FINANCE COMMITTEE

AGENDA

21st Meeting, 2006 (Session 2)

Tuesday 12 September 2006

The Committee will meet at 9.45 am in Committee Room 1 to consider the following agenda items:

1. **Accountability and Governance inquiry (in private):** The Committee will consider its draft report on its Accountability and Governance inquiry.

2. **Budget Process 2007-08:** The Committee will consider a paper from the budget adviser and will also consider guidance for the Parliamentary subject committees.

3. **Transport and Works (Scotland) Bill:** The Committee will take evidence on the Financial Memorandum from—
   
   Frazer Henderson, Transport and Works Bill Team Leader, Scottish Executive; and Emma Sinclair, Transport and Works Bill Team Policy Official, Scottish Executive.

4. **Subordinate Legislation Committee inquiry:** The Committee will consider a draft response to the Subordinate Legislation Committee inquiry on the Regulatory Framework in Scotland.

Susan Duffy
Clerk to the Committee
Room T3.60
Extn 85215
The papers for this meeting are:

**Agenda Item 1**

Correspondence from the Minister for Finance and Public Service Reform  
PRIVATE PAPER

**Agenda Item 2**

Guidance to Subject Committees on the 2007-08 Budget Process  
Draft Budget 2007-8: Briefing Note by the Budget Adviser  
PRIVATE PAPER

**Agenda Item 3**

Submissions from:  
- British Waterways Scotland;  
- Cairngorm National Park;  
- COSLA;  
- Historic Scotland;  
- Inland Waterways Amenity Advisory Council;  
- Scottish Environment Protection Agency (SEPA);  
- The South East Scotland Transport Partnership (SESTRANS); and  
- Strathclyde Partnership for Transport (SPT).

**SPICe Briefing** on Transport and Works (Scotland) Bill (circulated to members in hardcopy only, copies available from the Scottish Parliament website)

**Transport and Works (Scotland) Bill** and accompanying documents (circulated to members in hardcopy only, copies available from the Scottish Parliament website)

PRIVATE PAPER

**Agenda Item 4**

Draft submission  
PRIVATE PAPER
Finance Committee

21st Meeting 2006, Tuesday 12 September 2006

Accountability and Governance Inquiry

1. As part of the Committee's inquiry into Accountability and Governance, the Finance Committee took evidence from the Minister for Finance and Public Service Reform on 27 June 2006. Tom McCabe MSP agreed at the meeting to provide the Committee with further details on a number of issues raised during this evidence session, and the Committee has now received this.

2. This submission is attached to inform the Committee's consideration of its draft report on the inquiry.

Kristin Mitchell
Assistant Clerk to the Finance Committee
Letter from the Minister for Finance and Public Service Reform

During my appearance before the Committee on 27 June I undertook to follow up on a number of specific points raised by the Committee.

The Committee asked me about the scope for delay to the proposals to establish the Roadworks Commissioner and the Police Complaints Commissioner for Scotland until the Independent Review of regulation, audit, inspection, and complaints handling of public services in Scotland is concluded. As I indicated during my evidence, Ministers discussed the moratorium and the establishment of new bodies and considered whether we should continue to progress with those bodies that were already in the process of being established. The final decisions to proceed were taken by the portfolios concerned. The relevant Ministers do not propose to revisit those decisions.

The Committee also asked about any potential overlap between the remit of the Scottish Public Services Ombudsman and the new Scottish Human Rights Commission. I understand that the position was clarified during evidence to the Justice 1 Committee at Stage 1 of the Bill. In her evidence to the Committee, the Public Service Ombudsman, Professor Alice Brown, welcomed the Bill proposing the new Commission. In particular, she supported the proposal that the SCHR should have powers to conduct general inquiries into human right issues, distinct from the SPSO’s specific role in investigating individual complaints. She also welcomed the proposed SCHR’s role in promoting awareness and understanding of, and respect for, human rights. The SPSO does not have this kind of proactive, awareness-raising role. Professor Brown concluded that the remits, functions and powers of the two bodies should be distinct, but complimentary.

Committee members also raised general issues about the drafting of financial memoranda. I understand that the Committee Clerk has also written to Scottish Executive officials seeking information on this issue. As I indicated during my evidence, I am happy to consider and raise with my Ministerial colleagues any specific comments or concerns the Committee wishes to raise about financial memoranda.

You also quoted to me a line about best value taken from a letter from the Deputy Minister for Enterprise and Life Long Learning concerning the establishment of the Scottish Civil Enforcement Commission. I have now had the opportunity to look again at the quote within the context of the full letter. In his letter, Allan Wilson makes clear that, following careful consideration, Scottish Ministers determined that establishing the Commission was the correct thing to do in policy terms and represented value for money. The Deputy Minister emphasised that value for money was considered in light of the very significant financial value of the activity that required to be regulated. Within the context of the full letter, I do not believe that the specific text that you quoted to me should cause the Committee any concern.
I would be very happy to assist the Committee with any other points arising from the Inquiry and was pleased to have the opportunity to provide evidence.

TOM MCCABE
Finance Committee

21st Meeting, Tuesday 12 September 2006

Budget Process 2007 – 08 - Draft Budget Guidance to Subject Committees: Paper by the Budget Adviser

1. The budget process this year is again a short one, because of the postponement of the Spending Review until 2007, there has been no Stage One.

2. Members will also be aware from the figures that this is the tightest budgetary context in this Parliament with spending growing by 2.4 % in real terms over 2006-7.

3. Therefore, there is no need for Committees to make recommendations for additional spending, but proposals to reorder priorities within portfolios would be considered.

4. The document also highlights changes in plans since last year, and Committee comments on these would be helpful.

5. This is the last budget in the current Parliament. The Finance Committee has put considerable effort into improving the quality of financial information in the document. Concerns remain over the Executive’s ‘objectives and targets’ approach. It would be helpful if Committees could reflect on the usefulness of the financial and performance information to them, and suggest ways of improving the presentation of the budget in the next Parliament.

6. In addition, Committees may also feel able to reflect on spending priorities within their portfolios and recommend any programmes they feel need to be prioritised for the next Parliament.

7. Last year, Committees were asked for views on the Executive’s Efficient Government Initiative. The Executive has recently published an Outturn Report for 2005-06 and the Finance Committee would be interested in any observations that subject committees may have on Efficient Government within their remit.

8. With these comments in mind, the Finance Committee would welcome responses on the undernoted key topics:

   a) Is the Committee satisfied with the responses from Ministers to its recommendations for the 2006-7 budget?
   b) Does the Committee wish to make any comments on the budgetary changes reported in the “New Resources” section?
   c) Does the Committee wish to recommend any transfers of funding between programmes within its portfolio, with an explanation for the proposal?
d) Does the Committee have any proposals for improving the quality and relevance of financial and performance information in the Draft Budget which could be considered after the 2007 election?

e) Does the Committee wish to make any recommendations in budget proposals to its successors in 200x7? Is there any programme with a clear need for additional expenditure, or which members think is overfunded?

Professor Arthur Midwinter
September 2006
Finance Committee

21st Meeting 2006, Tuesday 12 September 2006

Draft Budget 2007-8: Briefing Note by the Budget Adviser

Introduction
1. The publication of the Draft Budget for 2007-8 marks the final stage in the 2004 Spending Review cycle. This note highlights my key concerns for the committee over its two major responsibilities, the presentation of budgetary information, and the setting and implementing of budget strategy and overall priorities.

2. This is also, because of the postponement of the Spending Review until next year, the second ‘light’ year. Members will recall the Committee agreed to this approach as a way of recognising the centrality of the Spending Review exercise, in terms of setting budget strategy in broad terms, with priorities and targets, in the Annual Evaluation Review (AER).

3. The AER is only published in Spending Review years, with Draft Budgets recording changes and setting out spending details in the autumn of each year, but in a truncated form in interim years. It was hoped this would reduce the degree of overlap and repetition between budgetary documents, whilst focusing on the key budget choices made.

4. This gives the Committee an opportunity to reflect on how the rationalisation of the process has worked prior to Spending Review 2007.

Budgetary Information
5. The format of the budgetary information is now broadly in line with the expectations of the Committee, with real terms data; separate sections for capital spend, PPP and EYF; and a statement of strategic priorities in the introduction with portfolio priorities set out in their respective chapters.

6. Table 2 records an overall growth rate of 4.7% per annum in real terms, since 2002-3. However, the real growth rate for 2007-8 is 2.4%, compared with 6.2% last year, and 5.1% in the previous year. It remains to be seen whether this period of sustained growth is coming to an end; but the Chancellor has advised spending departments and devolved administrations that there will be slower growth in the public finances over the SR2007 cycle.

7. The Committee has also expressed support for the growth of capital spending in the budget. This year, the Executive has included capital grants to the private sector in the totals. This makes for a more comprehensive measure of capital spend, but disrupts the time series from 2002-3. I have therefore asked the Executive to provide the Committee with comparative data for the period 2002-3 to 2005-6 (i.e. minus capital growth) so it can scrutinise the trend properly.
8. Members will also note the continuing increase in payments due under PPP. The increase for 2007-8 over 2006-7 is 7.7%, greater than the budget increase as a whole (5.1% in resource terms). However, this is a minor element of the budget as a whole, and the PPP share of the DEL budget has fallen from 1.92% in 2002-3 to 1.77% in 2007-8.

9. Finally in terms of expenditure plans, the sums of money added to portfolios throughout EYF in 2006-7, at £24,867m, is significantly down from the £272,563m total last year. Members may wish to discuss this with the Minister in November.

10. My main reservation over the presentation of budgetary information is the presentation of budgetary growth over 2006-7. This is the key measure of budgetary decisions which committees need to scrutinise. The objective of the Finance Committee for the interim years of the Spending Review was to highlight clearly changes to the budget baseline in terms of cash and outputs purchased for the new monies. In 2007-8, there will be £725,443m of real spending growth in the budget. (See Table 1)

11. The Draft Budget does contain a section on new resources and transfers, which accounts for changes at Level 3, most of which are simply transfers, or additional funding to last year's plans for 2007-8. The Draft Budget still does not explicitly set out baseline and growth information for each portfolio. Rather the approach is to merge growth items with the baseline in the general statements of what the budget does and what the department will do with the money.

12. This practice differs from most public sector budgets which clearly distinguish baseline from growth expenditure to promote transparency – i.e. to give a public account of precisely what additional public services the additional funding will deliver.

13. The Executive’s approach to financial management aspires to link allocations to outputs and outcomes. Defining outputs is central to making choices more transparent and thus more accountable. The current model needs to be strengthened to provide a clear focus on the allocation of the increment of growth – and budgetary redistribution – so that decisions are transparent. At the moment, the public are consulted in general terms about programmes and their allocations overall, making it difficult to comment sensibly on the actual budget decisions made.

14. A more rigorous and systematic approach is needed, to identify growth items and highlight their expected outputs, so making public consultation more meaningful and relevant.

**Strategic Priorities**

15. These gaps in information make it difficult to assess whether the Executive is efficiently targeting its overall budget priorities – economic growth; closing the opportunity gap, and sustainable development.
16. The Committee has already informed the Executive of its concerns over monitoring the targeting of priorities in the budget process, arguing that it needs to define what prioritisation means then illustrate how it is reflected in budget decisions.

17. In the Draft Budget, the portfolio chapters continue the practice of reporting their broad overall contribution to the three priorities, repeating much of the policy narratives from earlier documents. For a budget document, these sections do not include much in the way of financial data and some (e.g., Transport) do not have any at all. The Committee recommended last year that this presentation should be amended.

18. The picture is further confused by the practice of summarising spending over two to three years rather than simply highlighting provision for 2007-8. Some departments provided a narrative without costings; some only identified spend on closing the opportunity gap of the three cross-cutting priorities; and few identified any spend on sustainable development.

19. As we have already seen in the previous section no systematic exposition of the allocation of the £725m of expenditure growth is made in the Portfolio chapters. If it were, we could easily identify how much of this was targeted on the three priorities. An overall priority in the budget process is generally a cross-cutting objective to which functional programmes contribute in addition to their specific portfolio objectives.

20. In the case of economic growth, the Draft Budget does identify elements of the Environment and Rural Development; Education and Young People, Enterprise and Lifelong Learning and Transport budgets as making improvements to the growth objective. When we examine the real growth in portfolio budgets, however, only Education and Young People scores above average, whilst Health itself receives two thirds (66%) of all growth monies.

21. Moreover, the wider programmes which contain the major funding for education and skills, - Enterprise and Lifelong Learning (for training, HE and FE) and Finance (for school education) both receive very low increases. It is difficult to see how this pattern of spending growth can be deemed to reflect economic growth as a top priority in the budget process.

22. Indeed, it is clear from the allocation of the increment of growth that spending to ‘grow the economy’ has not been the top priority in the budget process. Rather, health has been the top priority, as it has been in most budgets since devolution. In my view, this is not surprising, and a reflection of the limitations of economic growth as a budget priority for the Executive given the range of functions it is responsible for. This makes it difficult to see the justification for the argument claiming employment levels as progress delivered by the Executive over the Spending Review cycle. This is more a reflection of macroeconomic management in the Treasury and
private sector investment decisions than the spending decisions of the Executive.

Local Government
23. In its budget report this year the Committee highlighted major problems in the local government finance settlement. On the basis of the Draft Budget, these will continue in 2007-8.

24. The local government budget shows minor changes from last year’s plan, because of transfers in and out of GAE. In real terms, AEF will rise by 0.2% - in effect a standstill budget. This means that the post-devolution trend of below Scottish average settlements will continue, as the Scottish Budget overall is growing by 2.4% in real terms. AEF’s share of the Scottish Budget has fallen from 41.6% in 2002-3, to 36.4% in 2997-8. By contrast, the NHS share has grown from 39.5% to 43%.

25. The Budget acknowledges that local authorities have a key role in delivering frontline services on which the public rely. It states: “Total revenue support for core services (AEF) for local authorities is being increased by £237.8m or 2.8% in 2007-8 to provide additional support in education, for families with young children, additional funding for the increase in teacher numbers, significant increases in resources for residential and home based care for the elderly to meet demand for additional numbers requiring care and for improvements in the quality of the service, additional investment in the police service to increase police numbers and meet the additional demands placed upon them, and protecting the services already being provided.”

26. I would have to advise the Committee that funding this level of growth – which was costed at £85.8m in Spending Review 2004 – from a standstill budget in terms of AEF – is an unrealistic financial assumption. Councils will not be able to fund growth and protect existing services without above-inflation council tax increases. The actual increases will depend on the level of savings councils apply to fund the £85.8m funding gap.

27. Members should also note that the funding support provided as capital and revenue grants outwith AEF are both falling in 2007-8 (see table 7.03). Revenue is falling by 9.25% in real terms (or £96m), and capital grants by 27.5% (or £162m). I have asked the executive for an explanation for these changes in 2007-8.

Conclusions
28. The Scottish Budget continues to grow in real terms, but the rate of growth is slowing down.

29. The health budget remains the top priority for the Executive, receiving two thirds of growth monies.
30. The local government budget remains a low priority for the Executive, with AEF receiving a standstill budget, whilst capital and revenue grants are falling.

Professor Arthur Midwinter

Table 1: Real Growth in Expenditure Plans, 2007-8

<table>
<thead>
<tr>
<th>Portfolio</th>
<th>£m</th>
<th>Percentage %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environment</td>
<td>+17.352</td>
<td>+2.0</td>
</tr>
<tr>
<td>Communities</td>
<td>+10.239</td>
<td>+0.8</td>
</tr>
<tr>
<td>Education</td>
<td>+44.995</td>
<td>+7.8</td>
</tr>
<tr>
<td>Tourism, Culture and Sport</td>
<td>+12.151</td>
<td>+4.2</td>
</tr>
<tr>
<td>Enterprise</td>
<td>+30.433</td>
<td>+1.1</td>
</tr>
<tr>
<td>Transport</td>
<td>+27.105</td>
<td>+1.2</td>
</tr>
<tr>
<td>Finance</td>
<td>+82.783</td>
<td>+0.8</td>
</tr>
<tr>
<td>Health</td>
<td>+482.950</td>
<td>+5.1</td>
</tr>
<tr>
<td>Justice</td>
<td>+22.942</td>
<td>+2.1</td>
</tr>
<tr>
<td>Administration</td>
<td>-6.475</td>
<td>-2.5</td>
</tr>
<tr>
<td>Crown Office</td>
<td>-1.110</td>
<td>-1.1</td>
</tr>
<tr>
<td>Food Standards Agency</td>
<td>+0.221</td>
<td>+2.2</td>
</tr>
<tr>
<td>Scottish Parliament and Audit Scotland</td>
<td>+1.858</td>
<td>+1.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>+725.443</strong></td>
<td><strong>+2.4</strong></td>
</tr>
</tbody>
</table>
Finance Committee

21st Meeting 2006, Tuesday 12 September 2006

Scrutiny of Financial Memorandum – Evidence on the Transport and Works (Scotland) Bill

1. The Transport and Works (Scotland) Bill (“the Bill”) was introduced to Parliament on 26 June 2006. The Local Government and Transport Committee has been designated the lead committee for the Bill at Stage 1.

2. The Finance Committee agreed to adopt a level 2 approach to its scrutiny of the Bill. Specifically, the Committee agreed to issue its standard questionnaire to potentially affected organisations and take oral evidence from Scottish Executive officials at its meeting on 12 September 2006.

3. The following submissions have been received so far and these are attached:

- British Waterways Scotland;
- Cairngorm National Park;
- COSLA;
- Historic Scotland;
- Inland Waterways Amenity Advisory Council;
- Scottish Environment Protection Agency (SEPA);
- The South East Scotland Transport Partnership (SESTRANS); and
- Strathclyde Partnership for Transport (SPT).

Kristin Mitchell
Assistant Clerk
Submission from British Waterways Scotland

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

We attended a workshop in May 2006. We did not feel sufficiently qualified to comment on the financial aspects at that time.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Paragraph 108 states that Stakeholders were content with the financial implications implies that we agreed that additional fees/ costs to the promoter of 17% was acceptable, which we did not.

We did however agree that in principle good promoters would be working in line with the Bill's proposals regarding consultation, engagement and publicity material, and that the changed procedures should be more efficient.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes this Bill has financial implications for our Organisation, and in so far as they relate major projects.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

No we would not be able meet the financial costs associated with this Bill without a direct contribution from our sponsoring department and our partners in such projects.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Secondary Legislation will deal with the issue of fees.
Submission from Cairngorm National Park

Consultation
9. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

We did not respond to the consultation as any implications for the CNP appeared to be minimal.

10. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not applicable

11. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs
12. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Given our understanding of the limited nature and scope of the Bill with regard to CNP it is considered that any financial implications can be accommodated.

13. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

See 4. above. If implications are greater than indicated we would expect Executive to make arrangements to have excessive costs met.

14. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

This is a matter for those drafting the Bill to address.

Wider Issues
15. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comment.

16. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
This is a matter for those drafting the Bill to address. If there are future, as yet un-anticipated, costs to CNPA we would expect Executive to make arrangements to have them met.
Submission from COSLA

Thank you for your request for evidence on the Financial Memorandum of the Transport and Works (Scotland) Bill. We have no comments to make in response to your specific questions, but wish to make the following points.

We welcome the efforts that are being made to make it clearer to promoters from the outset the costs that they will face. However, it seems that the changes being made do place a greater financial burden on the promoter, and we hope that, where public funding is given to public bodies to enable them to promote a scheme, these additional costs will be recognised.

Given the relatively small number of developments taken forward through the Private Bills Process, we do not anticipate that councils will face significant additional financial burdens as a result of any administrative requirements placed on them by developments for which they are not the promoter. However, if there were to be a significant increase in the numbers of such developments, then we would be seeking additional support from the Scottish Executive in order to allow councils to monitor and engage with these developments.

On a specific cost issue, the Bill proposes a ‘one stop shop’ for consents, for example listed building consent, associated with developments. This would mean that decisions would be taken centrally about consents, rather than by each individual local authority according to the location where the consent is required. However, these consents will need to be enforced locally, which will mean that councils face additional costs as a result of decisions taken centrally. COSLA believes that any such costs should be recharged to the promoter, and will be seeking ways to achieve this during the passage of the Bill.

I trust that this information is of assistance to you.

Yours sincerely

Cllr Alison Magee
COSLA Roads and Transportation Spokesperson
Submission from Historic Scotland

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes. As we concurred with the Financial Assumptions in relation to the impact on HS there was no need for comment.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not applicable. See our comments under question 1 above.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes.

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comment.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

No comment.
Submission from Inland Waterways Amenity Advisory Council

I refer to Kristin Mitchell's letter to me of 26 July 2006 and the attached questionnaire.

IWAAC is, as you know, a cross-border advisory body charged with advising the Scottish Executive and British Waterways Scotland (BWS) on the use and development of those waterways managed by BWS, namely the Lowland Canals (Forth & Clyde and Union), the Crinan Canal and the Caledonian Canal.

My response to the questionnaire is as follows:

The Council was regrettably not consulted on the Bill and only became aware of its existence on receipt of your letter. Having now examined the Bill, it has our full support. Our experience as a statutory consultee under the procedures currently pertaining to approval of transport projects in England and Wales suggest that that these have on the whole worked reasonably well.

In our judgement the Financial Memorandum presents a reasonable assessment of the cost implications for this Council namely that there is unlikely to be a significant financial impact. The number of projects in which the Council is involved each year in England and Wales is very small (perhaps 3-4) and in Scotland we would expect the numbers to be even lower.

Our experience is that the SIs/regulations/guidance to be drawn up by the Scottish Executive, and the way in which they are interpreted on applications and objections, procedures and public inquiries, may have more of an impact on the extent and therefore the cost implications of the Council's involvement than the provisions of the Bill per se. In particular, we believe that cost savings for both applicants and consultees could be realised compared with the way the system has operated in England and Wales if more emphasis is put on pre-application consultation.

The Council would be pleased to comment further on draft SIs/regulations/guidance when they have been produced.

I hope these comments will help to inform the deliberations of the Finance Committee in September.

Yours faithfully

John Edmonds
Chair
Inland Waterways Amenity Advisory Council
Submission from SEPA

Thank you for the invitation to submit evidence via the questionnaire regarding the Financial Memorandum to the Committee in respect of the Transport and Works (Scotland) Bill.

In principle, SEPA welcomes the bringing forward of the Bill and many of the proposals contained in it to replace the need for Private Bills for transport related developments with a modern, efficient process for considering and authorising such activities.

SEPA’s comments in respect of the specific questions detailed in your letter of 26 July are set out below:

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SEPA responded to the consultation paper “proposals for a new approach to delivering public transport infrastructure developments” published earlier this year. Professor James Curran, Head of Environmental Strategy provided detailed comments on 22 May 2006. At this stage, there was no information about the financial implications upon which to comment.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

SEPA made no comment on the financial implications of the proposals contained within the consultation document.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes.

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Memorandum states that “the impact on SNH and SEPA will be cost neutral”. In para 127 it states that “SNH and SEPA in addition to Historic Scotland (as part of the Scottish Administration) will be most called-upon in relation to the promoter’s Environmental Impact Assessment (EIA).” SEPA considers this to be correct. The Memorandum also states, in para 129, that “The Scottish Executive does not therefore expect there to be a significant financial impact on SNH, SEPA, or any other bodies.”

SEPA is already a statutory consultee for these types of developments and plays a key role in providing information, considering Environmental Statements and the environmental effects of proposals and liaising with stakeholders involved in the process. Accordingly, SEPA considers that the Bill will not have significant resource implications over and above current activities in this regard.
5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No comment

7. If the Bill is part of a wider policy initiative do you believe that these associated costs are accurately reflected in the Financial Memorandum?

No comment.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Subordinate legislation will play a key part in determining the detailed arrangements that the Bill sets the framework for. Given the implications that some of this detail may have for SEPA, there will be resource implications arising from the need to liaise closely with the Scottish Executive in respect of how subordinate legislation will impact upon SEPA’s activities and outcomes. In particular, potential impacts on fees that SEPA may receive if its environmental controls are subsumed within the decision making processes for transport works covered by the Bill will need to be assessed. Such issues are though a matter for consideration as and when subordinate legislation is prepared and the detail known.

I hope that these comments are helpful to the Committee in its consideration of the financial implications of the Transport and Works (Scotland) Bill. I am also pleased to attach a copy of the written evidence to the Local Government and Transport Committee for the Committee’s information. If you have any queries regarding this letter, please do not hesitate to contact Neil Deasley on 01786 452431 in the first instance.

Yours sincerely

Campbell Gemmell
Chief Executive
Submission From SESTRANS

1 GENERAL

1.1 The South East Scotland Transport Partnership (Sestran) is a statutory transport partnership of the eight Local Authorities largely within the Edinburgh travel to work area, namely the City of Edinburgh, East Lothian, Scottish Borders, Midlothian, West Lothian, Falkirk, Clackmannanshire and Fife.

1.2 Sestran is in full support of the proposal to introduce a Transport and Works Bill for Scotland which is designed to place the Scottish Ministers at the heart of an order making process and thereby avoid the need for private Bills for transport related development.

1.3 SESTRAN recognises the pressures on Parliamentary time and welcomes the proposal for scrutiny of orders to be carried out by the Scottish Office Reporters Unit. This should permit a significant reduction in the elapsed time spent in scrutinising transport proposals under the new process which is particularly welcome.

1.4 In addition, the format likely to be adopted of a Public Inquiry/Hearing should provide an environment that is more familiar to both promoters and objectors and allow a more structured and cost effective use of expert witnesses. It will also provide the comfort that both promoters and objectors require that their case has been given full and comprehensive consideration.

1.5 SESTRAN will comment in general terms on the content of the Financial Memorandum and specifically respond to the questions raised in the questionnaire.

2 FINANCIAL MEMORANDUM

2.1 It is disappointing to note that it is estimated that promoters costs will increase as a result of the new procedures (para 93) but the increased certainty and efficiency of process are welcome.

2.2 Para 97, Table 1 and Annex A identify an additional £1m of promoters costs as a result of the new proposed process. This raises a number of issues.

- Firstly there is the question of scale. The figures quoted relate only to major schemes that have gone through the Scottish Parliament to date and therefore can only be related to that scale of project. It would be better to quote the figures as percentage changes rather than absolute figures. This is borne out by the comments in para 102.

- The additional costs are attributed to specified statutory consultation, requirement for evidence of engagement, power to
enter land to conduct surveys, Environmental Impact Assessment and the need for a code of construction. These are all work streams that have proven to be necessary in the preparation of a private Bill in any case and even though they are not currently specified in the private bill process they do not necessarily represent additional work in the new process. Consequently, we question whether the estimate of an additional £1m of promoters costs is valid.

2.3 Para 108 indicates the possibility that good promoters would not incur the estimated additional costs other than fees. We would go further to suggest that the increased efficiency associated with the new process could result in a reduction of fees in that specialist advisers time at the inquiry will be able to be better planned and multiple representation should be able to be avoided on any particular day.

2.4 Para 116 estimates that the new process could result in a 12 week timescale for examination and report production. This timescale is welcome.

3 QUESTIONNAIRE

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

SESTRAN has provided evidence to the Local Government and Transport Committee on the Bill and this is SESTRAN’s response to the financial assumptions. It is understood that there was an earlier consultation exercise involving key practitioners. SESTRAN was not invited to participate in this.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A

3. Did you have sufficient time to contribute to the consultation exercise?

N/A

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

See comments above on the estimates of promoters costs. At present SESTRAN is not promoting a private Bill.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
Should SESTRAN promote a Transport and Works Order, it will seek funding from the Scottish Executive and its Partner Authorities. Such an order will likely be associated with a capital project. At present, SESTRAN capital projects are funded through the Scottish Executive.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

See earlier comments on promoters costs. The timescale for a public hearing is certainly welcome but could be ambitious.

**Wider Issues**

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The promotion of proposals that form part of a wider initiative are not reflected in the financial memorandum. However they are not reflected in the present costs associated with the private bills process, e.g. the costs of promotion of on street traffic regulations.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

There will undoubtedly be costs associated with the development and implementation of statutory instruments referred to in the draft Bill. It is not possible for SESTRAN to estimate these cost but estimates should be able to be developed by the Scottish Executive based on similar order processes associated with other legislation.

I trust that these comments are helpful and would reiterate SESTRAN’s support for the new legislation.

Alex Macaulay
SESTRAN Partnership Director
Submission from SPT

Thank you for your letter of 26 July 2006 regarding the above, and inviting SPT to offer comments. SPT, as the biggest regional transport partnership in Scotland considers it is well placed to offer constructive comments on transport and transport related Bills as they progress through the Parliamentary process. In addition, SPT would welcome an opportunity to offer evidence to the Committee if this was considered appropriate.

I have attached for your consideration a paper outlining specific responses to the questions poised. I hope these responses are of some assistance, but if you would require any further clarification please feel free to contact either myself directly or Valerie Davidson, Acting Assistant Chief Executive on 0141 333 3298.

Yours sincerely

Ron Culley
Chief Executive

CONSULTATION

Q1. Did you take part in the consultation exercise of the Bill, if applicable? If so, did you comment on the financial assumptions made?

A1. SPT did not offer a formal response during the earlier Bill consultation, although SPT did participate in a meeting with stakeholders during May 2006 at which some parts of the financial memorandum were discussed.

Q2. Do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum?

A2. At the time of the stakeholder meeting referred to above the detail outlined in the current document were not discussed in any detail. One area that SPT expressed an interest in at that time included the fees that are likely to be charged to allow the Scottish Executive to recover the costs associated with the processing of each application. On reading the current Financial Memorandum, insufficient information is available on this issue to offer constructive comment.

Q3. Did you have sufficient time to contribute to the consultation exercise?

A3. Approximately 4 weeks has been allowed for this specific consultation exercise. While it is generally recognised that consultation periods would ideally always be longer, this has to be balanced with the need to move things forward sufficiently quickly. However, in this particular consultation, the period allowed does not seem to have taken due cognisance of a number of other issues and consultations that may be underway. This is compounded by the fact that the consultation has also occurred in the peak of the summer months.
SPT, as well as all other RTPs, is currently responding to the National Transport Strategy process as well as at the height of activity associated with the preparation of the statutorily required Regional Transport Strategy, plus a number of other specific industry consultations. It has therefore been necessary for SPT to prioritise its attentions at this stage to these two critical areas of activity. I believe that in this instance as a result of the pressures of these, plus the ongoing Glasgow Airport Rail Link Bill evidence stage preparation and submission, that on this occasion 4 weeks to respond to the consultation has been very tight.

COSTS

Q4. If the Bill has any financial implications for your organisation, do you believe these have been accurately reflected in the Financial Memorandum? If not, please provide details.

A4. SPT is the promoter of the GARL project, and is planning to promote through the appropriate process a number of other key transport infrastructure projects. As a result, SPT has an ongoing interest in the proposed change. SPT did attend the stakeholder meeting referred to in the Financial Memorandum.

However, SPT does not believe sufficient information was available at these meetings or is contained within the Memorandum to support the suggestion that a further £1m of costs could be added to the promoter costs without this having significant implications for other projects.

Furthermore, it is not evident from the Memorandum that all of these costs would be fully funded, as the Table 2 (page 16) makes a distinction between the Scottish Executive funding and the Promoter. To use the GARL as an example, the early cost of this is being shared between SPT and the Scottish Executive. It is unclear whether additional funding would be made available to absorb the proposed increased promoter’s costs or whether the additional costs would require to be met at the expense of other projects.

Q5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

A5. As outlined above, SPT does not agree that simply to move approximately £1m of costs to the promoter is equitable, nor do we believe this could be done without putting at risks other projects which SPT would wish to undertake. SPT would propose that as proposals outlined principally result in a movement of costs between one arm of the public sector and another, then the funding available should also be adjusted to take account of this money go round change. If all parties are in agreement that the proposal will result in a better, more effective and efficient process, then it would be unfortunate if this was not reflected in the corresponding available funding to the affected parties.

Q6. Does the Financial Memorandum reflect accurately the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
The cost estimates outlined in the Financial Memorandum are based on named specific projects, mainly of a large-scale nature. It is difficult to comment on the certainty or otherwise of whether these costs are accurate or whether indeed the margin of uncertainty is accurate without more detail information of how in practice the revised process will operate. Indeed until such time as the process has been implemented it is not possible to identify all eventualities which may increase, or indeed reduce, the estimated costs.

WIDER ISSUES

Q7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

The Financial Memorandum discusses the cost implications arising from the proposed changes, and does not specifically outline costs associated with wider policy initiatives. As a result SPT is uncertain whether all costs have been taken account of.

Q8. Do you believe that there may be future costs associated with the Bill, for example, through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

A8. The current Financial Memorandum does not take into account the issue of fee recovery for the Scottish Executives costs, and therefore it is likely that this will result in additional costs at a later stage. Again, it is proposed at this stage, without having sufficient detail to comment fully, that the costs associated with this will fall to the project Promoter. The quantification estimate of these costs would require to be prepared by the Scottish Executive in the first instance. Further costs may also arise if promoters are seeking more detailed guidance on the revised process.

V Davidson
18 August, 2006
Finance Committee

21st Meeting 2006, Tuesday 12 September 2006

Response to the Subordinate Legislation Committee’s Draft Report on its Inquiry into the Regulatory Framework in Scotland

Background
1. The Committee made a submission to this inquiry in September 2005. The focus of this submission was the Committee’s concern over the number of Acts passed where significant costs are dependent on subordinate legislation. The Executive’s guidance states that where provisions of a Bill are to be introduced through subordinate legislation and therefore, the actual costs are unknown at the time of introduction, then the Financial Memorandum should give a range of costs. Unfortunately, not all FMs have adhered to this practice.

2. In its submission, the Committee gave examples of two such Bills and highlighted the fact that there was no procedure by which the Committee could return to subordinate legislation to ascertain the costs involved.

Submission
3. In its response to the Subordinate Legislation Committee, the Executive said that it “already provides information on the financial implications that are expected to arise from any instrument. It would be keen to further support the rigour and transparency of the process of financial scrutiny. Therefore whilst the Executive could not support an approach that would see provisions included inappropriately in primary rather than subordinate legislation, it would be very willing to consider any other proposals that the Subordinate Legislation Committee or Finance Committee might make for strengthening procedures”.

4. In its draft report, the Subordinate Legislation Committee has recommended that there should be a procedure which would allow this Committee the opportunity to scrutinise costs which are delegated to subordinate legislation.” The SLC has invited comments on its draft report and recommendations by 22 September 2006.

5. The Committee is invited to consider the attached draft response which sets out a potential procedure which could be followed.

Susan Duffy
Clerk to the Committee
Dear Sylvia

Subordinate Legislation Committee Inquiry into the Regulatory Framework in Scotland

Thank you for your letter of 23 May 2006 and the opportunity to comment on your Committee’s draft report.

I will focus on the recommendation you have made with regard to the Finance Committee’s concerns in paragraph 340. The Committee welcomes your recommendation that there should be a procedure which would allow the Finance Committee the opportunity to scrutinise costs which are delegated to subordinate legislation and I set out below the Committee’s views on a possible procedure which could be adopted.

The Committee notes that in the 2005-06 parliamentary year, a total of 486 SSIs were considered. I would like to say at the outset that it is not the Committee’s intention to attempt to scrutinise all SSIs. Rather, we would seek to introduce a “filtering” mechanism to enable the Committee to scrutinise instruments relating to parent Acts where the Committee had raised concerns over costs in its report on the Financial Memorandum. This would ensure that the Committee would be able to use its time effectively and focus its scrutiny on SSIs where problems have been anticipated.
The Executive’s own guidance on the drafting of Financial Memoranda says that where actual costs are unknown at time of introduction because they will be delegated to subordinate legislation, then a range of potential costs should be shown in the Financial Memorandum.

Unfortunately, not all Financial Memoranda have adhered to the Executive’s guidance and even where a range has been shown, there have been instances where the Committee has raised concerns because there has been so much uncertainty. Where the Committee has such concerns, these are recorded in its report on the Financial Memorandum which is forwarded to the lead Committee and also published on the Finance Committee’s website.

We have considered various options which would enable SSIs which relate to Acts about which we have raised concerns to be flagged up. Currently, when an instrument is laid, this is published in the Business Bulletin. We are also aware that your clerks operate a tracker system. However, we consider it would be unduly onerous for either the clerks to the Finance Committee to check each piece of subordinate legislation to ascertain whether it relates to the concerns raised by the Committee about a particular Bill or for your clerks to flag up a particular SSI as they would not necessarily be aware of the parts of the Bill which had caused concern.

Therefore, given that knowledge of both the content of the SSI and of the Finance Committee’s concerns is required, we would suggest that Executive officials (probably officials from the relevant Bill team) would be in the best position to alert the Finance Committee to relevant SSIs.

When the Finance Committee agrees its report on a Bill’s Financial Memorandum and if there are concerns expressed about costs attaching to subordinate legislation, the Clerks would contact the Executive Bill team to highlight the particular areas of concern. When the relevant instrument is to be laid, Executive officials could contact the clerks to our Committee to alert them.

The Committee would then consider the instrument to ascertain whether the costs fall within the range given in the Financial Memorandum (if indeed a range was given) and whether the Committee’s concerns have been addressed. If required, the Committee may seek oral evidence from Executive officials. If the Committee still has significant concerns over costs, then (time permitting) it could seek to draft a short report to the lead committee for its consideration.

I would be happy to discuss this further if it would be helpful.

Yours sincerely

Convener