538)

The Convener: No members have made points about the regulations or lodged motions to annul. As members have no comments, do they agree that we have nothing to report on the regulations?

Members *indicated agreement*.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2003 (draft)

The Convener: The order is a draft affirmative instrument. We have been designated as secondary committee on it and we will report our comments to the lead committee, which will consider the order on 21 January. If members have substantive questions about the instrument on which they wish to hear evidence from the minister, we could ask the minister to appear before the committee on 15 January. However, if members do not wish to raise substantive issues, we could leave consideration of the order to the lead committee. I seek guidance from members on the approach that they wish the committee to take.

Bruce Crawford: I do not wish to see the minister about the order. The only aspect that pertains to the committee is the provision on the Transport Act 2000, under which the Scottish ministers are being given an important power. I will explain that from personal experience.

In the run-up to achieving the Rosyth to Zeebrugge ferry service, considerable controversy blew up over whether the Department of Trade and Industry would support the project in principle and through funding. I give all credit to Henry McLeish, who at that time pushed hard behind the scenes. To clinch that deal and make the ferry service a reality, the Executive was required to pay £12 million to the DTI, which used that money to support the project at Rosyth through a freight facility grant subsidy.

The DTI did not want to fund the project and the Executive had no power to fund it, so a book mechanism had to be found to ensure that the money was in the right coffers to enable Superfast Ferries to set up shop. That seemed to me to be a ridiculously bureaucratic system. The order will remove that problem, so if ministers in Scotland wish to support a ferry project from Scotland to another country—rather than an internal ferry, such as from Aberdeen to Orkney—they will be fully at liberty to do so.

Given that the power will come to the Scottish ministers, my only question is what will happen to the finances that were previously available to the DTI to support such activity in Scotland. Will that money come to the Scottish budget? I am not sure whether that issue is linked directly to our requirement to consider the order, but it is an obvious question that needs to be asked. I am glad that the new powers will come, because they will remove unnecessary bureaucracy from the system, but will the money follow with them?

Nora Radcliffe: The Executive note on the order mentions

"financial assistance for shipping services which start or finish or both outside Scotland".

Is that intended to cover ferry services that call in in passing?

The Convener: Yes.

The order covers issues that are in the justice committees' remit and issues that are in our remit, which is why we have been designated as a secondary committee on the order. Bruce Crawford pointed out correctly the part of the order that relates to our remit. I note that Bruce welcomes the transfer of the powers, but I cannot answer his question about whether there will be a financial transfer. To answer that question, we could correspond with the minister and ask him to send a response to the lead committee and a copy to us, so that the lead committee has that information available to it when it considers the order. If members are content, we will indicate that we do not wish to take evidence on the order and that, in general, we welcome the transfer of powers, which will simplify the process with regard to ferry or shipping services that the Executive wishes to promote. We will ask the specific question that Bruce Crawford raised and request that the minister send the response to the lead committee and a copy to us prior to the lead committee's consideration of the order. Do members agree to that action?

Members *indicated agreement*.

Petitions

The Convener: We have eight public petitions to consider today, some of which cover the same subject, so we have grouped them into five headings. As we are approaching the dissolution of the Parliament, some of the petitions that we are considering now or that we will consider in future meetings might not be considered fully prior to dissolution. The committee is required to refer back to the Public Petitions Committee any petitions that do not reach satisfactory completion in our minds prior to the dissolution. The Public Petitions Committee, when reconstituted after the election, will decide whether to refer such petitions back to newly constituted committees. If we do not finish the consideration of a petition between now and the dissolution, the petition will not necessarily die. We will have the power to keep the matter live, if we feel that further work can be done on it.

Opencast Mining (PE346 and PE369)

The Convener: At our meeting of 9 October, we agreed to write to the Minister for Health and Community Care to ask about research on the impact of opencast coal mining on public health. We welcomed the indication that the relevant national planning policy guideline was to be reviewed, but we had further questions on health matters. At that stage, we agreed to copy any relevant correspondence to the Health and Community Care Committee to keep it informed on the health issues.

We have now received a further response from the Minister for Health and Community Care to our questions on health issues; members should have a copy of that letter. Members should also have received a copy of another letter from the primary petitioner of Scotland Opposing Opencast's petition, who encloses some articles from *The Lancet Oncology* on respiratory illness relating to pollution in the air, including particulates.

I look to the committee for guidance on a suggested course of action. I suggest that the issues that are directly within our remit, such as planning powers, have largely been dealt with. The Executive has said that it will review the relevant national planning policy guidelines, and the committee agreed on that way forward when it considered the matter previously. However, questions still exist on the health aspects of opencast mining, which have not been fully resolved and which are outwith our direct remit. Perhaps we should, therefore, decide that although we have concluded consideration of the aspects of the petition that are directly within our remit, we should refer the minister's correspondence and the committee's consideration of the health issues to the Health and Community Care Committee, for its consideration.

Nora Radcliffe: I agree that we should refer the matter to the Health and Community Care Committee. The fourth paragraph of the letter of 2 December from the Minister for Health and Community Care states:

> "The Executive's Health Department does agree … that there is a need for further research to address current uncertainties surrounding the general relationship between environmental exposure to airborne particulates and respiratory ill health."

However, it goes on to say that

"The relationship between respiratory ill health and opencast development is not regarded as a major driver".

If the Executive recognises that there is a need for research in that area, we might legitimately ask what it is doing to promote such research. If it is doing generic research into the effect of particulate matter on respiratory health, it does not matter whether the research is conducted using opencast mining or anything else—the important thing is that it is done. Generic research would be relevant to opencast mining because it would still be scientific evidence about the effect of particulate matter on health.

We should refer the matter to the Health and Community Care Committee, but it might also be appropriate for us to write back to the Minister for Health and Community Care, pointing out that the implication of his letter is that the Executive should be doing something about the matter.

Bruce Crawford: I agree with the convener. The jury is out on whether there is any point-source pollution from opencast mining operations especially because of particulate problems. I understand that the University of Strathclyde is keen to pursue some research on that subject, especially in the coalfield communities.

In the circumstances, it is incumbent on the committee to keep the issue alive and the only way we can appropriately keep it alive is to pass it to the Health and Community Care Committee, to ensure that that committee is aware of the concerns. I am not sure whether that committee will have time to do anything about it before the dissolution of Parliament. However, at least it should make the decision to hand it back to the Public Petitions Committee to keep the matter going and ensure that any research that is undertaken is followed up by the appropriate parliamentary committee. We will then be able to come to a conclusion about whether there really are the health effects from opencast mining that people in nearby communities believe exist.

John Scott: I, too, agree that someone should examine further the health matters. I also agree that the matter should be referred to the Health

and Community Care Committee. I presume that, if that committee does not have time to consider the matter before the election, it will consider it after that.

Maureen Macmillan: I agree that we should refer the matter to the Health and Community Care Committee. We should also refer that committee to the discussion that we have had about the subject today.

The Convener: There is broad agreement on the way forward. We will correspond with the petitioners on the basis of the evidence that we have taken so far, relating to the areas where the NPPG is going to be placed under review, and we will inform them that we have decided to refer the health issues to the Health and Community Care Committee. As the petition is passed to the Health and Community Care Committee, it will be given a copy of all relevant committee discussions and any correspondence that this committee has received on the issue. Are we all agreed?

Members *indicated agreement.*

Playing Fields (PE422, PE430 and PE454)

The Convener: The second group of petitions, PE422, PE430 and PE454, concern the disposal of playing fields. When the committee considered those petitions initially, we agreed to write to the Executive for its view on the implementation of current planning guidelines on the disposal of playing fields. The Executive's response detailed the current planning system, and the measures that the Executive and sportscotland have undertaken to improve the system.

10:30

The committee then agreed to write to sportscotland and the Convention of Scottish Local Authorities regarding their views on the adequacy of current guidance and their implementation of the guidelines that are currently being developed by the Executive. A cover note that was circulated with the petition recommended that—considering the preparation of NPPG 3 under a policy advice note to support NPPG 11, and COSLA's and sportscotland's comments on the current guidelines on protecting playing fields—the committee may decide that there is no need to take further action at this time.

We could agree to conclude consideration of the petitions and write accordingly to the petitioners and we could provide them with copies of correspondence from each of the bodies with which we have corresponded. I seek members' guidance on whether they wish to accept that course of action or to pursue another.

Bruce Crawford: I understand why we might want to do as the convener suggests, but I have two concerns about this issue. Torbrex community council highlights a paragraph in section 77 of the School Standards and Framework Act 1998 in England and Wales. Unfortunately, I do not know what that legislation says about how we could strengthen the position in Scotland, and there is no explanation in the papers. I do not feel that I have all the information that would allow me to come to a final conclusion as far as that is concerned. It might be that the new guidelines that are being drawn up by the Executive will cover that legislation and might prove to be adequate.

I noted another issue from the covering paper that does not relate to particular planning issues. Sportscotland asked the Executive about preparing guidance on the appropriate standards for playing field provision. So far, sportscotland has been unable to secure the Executive's support for that work. I would have thought that that was a reasonable request for sportscotland to make, given that such guidance would provide a framework in which local authorities could operate in terms of planning guidelines and so on by establishing a standard. The committee must decide whether it wants to support sportscotland in that call—I would certainly like to ask the minister why it was rejected, because it would have been a reasonable course to take.

To cut to the quick, I suggest two things. First, we should ask the minister why the Executive did not support sportscotland's view on standards. There might a good reason why the Executive did not support it—I do not know. Secondly, we can ask for further explanation of what section 77 of the School Standards and Framework Act 1998 in England and Wales says and compare it with the Executive's position in order to find the best option.

Nora Radcliffe: I picked up on Bruce Crawford's second point. I have read the papers and it seems to me that there is a gap between the guidance and appropriate standards. It is fine to defend the existing standards, but what constitutes reasonable provision of playing fields? Although that matter is obviously not within our remit, we have identified the gap, so should we draw it to the attention of the Education, Culture and Sport Committee and ask it to pick up that detail?

Bruce Crawford: It could come under the guidelines to local authorities on planning—for their own provision, provision on a housing estate or provision by the education authority. If whoever forms the Government after the Scottish election in May decides to hold a consultation on planning, the issue could be considered as part of that. That would be a reasonable way forward for the Executive. That is why I think that the issue falls within our remit.

Robin Harper: I agree thoroughly with what Bruce Crawford has just said. Despite the

assurances that we receive from the Executive, we continue to lose play space and sports space.

I am not satisfied by paragraph 13 of the cover note, which states:

"The Executive response states that ... Sportscotland often negotiates alternative sports pitches with developers".

Often those sports pitches are a long way from areas that were local and accessible to the people who used them. We do not want young children to have to travel ever further to reach play spaces that should be local and accessible. We should do everything that we can to keep the issue alive. We should be aware of the fact that this is a cross-committee issue that also involves the Health and Community Care Committee and the Education, Culture and Sport Committee.

The Convener: I understand that section 77 of the Schools Standards and Framework Act 1988 was addressed in previous correspondence on the petitions. That correspondence has not been distributed with the papers for today's meeting. I suggest that we dig it out and provide members with copies of it, so that we can consider whether we are satisfied with its content. We can keep the petitions live in that respect, but we do not need to write further letters on section 77 at this stage. If members are still not satisfied after they have considered the correspondence, we can consider taking other action.

In its response, COSLA indicates that it has consulted section 77 of the Schools Standards and Framework Act 1988 and believes that the current legislation is sufficient.

Bruce Crawford asked about sportscotland and the issues that it has raised with the Executive. There seems to be consensus among members that we should ask the Executive how it intends to respond to sportscotland and whether it intends to issue guidelines on appropriate standards for playing field provision. Do we agree to write to the Executive on that issue, which sportscotland raised and which Bruce Crawford has highlighted? Do we agree to consider the petition further once we have received a response to that question and once the correspondence concerning section 77 has been circulated to members?

Members *indicated agreement*.

Telecommunications Developments (Planning) (PE425)

The Convener: Petition PE425 concerns planning procedures for telecommunications developments. We considered the petition before the summer recess and raised a number of issues arising from it. The Executive has since responded to us on those issues. The Public Petitions Committee is now asking the Transport and the Environment Committee whether we would welcome formal referral of the petition to us.

I remind members that we have agreed to take evidence on the planning procedures for telecommunications developments. We could consider the issues that the petition raises at the meetings that we have scheduled over the next few months and advise the Public Petitions Committee that we have already decided to review the planning process for telecommunications developments and will be happy to advise it and the petitioners of any thoughts that we have once we have completed that process.

Angus MacKay: What does a formal referral of the petition mean?

The Convener: The Public Petitions Committee has not formally referred the petition to us for detailed consideration. The Public Petitions Committee is asking us whether, on the basis of the Executive's response, we want the petition to be referred to the Transport and the Environment Committee. We could then consider the petition by taking evidence, appointing a reporter, corresponding with the Executive and taking whatever other action we deemed fit. We are agreed that we will conduct a review of the committee's work on the subject and of the experience of implementing the new regulations that the Executive has introduced. I suggest that that work overlaps with the issues that the petitioner has raised and that we should continue with the work that we envisaged carrying out. We should agree to advise the Public Petitions Committee of that and say that we will advise it of our conclusions. The petitioners can then be advised in due course.

Angus MacKay: I am happy with that approach if it means that we will carry out most of the activities that we would have to do if the petition was formally referred to us anyway. It is a preamble, at least, to gathering evidence.

Have we already informed the petitioners that the committee intends to take evidence? If not, it would be sensible to write directly to the petitioners to inform them of that and to tell them that we will consider whether the petition should be referred formally to us subsequent to that evidence-taking process. We could invite them to consider giving evidence during that process.

The Convener: Yes.

Robin Harper: Will we give early consideration to what evidence we are going to seek? I am thinking in particular of evidence on mast sharing. Will we write to telephone companies and local authorities to ask whether any progress has been made on that? That should be done well in advance of the committee taking evidence so that we can be prepared.

The Convener: We are delving into the areas that we will review when we consider the implementation of the new guidelines. We do not have to do that at the moment.

Robin Harper: I was not saying that we should do it now; I was asking whether that should be scheduled.

The Convener: Later today, we will consider our approach to the review and we can discuss those issues then.

It has been suggested that, instead of the approach that I proposed, we should ask for a formal referral of the petition so that it becomes part of the evidence that we consider in our review of the developments in telecommunications. That seems to be a sensible approach. Are we agreed that that is what we should do? We can then advise the petitioners that their petition will be considered as part of our overall review of telecommunications developments and that they will be kept abreast of our conclusions.

Angus MacKay: Does that mean that we have to ask for a formal referral?

The Convener: If we ask for a formal referral, the petition becomes part of the evidence that we consider as part of our review.

Fiona McLeod (West of Scotland) (SNP): My remarks have been pre-empted. I wanted to speak in support of the recommendation that we seek a formal referral. You have just outlined my reason. Earlier, you said that we would just inform the Public Petitions Committee of our inquiry, but it is important that we have a formal referral so that the petition becomes part of our telecommunications inquiry. Then it will be able to inform the questions that we ask during the review and we will be able to satisfy Angus Mackay's request by keeping the petitioners informed. By making the referral formal, the petitioners have to be kept informed of what we are doing. I recommend that we ask for a formal referral and do not just make an announcement to the Public Petitions Committee.

The Convener: Are we agreed on that?

Members *indicated agreement*.

Planning Process (PE508)

The Convener: That brings us to petition PE508, on the implementation of environmental impact assessments. This is the first time that we have been asked to consider this petition, which calls for Parliament to review the implementation of environmental impact assessments and policy advice note 58 guidelines. The petition derives from the petitioner's experience of the applications by West of Scotland Water and Scotland Water for a water treatment plant in Milngavie. The committee's stance on petitions that relate to local issues is not to consider specific incidents. We consider such petitions only if they raise issues for the wider planning framework. I ask members to comment on the recommendations that were circulated with the covering note. I would like to know what course of action members would prefer us to follow.

10:45

Bruce Crawford: It is tempting to get dragged into the original issue raised in the petition, because it was so tortuous. There are lessons to learn about how consultation should and should not be carried out. Particular elements of the community in the area around the Milngavie development proposals rightly have a grievance about the consultation process. I hope that the appropriate bodies have learned something from the harsh lessons of the recent past.

The convener has rightly asked us to consider the wider strategic issues. Strathblane community council's petition asks us to examine two issues that are not specific to the Milngavie application, but which are of wider significance. The first is a statutory requirement to consult appropriate community councils. I was surprised that that requirement does not exist. I thought that it did, but there you go. The second is the fact that developers who pay consultants to do environmental impact assessments also set the consultants' remits. The petitioners rightly ask whether it might not be more appropriate for local authorities to set a consultant's remit and, indeed, choose the consultant. Developers should still pay the costs, because it would not be appropriate for local authorities to do so. Those two issues are strategic in nature and are not associated only with the water treatment plant for Milngavie.

I was a bit surprised by the Executive's blunt refusal to re-examine those particular issues. I would have thought that it is reasonable for appropriate community councils to be statutorily consulted about planning applications and that we could re-examine the whole issue of choosing, paying and setting the remit for consultants in relation to environmental impact assessments, particularly as there is no third-party right of appeal for parties who want to object to a development going ahead.

The Executive might not want to consider such issues in isolation, but a planning review has been promised and, for the life of me, I cannot understand why the Executive could not consider those particular aspects as part of that overall planning review. The Executive will have to open the Pandora's box of planning anyway, so surely we should examine every aspect of it. We should have proper consultation on whether community

councils should be statutory consultees and on who should choose, pay and set the remit for consultants who do environmental impact assessments. It is only fair that we go back to the Executive and ask whether it is prepared to re-examine those areas as part of its wider planning review; otherwise what is the point of having such a review?

Robin Harper: Bruce Crawford took the words out of my mouth. I agree with everything that he said, particularly about consultants. I agree that developers should pay for them, but it would be much more sensible, and signify greater transparency, if a local authority committee appointed the consultants.

Fiona McLeod: If we state in our recommendations that it might be appropriate to conclude the petition now, what does that mean? Would we not write to the Executive with Bruce Crawford's suggestions, which Robin Harper supported? PE508 refers to a specific case, with which I have been heavily involved for over a year, so I have a degree of insight to back up Bruce Crawford's request that we should bring the issue to the Executive's attention for any future review of planning. The Executive states in its response that it does not intend to review either the process of environmental impact assessments or the PAN 58 guidelines; it is being blinkered, and we must remove those blinkers and ensure that it reviews the guidelines.

I am involved in the case and with another local issue regarding the extension of a quarry, and it has become apparent that environmental impact assessments are not being accorded the status, weight and priority that they should be in the preparation of planning applications. The committee must review the EIA process to ensure that my opinion, which is gained from my experience with two local cases, is not generic to all planning applications.

As the environment committee, we are concerned that all planning applications take the environmental impact into consideration, and it would be useful to consider how the process works and whether EIAs are being accorded the status that they should enjoy.

John Scott: I agree with everything that has been said. It is vital that consultation is seen to be done. That is where the process has broken down. Like Bruce Crawford, I thought that community councils would be one of the statutory consultees and I am surprised that they are not. It is right that all those matters, especially the weighting, should be considered. In fact, the weighting that environmental impact assessments have in the new planning bill should, perhaps, be a matter for parliamentary debate.

The Convener: A degree of confusion may have arisen. The Executive's response on the question of consultation states:

> "In accordance with the EIA Directive, the legislative requirements for public consultation in relation to the EIA process are tied to the submission of an environmental statement. Environmental statements must be advertised and the public given an opportunity to comment. These arrangements are in addition to the normal public consultation requirements associated with planning applications, which include neighbour notification and consultation with community councils. PAN 58 recommends even earlier consultation with the public in relation to EIA, at the scoping stage for example."

The question of consultation may have caused confusion, but it does not seem that community councils are excluded from the process.

John Scott: That they appear to feel that they have been excluded is bad, and, according to the correspondence, they appear not to have been aware of the consultation process until the decision was taken.

Bruce Crawford: I understand your point, convener. You are right to say that community councils are consulted about the process, but statutory consultation requires that the appropriate community councils be contacted directly by developers as part of the notification process. I am not sure that PAN 58 covers that aspect of the process, and that is the distinction that must be made.

The Convener: It seems likely that major planning legislation will be introduced in the new session, and it is unlikely that major planning changes will be effected between now and the dissolution of Parliament. Therefore, perhaps several of the issues raised by PE508 would best be addressed when the Parliament is considering what changes it intends to make to planning legislation in general.

However, if we want to explore any of those questions, we could do so at the meeting that we have scheduled with the minister and the head of planning on general planning issues. We could notify the minister that we want to explore those issues as part of that meeting. Once we have talked to the minister, we could decide whether there is anything further that we need to do in relation to the petition.

Bruce Crawford: That seems reasonable. When has the meeting with the minister and the head of planning been scheduled for?

The Convener: The date has not been fixed yet. The clerks and the minister are negotiating.

Bruce Crawford: Will we get a paper that outlines the areas that we will discuss at that meeting?

The Convener: Yes.

Bruce Crawford: That is fine with me, then.

The Convener: Do we agree that we should explore this matter in the meeting that we have scheduled with the minister and the head of planning?

Members *indicated agreement.*

Water Treatment Plants (PE517)

The Convener: Today's final petition deals with the environmental and planning issues relating to water treatment plants. This is the first time that we have considered the petition, which calls on the Parliament to investigate local authority regulation of water treatment plants as regards environmental protection and planning legislation, to investigate possible solutions to the problem of noxious odours and airborne bacteria from such plants and to investigate the level and method of investment needed to prevent the release of noxious odours and airborne bacteria.

I ask members to note that Susan Deacon, who is unable to attend the meeting today, has indicated an interest in the issue and members should have before them comments that she has submitted by e-mail.

Maureen Macmillan: This is an extremely important petition and deserves a lot of study. My concern is that we do not have time in this session of Parliament to do it justice.

The petition addresses the problem of odour, which seems impossible to deal with. We have come across it in relation to the spreading of organic waste and the burning of animal carcases in the Carntyne incinerator. We have to get to grips with the problem.

It is suggested that we write to the Executive for further information, particularly on how to achieve odour control. I have had personal experience of similar cases and I know that it is difficult to get local authorities to agree that there is a problem. In this instance, however, it seems that the Scottish Environment Protection Agency is not taking responsibility either. The review of SEPA's responsibilities has not yet concluded and I hope that, when it is concluded, the gaps surrounding the issue of odour control are identified.

As the matter needs a great deal of investigation and input, which will take time, I think that we should also refer the petition back to the Public Petitions Committee so that, after the election, the petition can be picked up again by whatever committee has transport within its remit.

Angus MacKay: It is unfortunate that, because of her family bereavement, Susan Deacon cannot be here as I know that she has thrown herself into the issue energetically. She has sympathy with the position of the petitioners and has an informed view of the matter, given the particular interest that she has taken on the issue.

Trying to reflect Susan Deacon's views and the broad concern that members of the committee no doubt have, I would say that the number 1 priority is that this issue should not be lost simply because we are approaching the election. We need to find a way of parking it effectively so that we can be reasonably confident that it will be dealt with by the appropriate committee after the election.

My heartfelt sympathies go out to the petitioners and the people living in the area. While it does not form part of the Edinburgh constituency that I represent, I know the area reasonably well. The petitioners must be at their wits' end, as it is particularly difficult to persuade people who do not live in the immediate environment that there is a problem or that something needs to be done about it. Like noise caused by nuisance neighbours, the nature of odour means that it is not necessarily always present. Residents in those circumstances have difficulty persuading appropriate public agencies that there is a problem because people from those agencies are not there when the problems occur. Odours can consistently occur at certain times of the day or week and can make people's lives a misery. I hope that the committee will take a proactive stance on this petition, as the matter pertains not only to the people living in the affected part of Edinburgh, but is replicated across Scotland. Effective action must be taken.

11:00

Bruce Crawford: Angus MacKay's final point is correct: this issue affects all of Scotland. As Maureen Macmillan pointed out, we have come across the problem before in relation to cattle incinerators, chicken litter and sewage plants. As Angus MacKay said, the folk involved must be at their wits' end. In Kirkcaldy, in the region that I represent, a sewage plant is causing a similar problem and the people are at a loss as to what to do about it.

As far as I am aware, the only legislation that has any effect is that which enables local authorities to act in relation to a nuisance of odour. However, the problem is that it is difficult to measure odour. It is down to the particular environmental health officer, together with the complainants, to take an action in court. The only successful case that I know of involved chicken litter in Kinrosshire. I was one of the councillors involved in the prosecution on behalf of the community. Odour is extremely difficult to control and it is difficult for local authorities to deal with. The legislation is difficult to enforce because you cannot measure odour.

The best way of keeping the petition alive might be to ensure that it gets to the committee whose remit includes transport after the election. That committee could give detailed consideration to the complex and wide-ranging issues that are involved. If we began a process of investigation, we would not be able to complete it and the job would be left half done. We need to ensure that a committee can present a recommendation to the Executive that will strengthen the legislation and give some succour to people who live in the affected areas.

The Convener: If we initiate action, that would not stop us ensuring that the petition is referred to the relevant committee that is established after the election. It would be difficult for a reporter to complete the work in the time that is available, but we could raise the issue with the Executive. At a subsequent date, we could refer all the correspondence to the Public Petitions Committee, which would then refer the petition and the accompanying correspondence to the relevant committee after the election.

Robin Harper: We must remember that there are technical ways of solving the sewage odour problem. The documentation that accompanies the petition gave us the details of that. The question is whether Scottish Water can be convinced to introduce the updated equipment or whether the Parliament will need to legislate to force it to do so.

John Scott: I agree with everything that has been said. This is an important issue and we should either refer the petition to the Public Petitions Committee now or do so after getting a response from the minister.

I would like to know what the European position is on the matter of nuisance odours. Without meaning to be uncomplimentary, I would suggest that the issue is more of a problem in Europe, where temperatures are higher, than it is in Scotland. If European countries have come up with a satisfactory way of dealing with the problem, the Scottish Parliament, following a report by a committee, might want to consider introducing legislation to require minimum standards to be introduced by Scottish Water and so on.

There is a huge amount of work to be done on this. For example, the Health and Community Care Committee might need to consider what the health implications are. We can only scratch the surface prior to the dissolution of Parliament. Nonetheless, we should write to the minister and try to start the process by gathering as much information as we can because, as others have said, this is a problem that affects people across Scotland.

The Convener: I hope that your party leadership has authorised your suggestion that we look to Europe to provide an answer.

John Scott: I am not too bothered about that.

Maureen Macmillan: When we write to the Executive, we should ask about SEPA's responsibilities. As far as I am aware, SEPA does not have responsibility for sewage works. As I said earlier, the review of SEPA's responsibilities has not yet concluded. We could ask when the review will be concluded and whether the outcome will include consideration of odour control.

The Convener: There is broad agreement that this issue must be addressed and recognition that it would be difficult for this committee to conclude consideration of the petition before the dissolution of Parliament. Do we agree to write to the Executive about the issues that are raised by the petition and the points on SEPA that Maureen Macmillan raised?

Members *indicated agreement.*

The Convener: Once we have got that response, we will formally refer the petition back to the Public Petitions Committee in order to keep it live over the election period.

Rail Inquiry

The Convener: Agenda item 6 concerns consideration of a motion for the debate next week on our report on the rail industry. The debate will last two hours. The proposed motion, which members have before them, is straightforward and reads:

> "That the Parliament notes the 15th Report 2002 of the Transport and the Environment Committee, Report on Inquiry into the Rail Industry in Scotland."

Do we agree to submit the motion as drafted?

Members *indicated agreement.*

The Convener: We now move into private session to consider a paper on a possible approach to the committee's examination of developments following the publication of its report into telecommunications developments in 2001.

11:09

Meeting continued in private until 11:50.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178