TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

25th Meeting, 2001 (Session 1)

Wednesday 24 October 2001

The Committee will meet at 9.15 am in Committee Room 2, to consider the following agenda items:

1. **Items in Private:** The Committee will consider whether to take items 2 and 7 in private.

2. **Lines of Questioning:** The Committee will consider possible lines of questioning for the witnesses on the Water Industry (Scotland) Bill and on the 2002-03 Budget Process.

*Not before 9.30 am*

3. **Water Industry (Scotland) Bill:** The Committee will take evidence at Stage 1 on the general principles of the Water Industry (Scotland) Bill from—

   - Professor Alan Alexander, Chairman Designate, Scottish Water
   - Dr Jon Hargreaves, Chief Executive Designate, Scottish Water
   - Ian Jones, Chairman and Chief Executive, Quayle Munro Group
   - Dr John Sawkins, Heriot-Watt University
   - Dave Watson, Unison
   - Alex McLuckie, GMB

*Not before 11.30 am*

4. **2002-03 Budget Process:** The Committee will take evidence at Stage 2 of the 2002-03 Budget Process from—

   - Ross Finnie MSP, Minister for Environment and Rural Development
5. **2002-03 Budget Process:** The Committee will take evidence at Stage 2 of the 2002-03 Budget Process from—

Sarah Boyack MSP, Minister for Transport and Planning

6. **Subordinate Legislation:** The Committee will consider the following negative instrument—

The Building Standards (Scotland) Amendment Regulations 2001, (SSI 2001/320)

7. **Aquaculture Inquiry:** The Committee will consider the names of possible advisers on its inquiry into aquaculture.

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Letter from the Deputy Minister for Environment and Rural Development to the Convener on renewable energy (Agenda items 4 and 5)  

Covering note on SSI 2001/320 (Agenda item 6)  

SSI 2001/320 - The Building Standards (Scotland) Amendment Regulations 2001 (Agenda item 6)

Members may find it helpful to bring to the meeting the following previously circulated documents on the budget process—

- The Draft Budget 2002-03
- Committee’s Report to Finance Committee at Stage 1 of the 2002-03 Budget Process
- Departmental Response to the Committee’s Report at Stage 1 of the 2002-03 Budget Process – Environment
- Departmental Response to the Committee’s Report at Stage 1 of the 2002-03 Budget Process – Transport
- SPICe note on draft transport and environment budget 2002-03
Transport and Environment Committee
9th Report 2001
Report on Inquiry into Water and the Water Industry

Response by the Scottish Executive

Introduction

1. This note sets out the Scottish Executive’s response to the report on water and the water industry by the Transport and Environment Committee of the Scottish Parliament.

2. The Executive welcomes the report and its findings, and in particular welcomes the Committee’s support for the proposal to create Scottish Water as Scotland’s unitary public water authority. It is grateful to the Committee for having undertaken the inquiry and for ensuring that all the stakeholders in the water industry had an opportunity to be part of the debate that the inquiry initiated.

3. The significance of water and the water industry is demonstrated by the fact that the Executive has announced that it will introduce two water Bills in the Scottish Parliament in 2001-02. The first of these, the Water Industry Bill, was introduced on 26 September 2001 and provides for the creation of:

- Scottish Water;
- Water customer panels, chaired by a convener; and
- The Drinking Water Quality Regulator

4. The second Bill, the Water Environment and Water Services Bill is planned for introduction in spring 2002. It will provide for:

- A new approach to the management of Scotland’s inland and coastal waters; and
- A new regulatory framework for water and sewerage services to safeguard public health, protect the environment, and ensure accessible and affordable water services for all in an increasingly competitive environment

5. The Committee’s findings have informed the development of policy behind these Bills. This response should be read in conjunction with the provisions that the Executive intends for the Bills, as in many cases these provide a substantive response to the findings.

6. The response below follows the order of the recommendations as they appear in the report’s summary of evidence, conclusions and recommendations.

The Environmental Context (paragraphs 4 - 7 and 40 - 60)

Strategic issues

7. The Executive is fully in agreement with the Committee on the need to attain higher environmental standards. It is working to implement the applicable legislation in full, and thereafter to continue to comply with the standards set. The Executive is conscious that a number of Directives set not only mandatory standards, but also more stringent guideline
standards, which Member States must seek to achieve. Guideline standards are built into consenting policies of the Scottish Environment Protection Agency (SEPA) for discharges that could affect the waters in question. For example, the guideline standards of the Shellfish Waters Directive (79/923/EEC) include limits on microbiological contamination similar to those of the Shellfish Hygiene Directive (91/492/EEC). Accordingly, SEPA's consenting policies for discharges in shellfish waters aim to achieve the highest classification under the Shellfish Hygiene Directive. The water authorities’ Quality & Standards programmes for the period 1999 – 2002 and 2002 – 06 are both predicated on full compliance with all relevant legislation.

8. The Committee mentions the Urban Waste Water Treatment Directive (91/271/EEC) and the Bathing Waters Directive (76/160/EEC). Approximately half of the £1.8 billion spend by the water authorities during the current three-year period (1999 to 2002) has been on sewerage and sewage treatment improvements. This will allow 90% of the Scottish population to be connected to systems providing standard (secondary) treatment by 2002. The number of areas where less stringent treatment is permitted has been reduced from 12 to 2 since devolution. A programme of establishing areas where more stringent treatment is required, and delivering that treatment, is well advanced. The investment in sewerage and sewage treatment improvements will also have a major impact on bathing waters. It will not, however, address all the causes of failure. Diffuse pollution, particularly from agriculture, remains a problem. A major research programme is quantifying the risk and identifying mitigation strategies, which will be collated and publicised by the holder of a new advisory post. This is part-funded by the Executive and involves SEPA, WWF, SNH, the Scottish Agricultural College and the NFUS. It will make up-to-date and consistent advice more readily available to farmers. A bathing water strategy, addressing all potential causes of failure, is under preparation. The Executive is committed to achieving European standards at all 60 Scottish identified bathing waters.

Diffuse Pollution

9. The Executive recognises the difficulties posed by diffuse pollution, notably in relation to faecal contamination. The research programme mentioned in connection with bathing waters will greatly improve our understanding of the transport mechanisms and survival of faecal organisms mobilised by diffuse pollution. Scotland is in the forefront of developing methods of using natural, environmentally-friendly methods for dealing with diffuse pollution – so-called Sustainable Urban Drainage Systems (SUDS). These systems contain and treat run-off naturally, releasing good quality water to watercourses or groundwater, using reed-beds, ponds, swales etc. Although described as “urban” they are equally applicable in the case of rural developments. The Executive, together with the water authorities, SEPA, CoSLA, Scottish Enterprise and developers’ representatives formed the SUDS Working Group, which prepared the SUDS Design Manual for Scotland and Northern Ireland. Planning Advice Note 61 gives advice on incorporating SUDS into the planning system. The Executive is considering at present how a number of issues connected with SUDS, including the roles and responsibilities that the different stakeholders might assume, should be taken forward.

10. Action to deliver the Executive’s policies on bathing waters, shellfish waters and freshwater fish waters will entail curtailing diffuse pollution. This represents a significant percentage of Scotland’s fresh and coastal waters: Scotland’s freshwater fish designations, for example, cover some 72% of the length of our rivers. As the Committee notes, this action
will have to be carried out in concert with the relevant agencies, notably SEPA. The Agriculture and Environment Working Group will discuss diffuse pollution. It is not, however, a problem unique to Scotland, or the UK. For this reason measures to “prevent and control” it are required by the Water Framework Directive (2000/60/EC), which the Executive will implement by means of the Water Environment and Water Services Bill. The regime the Executive will propose to deal with diffuse pollution will be based on thorough consultation with the relevant agencies, and with other stakeholders, such as farmers and developers.

**Punishing Polluters**

11. Decisions on prosecution are a matter for the Procurator Fiscal, and decisions on sentencing are a matter for the courts. The Executive is, however, broadening the range of regulatory tools available to SEPA. In 2001, for example, the Silage, Slurry and Agricultural Fuel Oil (Scotland) Regulations 2001 were laid before the Scottish Parliament. These permit the serving of notices requiring improvements, while reducing the red tape involved in earlier regulations – for example removing the 30-day notification period for making bulk bagged silage. The Executive intends to trial a pro-active approach combining advice and regular visits from experts and regulators with regulatory powers where necessary in the catchment of a failing bathing water. This will provide lessons for more effective regulation in general.

**Sustainable Sewage and Waste Water Treatment**

12. The Executive’s work on SUDS is noted at paragraph 9 above. The Planning Advice Note referred to is intended as a means of encouraging the adoption of SUDS solutions by developers. In considering discharge consents from large developments, such as trunk roads or retail parks, it is SEPA’s policy to require systems recommended in the SUDS Manual to be designed into the scheme. In smaller developments as well, SEPA will examine applications in the light of the Manual’s recommendations. Any systems applied must, of course, also meet the requirements of the relevant local authority. Revisions to Part M (Drainage and Sanitary Facilities) of the 6th amendment to the Technical Standards for compliance with the Building Standards (Scotland) Regulations 1990 also encourage developers to consider the use of SUDS and to consult the local authority at an early stage.

**Competition Issues (paragraphs 8 -12 and 61 - 112)**

**Exclusion from the Competition Act 1998**

13. The Executive welcomes the Committee's endorsement of its own assessment that there is no legally sustainable means by which the water authorities can be exempted from the provisions of the Competition Act 1998. Like the Committee, it believes that the imperative is to avoid the risk of unregulated activity on the public networks. Its policy is to avoid such an outcome through a new statutory framework to regulate the provision of water and sewerage services on the public network. The Water Environment and Water Services Bill will establish that framework.
The Effects of Competition

14. The Executive agrees with the Committee that, in the interests of avoiding "cherry picking" by new entrants to the water and sewerage market, all service suppliers using the public networks should meet a full and appropriate share of network costs. Requirements to this effect will be included among the provisions on licensing new entrants planned for the Water Environment and Water Services Bill.

Phased Introduction of New Competition Provisions

15. The Executive recognises the merits of the Committee’s arguments in connection with the timing of when the new regulatory regime should be commenced. It intends to take account of the position in England and Wales before the provisions planned for the Water Environment and Water Services Bill come into force. In any event, however, a decision on this is some time off, given the need to enact provisions in primary legislation, probably towards the end of 2002, and then develop and consult on the detail of a licensing regime thereafter.

Developing the Public Sector Model

16. The Executive supports the Committee’s conclusions on the need for Scottish Water to be given greater operational and commercial flexibility and freedom in the face of the growing competitive challenge. The Water Industry Bill addresses these points in two ways. It provides for Scottish Water to have increased commercial powers, to be exercised within a firm framework of controls set by Ministers (see sections 25 - general powers - and 49 - directions). And, in contrast to the position with the existing water authorities, whose only executive director is the chief executive, it provides for Scottish Water’s Board to include up to five executive members drawn from the employees of the authority (see Schedule 3, paragraph 2).

Funding Commercial Investment

17. The Executive supports the Committee’s conclusion that Scottish Water requires increased freedom to invest in commercial ventures, while continuing to focus on its core duties. The purpose of the new powers and controls at sections 25 and 49 is to deliver this freedom within a framework of control that will allow Ministers to ensure that the core duties remain central to the authority.

18. In recommending that the Executive should consider the scope to invest in Scottish Water’s commercial ventures, the Committee cites a recent decision by the UK Government to take an equity stake in the Rolls-Royce aero engine business. The Executive does not believe that there are any relevant parallels between its relationship with Scottish Water as a public authority and the Government’s with Rolls Royce as a private sector company. In the case of Scottish Water, the Water Industry Bill provides for the Executive to act as the owner of the business on behalf of the public. The Executive will set Scottish Water’s funding levels as part of its allocation of public expenditure generally and ultimately, within the framework of controls mentioned above, will underwrite Scottish Water’s core and non-core activities (see Sections 38 - 42 and 49). Therefore, any support for a particular venture will be covered as part of the Executive’s general financial support to all aspects of Scottish Water’s activities.
Single Scottish Water Authority (paragraphs 13 - 14 and 113 -135)

19. The Executive welcomes the Committee's support for the creation of a single all Scotland water authority, which is now being taken forward through the creation of Scottish Water by the Water Industry Bill. The Financial Memorandum that the Executive published with the Bill met the Committee’s recommendation that the costs of moving to Scottish Water should be made public as soon as possible. It identified these costs as being in the region of £3 million to £5 million in 2001-02 and indicated that the Executive would meet £3 million of this by way of grant (see paragraph 179 of the Explanatory Notes and Other Accompanying Documents that were published with the Bill).

Mutualisation (paragraphs 15 and 136 - 147)

20. The Executive welcomes the Committee's conclusion that it could not support moving to a mutual or community corporate structure for the public water industry.

Efficiencies (paragraphs 16 and 148 - 155)

21. The Executive is happy to endorse the Committee's view that achieving improvements in efficiency means providing customers with better value for money, not a lower level of service.

Collection rates and inherited debt (paragraphs 17 and 156 - 168)

22. The Executive recognises that the water authorities' charge collection rates have been poor and that further efforts are needed by both local authorities and the water authorities to improve the position. It has been considering future billing and collection arrangements with CoSLA. This includes, as an interim measure, extending beyond March 2002 the Order that covers existing arrangements. No decisions on long-term arrangements can be taken until Scottish Water has assumed its responsibilities and has assessed the options available to it for improving collection rates.

Investment Levels: Water Quality and Standards (paragraphs 18 and 169 - 172)

23. The Executive announced on 29 August 2001 that investment in the water industry during the period 2002-06 would be based on the central option, which the Committee endorsed, in addition to which a further £50 million would be available to provide for new connections in rural areas and to ease development constraints. This decision formed the basis of the Executive's request to the Water Industry Commissioner for advice on strategic charges in the period 2002-06. The Commissioner’s function is to identify the scope for delivering the outputs in the central option for less than the current estimate of £2,210 million.

Funding Capital Investment (paragraphs 19 and 173 - 205)

24. The Executive welcome the Committee's finding that PFI/PPP has been an appropriate and effective approach in securing completion of the major water industry schemes on which it has been applied to date.
Investment and EC State Aid Rules (paragraphs 206 - 212)

25. The Executive notes the Committee’s view that any decision to introduce what might be regarded as a State Aid would need to be carefully examined on its individual merits.

Relief to Charities and Voluntary Organisations (paragraphs 20 and 213 - 219)

26. The Executive notes the Committee’s recommendation that a new more targeted charges relief scheme for voluntary organisations and charities should be established, but that it should not extend to all voluntary and charitable organisations. It recognises the concerns behind the recommendation, but believes that the water authorities are right to continue phasing out the current system of reliefs over a number of years. It does not believe that the current system, which bases relief on the rateable value of premises occupied, provides an effective means of targeting assistance on particular organisations. And it doubts whether it would be possible to develop a targeted scheme that would meet the Committee’s objectives in this matter. However, the Executive wishes to explore with the Committee means of addressing the Committee’s concerns, possibly as part of the Committee’s consideration of the Bill (though not necessarily requiring legislative change).

Affordability (paragraphs 21 and 220 - 225)

27. The Executive notes that the Committee had nothing to report in relation to the regulations introducing the Executive’s water charges affordability scheme. While it agrees with the Committee that the move to Scottish Water will provide a permanent mechanism to drive down costs within the industry, it is concerned by the suggestion that charges will come down. It believes that that the need to improve standards of water and wastewater treatment and to tackle the longstanding backlog of maintenance mean there is no realistic prospect of charges falling. However, the substantial efficiency savings that the move to Scottish Water is expected to deliver, will ease the pressure on charges and mean that future increases will be smaller across Scotland than they would have been under a three authority structure.

Scottish Executive
October 2001
The creation of Scottish Water as proposed in the Water Industry (Scotland) Bill will create an organisation capable of meeting the main challenges facing the Scottish Water Industry. In particular it will provide a scale of operations that will:

- enable efficiencies in operating and capital investment expenditure to be achieved
- provide a consistent approach to customers across Scotland in terms of charges and additional services.
- enable the organisation to compete for the retention of customers
- allow a more consistent and strategic approach to investment planning and procurement so that environmental and quality objectives are met more effectively.

The creation of both the Water Customer Consultation Panels and the Drinking Water Quality Regulator are considered as positive additions to the regulatory framework. The WCCPs provide customers an additional route for resolving issues where service has not yet met expected standards. The DWQR provides safeguards to public health that are essential particularly as competition develops.

The clarification contained in the Bill regarding general powers to Scottish Water are welcomed. The commercial pressures particularly in the industrial sector continue to attract competition keen to assist industrial companies find alternative sources of water, wastewater treatment reduce the volumes of water used. While the Water Authorities have had recent successes in retaining customers the competitive pressure is never far away.

The powers to form joint ventures and other partnerships including taking equity shares will provide Scottish Water with the ability to provide customers with the services they require and thus retain a greater proportion of its customer base than otherwise might be the case. These powers must be used sensibly and only in the interest of customers. The role of the shareholder in ensuring only appropriate and sound commercial activities are embarked upon is recognised.

The challenges to Scottish Water are very significant. The Water Industry (Bill) as drafted provides the necessary structure and conditions to succeed. The challenge for the Chairman (Designate) and CEO (Designate) is to build a team that can deliver £135m operating costs saving, very substantial capital efficiency savings and the merger dividend. Equally important is the delivery of improvements to customer service and environmental quality.

Until Scottish Water is formed the three Authorities are working hard to ensure that efficiency and service gains are made in 2001/02. Considerable effort is being made to keep staff and other stakeholders informed. Employees are uncertain about the future; the best service we can give them is to provide as much clarity as possible, as quickly as possible.

Dr J W Hargreaves
CEO East of Scotland Water
CEO (Designate) Scottish Water
Introduction

The Water Industry (Scotland) Bill is the first of two water bills in this legislative session and follows the Scottish Executive consultation paper earlier this year. It has three main parts. The first two cover the functions and powers of the Water Industry Commissioner for Scotland and the Drinking Water Quality Regulator. The third and main part of the bill creates a new public corporation to be called Scottish Water that will take over the functions of the three current water authorities in Scotland. This briefing sets out UNISON Scotland’s initial consideration of the Bill.

Water Industry Commissioner

The Water Industry Commissioner (WIC) was established under the Local Government etc (Scotland) Act 1994 and the Bill’s provisions do not appear to radically change his powers and functions. The WIC’s functions are similar to the UK utility regulators although not so extensive or as independent of government. Given the poor track record of utility regulators, particularly their grasp of the wider economic and social ramifications of their decisions, UNISON would not support any further widening of the WIC’s powers.

The WIC will have a general function “of promoting the interests of customers of Scottish Water” (s1(2)). In an increasingly competitive environment this could be interpreted as promoting competition and the interests of private water companies who wish to cherry pick services. UNISON would prefer to see this explicitly excluded in the Bill to avoid any potential conflict with wider customer interests.

The Bill establishes in principle Water Customer Consultation Panels (s2). The Bill does not however require Scottish Ministers to establish them. Given the nation-wide coverage of Scottish Water UNISON believes that “may by order establish” (s2(1)) is insufficient. There may be an unspecified number of panels covering different parts of the country and they will have a general consultative and representational function. There will be a Convenor of the Water Customer Consultation Panels who will be a member of each panel. Scottish Ministers will appoint him/her but the Convenor will have the power to appoint all the other members, subject to certain consultation requirements (Schedule 1 Pt2). UNISON believes this is an extraordinary power for one person.

The specific functions of the WIC are set out in s3. They include investigating complaints by “potential” customers. This would be reasonable in respect of domestic customers but could again be widened to promote the interests of those who wish to cherry pick profitable services.

S6 requires Scottish Water to pay the Commissioner’s expenses whereas Scottish Ministers “may” make grants towards his/her expenses. There are no provisions in the Bill for private
water companies to contribute towards these expenses. UNISON believes the Commissioner’s role is a public interest one and therefore the cost should be borne by the Scottish Executive.

Drinking Water Quality Regulator

The Drinking Water Regulator will be responsible for regulating the public water supplier i.e. Scottish Water. Private supplies are the responsibility of local authorities under the Water (Scotland) Act 1980. Here will need to be a review of that provision to ensure that local authorities have equivalent powers and that they are adequately resourced to monitor what is likely to be an increasing use of private supplies.

Scottish Water

UNISON has always been sceptical about the balance of benefit in creating one body to administer Scotland’s water and sewerage functions. We have regarded the creation of Scottish Water as a distraction from the major challenges facing the industry. The bill proposes very broad statutory powers with the prospect of regulation through secondary legislation.

Establishment

S20 (1) establishes Scottish Water as a public corporation. As a creature of statute its powers and functions are the responsibility of Parliament although as we will see it is proposed to give this corporation very wide powers to regulate itself. Under current Treasury rules expenditure and borrowing would be on the public balance sheet. However, this status might change if (or when) the UK government adopts the rules set out in the Maastricht Treaty, known as the GGFD.

S20 (2) Schedule 3 makes provision for the constitution of Scottish Water. Para 2(1) of this schedule allows for the possibility of more executive than non-executive members and the power of appointment for executive members both in numbers and personnel remains with the board. UNISON believes there should always be a majority of non-executive members. In addition there should be an employee director.

The corporate governance provisions of the bill and Schedule 3 are very limited. For example there are no provisions for the publication of minutes, public access to meetings etc.

Staff

Para 6(3) gives the board the power to appoint staff and set terms and conditions with the approval of Scottish Ministers. This is a somewhat muddled clause, as there needs to be clarity as to who is responsible for bargaining pay and conditions.

Para 6(5) states that Scottish Water “may” establish “one or more pension schemes”. There is no transfer provision for pensions in s23 of the bill as TUPE does not at present cover pensions. Para 52 of the explanatory notes to the bill makes reference to the powers in s24 that “could” be used in relation to staff pension rights. Staff pensions rights are too important to be left to chance.

There needs to be a specific statutory provision for the transfer and maintenance of pension rights. It is also unclear if the necessary amendments have been made to secondary legislation
to ensure that Scottish Water remains a public authority for pension transfer and redundancy modification.

Staff of the existing water and sewerage authorities transfer to Scottish Water under the provisions of TUPE “whether or not they would so apply apart from this section” (s23). The TUPE regulations are the subject of constant legal interpretation and the UK government has been conducting a review of the regulations for some time. This provision means that there can be no dispute over the applicability of TUPE. However, there could still be difficulties over specific application of sections of the regulations, particularly for functions that may be reorganised. UNISON would therefore prefer a comprehensive staff transfer order in addition to s23.

General Powers
The powers of Scottish Water as set out in s25 are very widely drawn. It can do anything which “it considers is not inconsistent with the economic, efficient and effective exercise of its core functions”. The whole structure of the industry in Scotland could be changed with no democratic approval. Scottish Ministers will have the power to issue directions but their approval would not be required for such major change. The contracts could be signed before any directions could be issued. For example, Scottish Water could turn itself into an enabling authority with all services to the public privatised using the powers in s25. This includes the widespread use of PPP/PFI schemes (without ministerial approval) using powers in s25(3) and (4). Ironically there are the usual restrictions on the far more cost-effective conventional borrowing. UNISON believes that the powers of Scottish Water need to be drawn more tightly. For example, significant organisational change should require democratic approval.

Whilst the Bill repeals most of the provisions of Part II of the Local Government (etc. (Scotland) Act 1994 which established water authorities, it does not repeal s65(1) which requires the Secretary of State (now Scottish Ministers) to “Promote the conservation and effective use of water resources of, and the provision of adequate water supplies throughout, Scotland …”. It is unclear why this important duty is being retained in other legislation instead of being codified in the Bill.

Code of Practice
S26 and s27 requires Scottish Water to prepare a code of practice covering its performance standards etc and submit it to the WIC. If the WIC does not approve it Scottish Ministers have the final say.

Charges
S28-37 deals with charges and gives Scottish Water slightly wider powers than exist at present. S29 for example anticipates partnerships with private companies for the supply of services, giving Ministers the power to set maximum charges. The charges for core functions follows existing provisions under which the WIC advises Ministers on the charges schemes. The provision that domestic customers cannot be disconnected for failing to pay charges remains. It does not stop self-disconnection through metering and the metering provisions have not been amended by this Bill.
Scottish Water will have the power to collect charges itself or use the current local authority system. Given the huge level of uncollected debt this is something Scottish Water is likely to look very carefully at. Ministers also have the power in s37 to establish a scheme of reduced charges for certain groups.

Finances
S38-42 covers the financial functions of Scottish Water. There are the usual requirements to achieve a rate of return on assets (s38) and this can be different for specified functions. Scottish Water will require ministerial consent for borrowing.

Ministers will have the power to make grants to Scottish Water. There is no requirement to make good any shortfall under a reduced charges scheme under s37. This means other customers could be asked to cross subsidise or the corporation’s ability to compete with other suppliers could be undermined. It would seem reasonable that the Scottish Ministers should finance charge reductions for public policy purposes.

There is no reference to existing debt other than all liabilities transferring to Scottish Water. UNISON has consistently argued that existing debt should be cancelled as happened in England and Wales at privatisation.

The financial memorandum to the bill estimates that transition costs will be in the region of £3m to £5m of which the Scottish Executive will contribute £3m. This seems a very modest estimate and anything above this level will have to be found from further cuts in service over and above those already planned.

The general level of “operational efficiency savings” (between £100m and £168m) has little to do with the establishment of Scottish Water. Whilst a level of savings can be achieved through new technology and new methods of working the rest will simply result from cuts in customer service and reduced levels of public and staff safety. The lessons from similar “savings” in the rail and gas industries have not been learnt by the Scottish Executive.

Land Transactions
Scottish Water will retain its statutory undertaking powers in relation to land acquisition and this is extended in s44(1) to allow others to provide services. In effect to allow private companies to compulsorily acquire land. Under s45 it may dispose of land “to whomsoever and for whatever purpose it wishes” so long as it does so at market value. Whilst this is broadly the same as the current provision, Scottish Water will have far less democratic accountability. Scottish Water will be a major Scottish landowner and has social obligations in that regard. It should not be able to asset strip this heritage without some element of democratic control. The environmental protections in s47 are meaningless if the property is disposed of.

Miscellaneous
S49 gives ministers general powers to issue directions to Scottish Water, although as indicated above given the boards extensive powers this may be a case of shutting the stable door…..

Democratic accountability is minimal. S50 simply requires two reports a year. There is no requirement for any representative non-executive directors or any other provisions to make Scottish Water accountable to the Scottish people.
S55 excludes from the Register of Trade Effluents “commercially confidential information”. In our response to the Bill’s consultation paper we drew attention to the need for a full review of the 1968 act and increasing the powers and resources of SEPA in this area. UNISON is concerned that this new clause could be used to avoid public scrutiny of effluent discharges.

Conclusion

The Bill establishes a public corporation that will have extensive powers to operate Scotland’s water and sewerage services with minimal democratic control. Whilst UNISON supports some commercial freedoms this should not enable Scottish Water to change the essential structure of the public service provision without the approval of the Scottish Parliament.

The staffing provisions of the Bill are inadequate and reflect the minimal attention given to these issues in the consultation papers. The finances of Scottish Water also need to be addressed by Ministers to provide something closer to a level playing field, given their support for competition.

There is a real concern amongst staff and the public that Scottish Water could become a public façade for a largely privatised industry. We call upon the Scottish Parliament to ensure that the Bill is amended to stop the gradual privatisation of Scotland’s water.

Dave Watson
Scottish Organiser (Utilities)
UNISON Scotland
October 2001

For further details contact:
Dave Watson, Scottish Organiser (Utilities), UNISON House, 14 West Campbell Street, Glasgow G2 6RX. Tel: 0141 332 0006 e.mail: d.watson@unison.co.uk or visit our website at www.unison-scotland.org.uk
The purpose of this note is to clarify three issues which the Minister for Environment and Rural Development raises in his letter to me of 11 October.

1. The covering letter to Annex A which contained the Department’s response to the Committee’s Stage 1 report was issued on 28 September. This letter, which was not copied to the clerk to the committee, was automatically forwarded to my constituency office and from there to the clerk. Accordingly it was not received by the clerk in advance of the meeting on 3 October.

2. The Minister makes reference to renewable energy not strictly being an environment department issue. Even though it is the Enterprise and Lifelong Learning Department that has policy responsibility for this area, the Deputy Minister for Environment and Rural Development has now responded to the points made by the Committee in its Stage 1 report in respect of renewable energy (the letter from the Minister is attached).

3. I requested clarification on the £16 million increase in the size of the Departmental Expenditure Level figure for 2002/03. Put simply, the £16 million funding for the strategic waste fund was initially likely to be allocated to local authorities by way of increasing their consents for capital borrowing. Scottish Ministers decided that local authorities should receive specific grants totalling £16 million in respect of the strategic waste fund (rather than increases in consents for capital borrowing). So, in effect, total planned spending on the environment has not increased by £16 million - there has been a reclassification of funding to include the £16 million in the Environment portfolio.

Andy Kerr
Convener
Dear

At the meeting of the Committee yesterday, members considered the Scottish Executive’s response to the Committee’s report to the Finance Committee on Stage 1 of the 2002/03 budget process.

We had before us a letter from the Minister from Transport which dealt with our comments on the transport element of the budget but only an “annex A” dealing with some of the comments in the Committee’s report on the environment element of the budget.

The Committee did not consider that this document from your Department was an adequate reply to a committee report. More important than the format of the response is the fact that it did not address the Committee’s recommendations on (1) the impact of foot and mouth disease on the budget and (2) renewable energy in the budget.

In light of the Minister for Finance and Local Government’s request that his ministerial colleagues should respond to subject committee reports by the end of August, I should be grateful to receive your response to the outstanding matters by the end of the week commencing 8 October.

In addition to these matters, I should be grateful if you would clarify the following matters relating to the 2002/03 draft budget:

- The draft budget indicates total managed expenditure (table 0.1) of £555 million for 2002/03. Presumably this is comprised of £398 million (DEL – table 0.5) and £157 million (AME 0.7). However, the level 2 figures (table 10.1) indicate a total budget of £539 million. Why does this figure not tally to the £555 million figure?

- There would appear to have been an increase in the DEL figure of around £16 million between the the publication of the annual expenditure report and the draft
budget. If there is, indeed, additional funding, where has this come from and where has it been directed (at levels 2 and 3) in the environment budget?

- The capital budget for the environment (table 0.4) has risen from £517 million to £533 million. Could you provide a breakdown of the capital budget for the environment and explain how this budget relates to the DEL and AME budgets? To what extent is the £533 million figure subsumed into the £398 million (DEL) and £157 million (AME) figures?

I should be grateful if you would copy your response to the clerk of the Committee.

Yours sincerely

Andy Kerr
Convener
STAGE 1 OF THE 2002-03 BUDGET PROCESS: REPORT OF THE TRANSPORT AND ENVIRONMENT COMMITTEE ON THE 2002-03 BUDGET PROCESS

Thank you for your letter of 4 October in which you have responded to our response to your Committee’s recommendations. I will deal with each of your points in turn.

You refer to only having received an Annex A to a letter from the Minister of Transport which dealt with the environment element of the budget. This I find surprising given that on 28 September my office issued a covering letter to this annex to you.

In terms of the Transport and Environment Committee’s recommendation relating to the impact of foot and mouth disease on the budget, I have already addressed the Rural Development Committee on this particular issue. To address your Committee’s specific recommendation, that when the budgetary implications of the study into the economic impact of foot and mouth become clear, those implications should be spelt out by SEERAD, I would point out that the Impact Assessment Group consists of representatives of external organisations and Executive officials; it was established to identify economic and social impacts rather than environmental impacts and it is important to recognise that their work is ongoing. The evolving nature of the impact situation means that it is difficult to quantify future budgetary implications at this stage. However, I will ensure that the Committee is appropriately briefed on any budgetary implications as they arise.

With reference to the response to the recommendations on renewable energy, the Committee Clerk was advised by officials before the response issued from me that this was not strictly an Environment Department issue and that a response would be forthcoming from the Enterprise and Lifelong Learning Department which has policy responsibility for these matters, but Rhona Brankin has been considering the points you raised and will be writing to you shortly.
With regard to your additional questions on matters relating to the 2002-03 budget I can provide the following answers:

- The reason for the difference in the figure for total managed expenditure of £555m and the level 2 of £539m is that, while the Strategic Waste Fund monies (£16m in 2002-03) are included in table 0.1, the allocation of these resources is to be via the local authorities. The funding is therefore included in table 10.6.

- The £16m increase in the DEL figure between the publication of the annual expenditure report and the draft budget arises as a result of the inclusion of the Strategic Waste Fund resources now that the basis of allocation has been agreed.

- The DEL Capital Budget is now as follows:

<table>
<thead>
<tr>
<th></th>
<th>£million</th>
</tr>
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<tbody>
<tr>
<td>Water</td>
<td>513</td>
</tr>
<tr>
<td>Strategic Waste Fund</td>
<td>16</td>
</tr>
<tr>
<td>SNH</td>
<td>3</td>
</tr>
<tr>
<td>SEPA</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>533</strong></td>
</tr>
</tbody>
</table>

The increase arises from the establishment of the Strategic Waste Fund. The reason why the DEL total for the Environment Portfolio is lower than the Capital Budget is that the Water Authorities’ profit has a negative effect on the Resource Budget. In aggregate, the DEL figure of £398m comprises

<table>
<thead>
<tr>
<th></th>
<th>£million</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water</td>
<td>302.0</td>
</tr>
<tr>
<td>Natural Heritage</td>
<td>54.3</td>
</tr>
<tr>
<td>Environment Protection</td>
<td>23.8</td>
</tr>
<tr>
<td>Publicity and Sustainable Action</td>
<td>1.9</td>
</tr>
<tr>
<td>Waste Grants</td>
<td>16.0</td>
</tr>
</tbody>
</table>

The AME provision has no impact on these numbers.

I hope that this provides the further clarification you were seeking.

I note your comments on the format of the response and on the timetable for response to the committee and action is being taken to address these issues for the future.

ROSS FINNIE
During the course of your Committee’s consideration of the Budget Process held on 9 May, Members asked Ross Finnie two questions about the funding of research and development projects in the renewable energy sector and about capital grants. I apologise for the delay in responding to these questions.

The first of the questions asked was about whether the UK money available for renewable energy R&D could not be shared out on the basis of Scotland’s considerable potential for renewable energy development. Scotland’s tremendous natural resource in terms of renewable energy is undeniable, and makes it a very attractive location for renewable energy technology development. That is why we are supporting the work being done by Highlands and Islands Enterprise on the development of a Marine Energy Test Centre in Orkney. But responsibility for renewables R&D is a reserved matter and the budget lies with DTI. As explained at the Committee Hearing, the Executive works hard to ensure that the availability of this R&D funding is promulgated as widely as possible across the renewables community in Scotland, from private sector companies to academic institutions. Scottish projects have every opportunity to bid for the significantly increased R&D funding which is available from DTI, and it was heartening that Wavegen, the Inverness company active in wave energy development, recently secured a substantial DTI grant. My officials will continue to work hard to ensure that Scotland continues to attract a significant share of the DTI funds. But they can only do so much; what is needed is more high quality research proposals from the private sector and academia.

The second question asked was about capital grants for offshore wind. At the Committee Hearing Mr Brown talked about Scotland achieving at least a pro rata share of the DTI capital grants available for offshore wind developments. In view of the fact that Crown Estates has announced 19 potential offshore wind sites, but only one of these is in Scotland, the question was put about how only one Scottish project out of 19 could account for a pro rata of the UK capital grant budget.
The answer is that although it is correct that leases on 19 sites have been provisionally awarded to developers by Crown Estates, and only one of these is (partly) in Scottish waters (in the Solway), it is extremely unlikely that all 19 will secure the necessary consents and planning permission required for development. In addition, the DTI funding available at UK level, following an open and competitive bidding process, is likely to support no more than 5 or 6 projects. If we had chosen to seek a pro rata share of the DTI money available, the amount allocated to the Executive for Scottish projects would have been insufficient to support the development in Scotland of even one project. We therefore took the view that in order to achieve the best outcome for Scotland, we should strongly support the only Scottish project in the competitive bidding process. Should it secure both the necessary consents and a share of the available funding, it would result in a significantly larger amount of funding being allocated to Scotland than would have been the case if we had bid for a purely Scottish share.

In your Committee’s report on the Environment budget, you recommended (paragraph 51) that the Executive should make it clear that the budget line for the Scottish Renewables Obligation is a non-cash line, and (end of paragraph 53) that the fact that Scottish renewable energy projects would be assessed on their merits, and not restricted to receiving a specified share of UK funding, should be included in budget documentation in future years. I can confirm that we will conform to both of these recommendations by means of footnotes in future budget documents.

I hope this is helpful.

RHONA BRANKIN
Subject: The Building Standards (Scotland) Amendment Regulations 2001, (SSI 2001/320)

Meeting No: 25th Meeting

Date: 24 October 2001

Author: Note by the Assistant Clerk

Introduction

1. The Building Standards (Scotland) Amendment Regulations 2001, (SSI 2001/320) was laid on 24 September 2001. The Parliament has designated the Transport and the Environment Committee as the lead committee for the consideration of this instrument. A Regulatory Impact Assessment on the Regulations has been provided, but there is not, in this instance, an Executive Note.

2. The order was laid under a “negative procedure” which means that the Parliament has power to annul the order by resolution within 40 days, excluding recess. The time limit for Parliamentary action expires on 14 November 2001.

3. Any MSP may lodge a motion to propose to the lead committee that the order be annulled. The Committee is required to report on the instrument by 12 November 2001. Should a motion for annulment be lodged, under Rule 10.4, the Transport and the Environment Committee must debate the issue and then report to the Parliament with its decision.

Purpose of Regulations

4. These Regulations make further amendments in various subject areas to the Building Standards (Scotland) Regulations 1990. These subject areas include facilities for fire-fighting, sustainable drainage practices, and improved standards for thermal insulation and efficiency.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its 27th meeting on 2 October 2001. The Committee agreed to raise points with the Executive on the instrument. The Committee is due to consider the instrument again at its 28th meeting on October 23rd 2001. The Convener will update the Transport and the Environment Committee on the results of this Subordinate Legislation Committee’s consideration of the instrument.
TRANSPORT AND THE ENVIRONMENT COMMITTEE

Recommendation

6. The Committee is invited to agree its report on the instrument SSI 2001/320.

Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
October 2001