TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

31st Meeting, 2001 (Session 1)

Wednesday 12 December 2001

The Committee will meet at 9.30 am in the Hub, Castlehill, Edinburgh, to consider the following agenda items:

1. Declaration of Interests: The new member of the Committee will be invited to declare any relevant interests.

2. Convener: The Committee will choose a Convener.

3. Lines of Questioning (in private): The Committee will consider possible lines of questioning for witnesses on its aquaculture inquiry.

4. Aquaculture Inquiry: The Committee will take evidence as part of its inquiry into aquaculture from—

   Dr Kenneth Black, SAMS Dunstaffnage Marine Laboratory

   Professor Randolph Richards, Institute of Aquaculture, University of Stirling

   Dr Dick Shelton

   Allan Wilson MSP, Deputy Minister for Environment and Rural Development

5. Public Petitions: The Committee will consider the following Public Petitions—

   Petition PE59 by Mr Frank Harvey calling for the Scottish Parliament to take certain steps to improve passenger safety on public transport in Scotland.

   Petition PE187 by the Scottish Gamekeepers Association calling for the Scottish Parliament to allow limited licensed culling of raptors under the terms of the 1981 Wildlife and Countryside Act in areas where local populations have increased beyond normal levels.
Petition PE225 by Mr William Ackland calling for the Scottish Parliament to take steps, including legislation if necessary, to protect the human rights of residents of homes adjacent to quarrying from vibration, noise and environmental threats.

Petition PE346 by Mr Lawrence Fitzpatrick on behalf of Scotland Opposing Opencast, calling for the Scottish Parliament to take various steps to protect local communities and the environment from the adverse effects of opencast coal mining in Scotland.

Petition PE369 by Mr Brian J Rostron, on behalf of Confederation of UK Coal Producers, calling for the Scottish Parliament to urge the Scottish Executive to take certain steps in relation to opencast coal development.

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The following public papers are relevant for this meeting:

| Submission from Dr Dick Shelton (Agenda item 4)                          | TE/01/31/1 |
| Letter from the Deputy Minister for Environment and Rural Development to the Deputy Convener (Agenda item 4) | TE/01/31/2 |
| Cover note on Petition PE59, plus copy of petition (Agenda item 5) | TE/01/31/3 |
| Cover note on Petition PE187, plus copy of petition (Agenda item 5) | TE/01/31/4 |
| Cover note on Petition PE225, plus copy of petition – PAPER TO FOLLOW (Agenda item 5) | TE/01/31/5 |
| Cover note on Petitions PE346 and PE369, plus copy of petitions (Agenda item 5) | TE/01/31/6 |
Points for Discussion on 12.12.01

- The most economically important species of sea-migratory salmonid fishes in Scotland are Atlantic salmon and sea trout.

- Over Scotland as a whole, current levels of return to home rivers for both species are around a third to a half of those recorded in the peak post-war years of the 1960s and 1970s. These reductions in return rate have been recorded over much of the geographical range of salmon and sea trout and are ascribed largely to the effects of changes in marine climate and the growth and survival opportunities of the fish.

- Much greater reductions in the return rates of sea trout have taken place in rivers draining the North West Highlands. Many of the affected populations have effectively collapsed together with the fisheries associated with them.

- Return rates of salmon to a number of fjordic sea lochs in North West Scotland have also suffered undue reductions with consequent effects on fishing opportunities.

- Stock-taking of habitat constraints in fresh water, including rainfall, acidification, afforestation, changes in land use and road widening, reveals no general factor which might explain the stock collapses that have been observed in North West Scotland.

- There is a close geographical correspondence between the areas of Scotland where stock collapses of sea trout have occurred and the relatively recent advent of large-scale, intensive cage rearing of salmon.

- The marine phase of the salmon farming industry is associated with local effects on the sea bed, increased nutrient input, outbreaks of disease, large-scale escapes of reared fish, increased numbers of sea lice and aggregations of marine fish around the cages.

- It is widely accepted that the infestation of wild salmon and sea trout with sea lice derived from caged salmon is the greatest immediate threat posed by salmon farming to wild salmon and sea trout resources.

- There is increasing evidence that the rigorous control of sea lice at cage sites confers immediate benefits on adjacent wild salmonids. The main methods of control (chemical treatment in combination with appropriate fallowing regime) are expensive
and there is concern that the large-scale simultaneous use of chemicals toxic to sea lice poses unacceptable risks to other crustaceans, including the larvae of prawns, lobsters and crabs.

- For the above reasons it is possible that salmon farming on its present scale in confined Scottish waters is incompatible with healthy local populations of wild sea trout and salmon.

- It would be prudent for Government to place an immediate moratorium on the expansion in scale and space of the salmon aquaculture industry and to introduce a proper system of inspection and regulation covering husbandry standards, louse levels, infectious diseases and polluting output.

- In the longer term the industry should be encouraged to operate on smaller scales with lower stocking densities at sites well clear of historically important sea trout and salmon rivers.

Biographical Note
Dr Richard Shelton is a double graduate of the University of St. Andrews at whose Gatty Marine Laboratory he studied the sense organ systems of a range of commercially important shellfish. He has wide experience of studying the responses of exploited wild fish and shellfish populations to fishery exploitation and environmental change. He has worked at the Burnham-on-Crouch and Lowestoft Laboratories of the then Ministry of Agriculture, Fisheries and Food and at the then Scottish Office Marine Laboratory, Aberdeen. From 1982-2001 he was Head of the FRS Freshwater Laboratory, Pitlochry.
As my predecessor undertook to do in her letter of 15 November, I am writing now to explain how I propose to take forward the conclusions of the recent review of the regulations governing aquaculture in Scotland. While I note from your letter of 22 November that you would have wished for some earlier announcement of the Executive’s intentions, I would point out that officials were still receiving responses to the consultation paper right up to the middle of last month. The detailed analysis of these required careful consideration before any announcement could be made.

After due deliberation I am satisfied that my proposals will provide the basis for an effective and balanced regulatory regime, as well as for the sustainable development of the Scottish aquaculture industry. To assist your Committee’s consideration, they are set out below under the same headings as were employed in the consultation paper.

SINGLE REGULATORY BODY/SINGLE APPLICATION PROCESS

The consultation paper proposed that: “within local authorities Area Advisory Committees… be set up, comprising a local authority planning official and representatives of the other regulators, to consider site applications….. and applications for consents under the Control of Pollution Act 1974 (COPA)”.

It sought views on the proposition that the applications to SEPA for discharge consent and the Crown Estate for development consent be combined, or at least more closely aligned.

And it proposed that SEPA be designated a competent authority under the EIA Regulations and that applications to be submitted in parallel to local authorities and SEPA.

The proposal to establish Area Advisory Committees received a mixed response: 21 respondents offered support in principle, 18 were opposed and 8 offered no comment. Three local authorities expressed reservations about the effectiveness of such a measure in reducing bureaucracy, given that most authorities do not deal with sufficient applications to make it workable, and foresaw the possibility that a Committee’s taking decisions about two different consents might create difficulties for any subsequent appeals. The industry itself was divided over the proposal: 5 respondents were in favour, subject to clarification of the practicalities and assurances that there would not be increased
bureaucracy, additional costs or further delays in granting permissions. The remaining 5 were not in favour, largely for the reasons expressed by some local authorities themselves. Other respondents were similarly divided.

This proposal was included because in my officials’ preliminary consultation two local authority respondents had thought it worth exploring; but, given the reservations expressed, I have concluded that it would not be appropriate to pursue this. Nevertheless, in light of the comments expressed, I shall wish to give further thought to other ways in which a “one-stop shop” approach might be facilitated.

Thirty-three of the respondents were in favour of combining or aligning the two application forms and of making SEPA a competent authority under the EIA Regulations. Some concern was expressed, however, that in a combined application process one consent could become dependent on the other. Regulators were in favour of retaining separate forms, but of more closely aligning them and requiring their submission in parallel so that each regulator received the relevant data at the same time, enabling effective consultation and liaison. There was general agreement that the process would be further aided by making SEPA a competent authority under the EIA Regulations. This would ensure EIAs met all the information requirements of the appropriate authorities by reducing attendant bureaucracy and duplication of information.

I have therefore concluded that the proposal for more closely aligning the two application forms should receive further consideration; and that the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999 should be amended to make SEPA a competent authority and to require applications to SEPA and the Crown Estate to be submitted in parallel.

CONSENT PROVISIONS UNDER THE CONTROL OF POLLUTION ACT 1974 (COPA)

The consultation paper proposed a number of changes to the way in which SEPA regulates the aquaculture industry through the Control of Pollution Act 1974 (COPA). In summary, the proposals were to provide SEPA with new powers to facilitate review of consents at any time, to serve enforcement notices and to issue stop notices, to control the process of fish farming rather than its associated discharge and to adjust the application process to make it more effective and relevant.

All of these proposals received overwhelming support, with proposals to provide SEPA with new powers and to adjust the application process attracting favourable support from 33 respondents. The proposal that SEPA be enabled to control the process of fish farming rather than the associated discharge through the licence conditions which are applied attracted support from 31 respondents, although there were some concerns about how this might work in practice. Some respondents, who saw this as a bid for SEPA to become involved in day-to-day husbandry issues, were not at all attracted to the proposal and the notion of “lighter” regulation clearly alarmed others, who argued that smaller developments might still have a major environmental impact. Clearly, further consideration is required as to how these proposals might be given practical effect. I have therefore concluded that legislative proposals should be developed to implement these changes, through the forthcoming Water Environment and Water Services Bill, and that further consultation should be undertaken on how they might operate in practice.
SEA LICE CONTROL

The consultation paper invited comment on three proposals:

- that, at such time as there seemed likely to be a legislative opportunity, we review the operation of the AMA process and the need for, and the feasibility of, introducing mandatory controls;
- that the legislation be amended to enable lice treatment discharge consents to be given for management areas rather than specific sites; and
- that the Tripartite Working Group (TWG) develop a national sea lice control strategy.

Responses on the first of these proposals were polarised. While respondents acknowledged the importance of effective sea lice control, 16 were in favour of pursuing control via the voluntary AMA process; 17 favoured introducing mandatory controls as soon as possible; and 14 offered no comment at all on this aspect. Those in favour of maintaining the voluntary approach (largely the industry, SEPA and local authorities) acknowledged the process had been slow to deliver, but believed it offered the best hope of controlling sea lice by providing a flexible and more responsive approach, while recognising that, if it could not deliver, mandatory controls might need to be imposed. Wild fishery interests, SNH and a number of other interested organisations considered the AMA approach slow to deliver and saw regulation as essential.

Although the outcome of the consultation exercise cannot therefore be said to offer a clear mandate either for proceeding immediately to legislative control or for deferring this, there is at present no legislative vehicle we might use. My officials are yet to consult on the proposed terms of the Water Environment and Water Services Bill, but it is clear that direct control of sea lice would be outwith its scope. (Sea lice are a naturally occurring parasite and it would be inappropriate to deal with them in legislation whose main focus is the control of anthropogenic impacts on the environment. Sea lice more readily fall to be dealt with under the fish health legislation.) However, the Water Environment and Water Services Bill, by enabling SEPA to be more involved in the process of fish farming, will provide tools which will assist with control of sea lice by enforcing management techniques such as falling. The range of conditions SEPA is able to set would be broadened so that, for example, signing and implementing an Area Management Agreement with wild fish interests might be made a condition of consent.

I have also asked my officials to look again at the area management agreements and press ahead with arrangements to:

- formalise the Area Management Groups to achieve a recognised structure;
- require standard, bi-annual, progress reports;
- provide feedback [from the reports] to interested parties to help inform future decisions and development of AMAs;
- make the process more open and transparent ie minimise the need for confidentiality clauses within AMAs;
- introduce the principle of 5 year forward stocking plans to all AMAs;
- appoint a national co-ordinator to drive forward the process, in particular AMA coverage and efficacy; and
• identify and develop regional research and information gathering projects, again to inform
decision making

as a way of reinforcing the process.

I propose to take advantage of the limited opportunity which the Water Environment and
Water Services Bill represents to legislate in this area, but I shall also ensure that the AMA
process is kept under review, with the option to legislate separately in due course for
mandatory controls should these prove necessary.

The proposal that the legislation be amended to enable lice treatment consents to be given for
management areas rather than specific sites attracted support from 21 respondents on the basis it
would make area management strategies more effective and might result in reduced use of chemical
therapeutants, 4 were against and 22 offered no comment. Concern was expressed about whether in
practice such consents would be enforceable, given the difficulty of identifying in law the party or
parties responsible where a breach of consent was suspected and where responsibility for compliance
was shared among several companies or individuals. An additional concern related to the situation
where the total carrying capacity of a loch could be determined, but where it would not be safe to
allow fish farmers free rein as to where and when they used their quota of chemical therapeutants
because particular parts of the loch were more sensitive than others.

However, the benefits which might be derived from such an approach - reduced lice populations,
resulting in a reduction of physical and economic damage to both wild and farmed fisheries, reduced
treatment use and cost, and the resultant reduction in environmental impact – would all assist in
ensuring the sustainability of the aquaculture industry and therefore make it vital that we explore its
feasibility.

The proposition that SEPA be given a discretionary power under the Water Environment and
Water Services Bill to issue sea lice treatment discharge consents for whole management areas
- where the environmental conditions indicate this would be appropriate - will be given further
consideration.

The proposal that the Tripartite Working Group develop a national sea lice control strategy received
support from 22 respondents, 3 were against and 22 offered no comment. Those against the proposal
pointed out that Scottish Quality Salmon had developed and implemented a National Treatment
Strategy in 1998; members had carried out co-ordinated treatments under that strategy since then, but
had been hampered by lack of access to new, more efficacious, therapeutants (although this was now
being addressed). The Shetland Salmon Farmers Association, which has also adopted the principles
of this strategy, indicated it would welcome an area-specific strategy for Shetland. Generally,
opinion favoured improving the existing arrangements.

Those who supported the proposal considered a national strategy essential. Some suggested that the
SQS Strategy might form the basis of a national integrated pest management control strategy. There
was agreement that such a strategy might be developed under the auspices of TWG – but only if the
Group became more transparent, open and inclusive in its approach.

On balance it seems to me appropriate to invite TWG to establish a sub-group, with
appropriate external representation (e.g. from local authorities, Crown Estate, Association of
Scottish Shellfish Growers and local authorities) to review the effectiveness of the SQS
National Treatment Strategy and, if it considers it necessary, to develop a national strategy for application throughout Scotland.

FLEXIBILITY FOR NEW SPECIES

The Executive currently advises against multi-species sites on fish health grounds. But, recognising the uncertainties which currently affect development of new species and the high risk involved, the consultation paper invited views on the proposition that officials take a more pragmatic view of multi-species site applications in the short term, considering each application on its merits.

Eighteen respondents were in favour of the proposal, 20 respondents were against and 9 offered no comment. The industry, not surprisingly, responded favourably, acknowledging the proposition as likely to be helpful in the short term. However, caution was advised against adopting less stringent regulation so that established salmon sites were not compromised. The local authorities pointed to the unknowns in relation to species compatibility and disease transfer in farmed situations, but largely supported the proposal to encourage diversification, subject to appropriate controls.

Wild salmonid interests and environmental NGOs expressed strong opposition, advocating that the precautionary principle be applied until the impacts of new species were better understood.

The aquaculture industry in Scotland needs to diversify to secure its future. Nevertheless, it would be imprudent to abandon the precautionary principle – and I do not propose to do so. If the industry is to be sustainable, the competing interests of the new species sector on the one hand and the concerns of the established salmon sector, wild salmonid interests and environmental NGOs on the other will have to be balanced. While I am in favour of implementing this proposal, I recognise the need to have in place the necessary monitoring arrangements.

The consultation paper also invited views on a suggestion for fast-tracking applications seeking to convert small inshore sites licensed for salmon farming to farming of new species. Seven respondents were in favour of such an approach, 21 were against and 19 offered no comment. On reflection, I am inclined to drop this suggestion, so that there is no compromise of standards of appraisal.

On the first point, I shall ask my officials to take a more pragmatic view of multi-species sites to assist development of this sector – but require that this go hand-in hand with the development and application of appropriate monitoring procedures designed to identify potential problems at an early stage and prompt any necessary remedial action. I am asking the Aquaculture Health Joint Working Group to develop advice to underpin the policy (more frequent inspections by FRS Fish Health Inspectors might be a feature). And I shall want the policy to be reviewed in due course in light of the research into cross-species infectivity and separation distances between farms which is being put in hand by FRS.

I have decided against the fast tracking of applications seeking to convert small inshore sites licensed for salmon farming to farming of new species as it would not be appropriate for such applications to be subject to less rigorous assessment procedures.
FISH HEALTH

The consultation paper provided an account of work on ongoing fish health issues in which my officials are engaged: the EU review of fish health controls, compliance with the Infectious Salmon Anaemia Code of Practice and plans to repeal section 9 of the Diseases of Fish Act 1983. The first report on compliance with the ISA Code of Practice will be published shortly and will, over time, inform thinking on whether legislation would be the appropriate way forward. The timetable for repealing section 9 of the Diseases of Fish Act remains 2003.

ESCAPES OF FARmed FISH

The consultation paper also outlined existing initiatives to address concerns about escapes of farmed fish. My intention is to introduce legislation requiring that Scottish Ministers be notified of escapes from fish farms. I expect the necessary Scottish Statutory Instrument to be in force early next year.

CARRYING CAPACITY OF COASTAL WATERS FOR FISH FARMING

The consultation paper acknowledged that there is insufficient scientific information about the carrying capacity of our coastal waters. It proposed that in the first instance the task and the criteria might be specified by a small group representing the different interests involved, perhaps as a sub-group of the Tripartite Working Group, co-opting experts as necessary, and possibly liaising with existing groups such as the Highlands and Islands Forum on Aquaculture.

Forty respondents agreed that work to define carrying capacity is urgently required; 7 offered no comment. However, there was rather less agreement as to who might undertake the work. Twenty-one respondents agreed that it should be carried out under the auspices of the Tripartite Working Group. The other 19 did not consider TWG an appropriate vehicle for pursuing work in this area - its lack of expertise, transparency and resources was cited. Instead a separate, dedicated working group, whose membership might include academic experts, industry practitioners, regulators, environmentalists and others with an interest, was proposed, to be headed up by Fisheries Research Services or SEPA.

I agree that TWG is not the appropriate forum. Since the paper was issued, the Crown Estate Commission, as you know, has set up a research committee which has agreed that its first priority for funding will be research on the carrying capacity of coastal waters. I also understand that at a recent meeting of the Committee for Aquaculture Research and Development a commitment was given by those present - industry and potential research sponsors alike – to fund the necessary research into carrying capacity as a collaborative venture on the part of all interested in ensuring that the industry operates sustainably.

Work on carrying capacity, particularly in relation to nutrient input, is already being carried out. I have asked my officials to work collaboratively with potential research partners to scope the further necessary research into the carrying capacity of coastal waters.
I have set out my intentions very fully above as a way of briefing the Committee for our discussion on 12 December. I have also attached to this letter a summary of the consultation responses. If there is anything further you would find it helpful to know in advance of your December meeting, perhaps the Clerk to the Committee, to whom this letter is copied, would let my office know.

ALLAN WILSON
SUMMARY OF CONSULTATION

Breakdown of respondents

Forty-seven responses to the paper were received. The respondents can be categorised as:-

5 public bodies: Scottish Natural Heritage, Scottish Environment Protection Agency, Crown Estate Commissioners, Highlands & Islands Enterprise, Marine Coastguard Agency.


12 aquaculture trade associations and individual companies: Scottish Quality Salmon, British Marine Finfish Association, Orkney Fish Farmers Association, Shetland Salmon Farmers Association, Association of Scottish Shellfish Growers, British Trout Association, Marine Harvest International Ltd, Loch Duart Ltd, Wester Ross Salmon Ltd, Migdale Smolt Ltd, Aquascot and 1 respondent who requested confidentiality.

9 wild salmonid organisations: The Salmon and Trout Association, Scottish Anglers’ National Association, Atlantic Salmon Trust, Association of Salmon Fishery Boards, Lochaber District Salmon Fishery Board, Wester Ross Fisheries Trust, Ness District Fishery Board, Awe District Salmon Fishery Board, Western Isles Fisheries Trust.

4 NGOs: RSPB Scotland, Scottish Wildlife Trust, WWF Scotland, National Trust for Scotland.


3 individuals

Profile of views on the main proposals in the consultation paper

SINGLE REGULATORY BODY/SINGLE APPLICATION PROCESS

The consultation paper proposed, in preference to the new regulatory body some consultees had previously asked for, Area Advisory Committees within local authorities to co-ordinate consideration of applications for Crown Estate sea bed leases and SEPA consents to discharge.

- Public bodies: favoured improved co-ordination, but felt unable to provide meaningful comment without more information. Some concern was expressed that the case for establishing another bureaucratic forum had not been made. Adequate resourcing was seen as a major issue.

- Local authorities: of the 5 which responded, only one supported the proposal in principle, subject to adequate resources’ being made available. The others were not convinced real benefits would be derived, given the relatively small number of applications currently considered. Concerns were expressed about confusion which might arise in considering two applications, and the possibility of further increasing the time taken to reach decisions.
• **Aquaculture industry:** expressed reservations about local authorities’ having the necessary expertise to deal with applications timeously, as well as concerns about maintenance of impartiality and lack of national consistency in approach. Some respondents would accept, subject to assurances that these matters could be dealt with effectively and without increasing costs.

• **Wild salmonid organisations:** some would still prefer to see a single regulatory body but accepted this is not feasible. If proposal goes ahead, needs to be adequately funded. Would like to see a role for the Area Management Groups which manage Area Management Agreements as part of the Tripartite Working Group process.

• **NGOs:** offered support in principle subject to adequate resources’ being made available and a clear remit established. Environmental interests should be included in membership.

• **Other organisations:** offered little support because of concerns about expertise, consistency of approach and resourcing. Some support for concept of “one-stop shop” approach - but not if led by local authorities.

• **Individuals** made only limited comment.

The consultation paper proposed that, to reduce duplication, the application forms be combined or more closely aligned, SEPA be designated a competent authority under the EIA Regulations and those Regulations be amended to require parallel submission of applications.

• **Public bodies:** SNH supported the principle of a single or joint application but was not in favour of SEPA’s being designated a competent authority under the EIA Regulations, considered current arrangements work well. SEPA favours retention of separate forms which could be more closely aligned to reduce duplication and would welcome a role under the EIA Regulations. The Crown Estate does not consider there is a need for change as the applications are rarely made in tandem, sees a role for parallel applications where relevant.

• **Local authorities:** favour retention of separate forms, but agree a closer alignment is appropriate. Welcome proposals for SEPA to be designated a competent authority and for parallel submission of applications.

• **Aquaculture industry** general support for both proposals, although there was some concern that a single application approach could result in licenses being dependent on each other.

• **Wild salmonid organisations** support both proposals but one respondent could foresee difficulties and confusion arising in terms of responsibilities, an issue which would need to be addressed.

• **NGOs** support both proposals but RSPB points out that a rigid framework will be required to ensure bodies work in tandem.

• **Other organisations** limited comment. Shetland Seafood Quality Control Ltd suggested closer alignment of the application forms would be appropriate for applications which require EIA but there was less of a need where this was not the case. Considered creating a role for SEPA under the EIA Regulations would be likely to result in increased bureaucracy.
CONSENT PROVISIONS UNDER THE CONTROL OF POLLUTION ACT 1974 (COPA)

The consultation paper proposed a number of changes to the way in which SEPA regulates the aquaculture industry through COPA. In summary the proposals were to provide SEPA with new powers to regulate the process of fish farming rather than the associated discharge, a range of enforcement powers to assist in making the regulation more effective and adjustments to the application process to provide streamlining.

All of these proposals attracted considerable support across the board, subject to further consultation on detailed proposals. Some sectors of the industry were not attracted to the prospect of SEPA’s regulating the process of fish farming rather than the discharge as they did not consider it has the necessary expertise.

SEA LICE CONTROL

The consultation paper proposed that the existing (voluntary) AMA approach continue meanwhile; legislation should be amended to enable lice treatment discharge consents to be given for management areas rather than specific sites; and a national sea lice control strategy should be developed by the Tripartite Working Group.

- **Public bodies** SNH supported the partnership approach but thought the AMA process was not producing results rapidly enough: arrangements should be put on a firmer footing through implementation of the Water Framework Directive. Agreed with proposal for lice treatment consents to be issued for management areas but expressed concerns about possible impact of these on non-target organisms. SEPA supported maintenance of voluntary approach but was strongly opposed to the proposal to issue consents for management areas believing this would be unenforceable in practice as it would be impossible to identify in law a party or parties responsible where a breach of consent was suspected and the responsibility for compliance was shared between several companies or individuals. The Crown Estate suggested it may be appropriate to introduce maximum lice loading levels which, if exceeded, must be treated. The level set may vary from site to site.

- **Local authorities** agreed voluntary approach but Highland Council suggested that the need to standardise monitoring, recording and treatment use in the future may require a mandatory approach. Both Highland Council and Western Isles Council favoured issuing lice treatment consents on a management area basis but Orkney Islands Council opposed because consents could not be assessed in the same detail. Highland Council pointed out a national strategy already exists in the form of the SQS National Treatment Strategy implemented in 1998. Western Isles and Orkney agreed guidance is necessary.

- **Aquaculture industry** wide support for maintaining voluntary approach, acknowledged progress slow but believed it can deliver over time. General support for lice treatments to be consented on a management area basis but little support for a national control strategy given the existence of the SQS Strategy although Shetland Salmon Farmers Association indicated a Shetland-specific strategy would be welcome.

- **Wild salmonid organisations** were generally of the opinion that the voluntary AMA approach needs to be underpinned by a regulatory framework to ensure the necessary management measures are taken to control sea lice. The ability to issue treatment consents on a management area basis
would be consistent with AMA aspirations to manage lice on a regional basis. A national strategy for sea lice control considered essential.

- **NGOs** RSPB commented that if the AMA process is to become the general mechanism for addressing sea lice issues the agreements and groups need to become more transparent and accessible. WWF supported mandatory controls which would require development of an integrated pest control strategy which should aim to reduce emission of therapeutants and place emphasis on prevention of infestation through good husbandry and site management practices. Both were agreed a strategy is required but if it is to be developed by TWG the Group must become more open and transparent and should co-opt appropriate representation.

- **Other organisations** offered limited comment. The consensus was in favour of mandatory controls, treatment consents to be issued on a management area basis and a national control strategy.

- **Individuals** also offered limited comment, but in favour of mandatory controls, treatment consents on an area basis and for a national control strategy.

**FLEXIBILITY FOR NEW SPECIES**

Comments were invited on the proposal that the Executive take a more pragmatic view of multi-species sites in the short term to help the development of the new species sector. It had also been suggested to us that a fast track approval process be available for applications to convert existing small scale salmon farms to new species farming.

- **Public bodies** SNH commented that lessons need to be learned from salmon farming and; the precautionary principle should therefore be applied until the impacts are better understood fast tracking applications would be difficult given the range of environmental issues which need to be addressed. The Crown Estate pointed out that the proposal would be welcomed by the industry but would need to be kept under regular review and that fast tracking ought not to be controversial in most cases. Highlands & Islands Enterprise expressed support but cautioned that risk to established farms must be avoided; was against fast tracking on the basis it would not be appropriate to compromise the standards of appraisal in this way.

- **Local authorities** acknowledged there are many unknowns in relation to species compatibility and disease transfer in farmed situations. However, they offered support in order to encourage diversification and as way of answering some of these questions, subject to appropriate controls. Highland Council recognised a need for fast track applications but considered consultation is required on how such measures would be implemented.

- **Aquaculture industry** considered it important that lessons are learned from salmon farming to deliver sustainability from the outset but subject to appropriate controls support proposal in the short term. The British Marine Finfish Association welcomed the proposal as a practical measure to assist development of the sector and acknowledged that single species sites should be the accepted norm. The suggestion of a fast track application process was supported.

- **Wild salmonid organisations** considered lessons need to be learned from salmon farming and the precautionary principle applied until the impacts are better understood. The Association of Salmon Fishery Boards suggested that some development could be trialled in zoned areas where any potentially damaging effects can be assessed.
• **NGOs** strongly opposed. Considered the precautionary approach should be maintained until a properly informed decision can be taken about the disease and environmental implications of new species.

• **Other organisations** The Royal Institute of Chartered Surveyors, Firth of Clyde Forum and the Scottish Landowners Federation considered the precautionary principle should be applied until the impacts are better understood. Sea Fish Industry Authority, Schering-Plough and Shetland Seafood Quality Control Ltd welcomed the proposal as a short-term measure which should be subject to review.

• **Individuals** strongly opposed. In favour of precautionary approach being maintained until the impacts are properly understood.

**CARRYING CAPACITY OF COASTAL WATERS FOR FISH FARMING**

The consultation paper proposed that preliminary work be undertaken to establish carrying capacity, perhaps under the auspices of the Tripartite Working Group.

Respondents unanimously agreed that preliminary work should be undertaken to establish carrying capacity, as a matter or urgency. However, a little more than half of respondents did not consider the TWG an appropriate forum.

• **Public bodies** The Crown Estate and HIE would prefer to see a separate dedicated group established, representing the relevant interests and areas of expertise. SNH commented they would like to participate in an assessment in relation to the natural heritage and would wish to be included in any working group established. SEPA suggested a separate group be established with FRS providing expertise and administrative support to a wider group of experts, including SEPA.

• **Local authorities** Highland Council in favour of work being undertaken by TWG in liaison with the Aquaculture Forum. Western Isles also in favour and suggested that, given the complexity of the subject, the group should learn from similar work undertaken in other countries. Orkney Islands Council would like to be represented on any group looking at carrying capacity around Orkney.

• **Aquaculture industry** agreed with proposal that TWG undertake this work, with the exception of Loch Duart Ltd, which suggested it would be more appropriately carried out by FRS.

• **Wild salmonid organisations** concurred that the TWG does not have the necessary resources or expertise to carry out work in this area. The Salmon and Trout Association and Scottish Anglers National Association suggested SEPA could be an appropriate agency given adequate funds. Wester Ross Fisheries Trust supported the principle of using the ceiling between Category 1 and 2 (defined in the Locational Guidelines) as the limiting factor until carrying capacity is established.

• **NGOs** WWF suggested a more transparent committee is required, including a broad selection of academic experts, industry practitioners, regulators, environmentalists and others with an interest. The RSPB would like to see urgent action, with a moratorium on further expansion of the industry until a fuller understanding of carrying capacity is available.

• **Other organisations** limited comment.
• **Individuals** limited comment.
Subject: Petition PE59 – Petition by Mr Frank Harvey calling for the Scottish Parliament to take certain steps to improve passenger safety on public transport in Scotland.

Meeting No: 31st Meeting, 2001

Meeting Date: 12 December 2001

Author: Note by the Assistant Clerk

Introduction

1. This paper invites the Committee to consider for a third time a petition from a Mr Frank Harvey which is concerned with (a) the passenger safety implications of overcrowding on public transport; and (b) the potential dangers caused by taking dogs on public transport. Mr Harvey is the sole signatory to the petition.

2. The following papers are attached with this cover note:
   - A copy of the petition
   - Letter from the Scottish Executive dated 29 September 2000
   - Letter from the Scottish Executive dated 4 October 2001

Progress of the Petition

3. This petition was referred by the Public Petitions Committee (PPC) to the Transport and the Environment Committee on 21 January 2000. In referring the petition, the PPC stated it was not requesting further any consideration of the petition unless the Transport and the Environment Committee felt that this was necessary.

4. The Transport and the Environment Committee first considered the petition on 2 February 2000, and agreed to seek further information on the policy of the rail industry with respect to safety and overcrowding prior to further consideration of the petition. The response which was received from the Scottish Executive is attached with this cover note – this is the letter dated 29 September 2000.

Executive’s Comments on the Petitioner’s Requests

5. Mr Harvey’s first request is that a limit is placed on the number of passengers travelling on public transport in Scotland. The background to this request is his concern that over-crowding on trains is compromising passenger safety.
6. Passenger safety on public transport is a reserved matter. The response received from the Executive indicates that it is specifically a matter for the Health and Safety Executive. The Executive response notes, for information, that the current franchise performance payments system for surface trains penalises overcrowding. In relation to buses, capacity levels are prescribed under Regulation 6 of the Public Service Vehicles (Carrying Capacity) Regulations 1984.

7. Mr Harvey’s second request is that all dogs, apart from guide dogs, should be banned from public transport. During the Committee’s previous discussion on this petition, members raised some concerns at the possible impact of such a blanket ban. It would prevent, for example, sheep dogs travelling on ferry crossings to island communities.

8. The petition is concerned specifically with potentially dangerous dogs which are permitted to travel on public transport.

9. The response received from the Executive sets out the legislation governing the control of dangerous dogs. The Dangerous Dogs Act 1991 makes it an offence for anyone in charge of a dog to allow it to be dangerously out of control in a public place (the definition of which would include public transport). The definition of “dangerously out of control” would include occasions where there are grounds for reasonable apprehension that the dog will injure a person, regardless of whether it actually causes injury. The Executive considers this current legislation to be effective.

Consideration of Petition PE59 – 5 September 2001

10. The Committee considered Petition PE59 for a second time, plus the Scottish Executive’s response to the petition, at a meeting on 5 September 2001.

11. Following discussions, the Committee agreed to write to the Scottish Executive to request further information on how overcrowding on trains is defined and monitored under the current train franchising arrangements, and to confirm that it is currently legal for dogs to be taken on public transport provided they are not dangerous.

12. A response, dated 4 October 2001, has been received from the Executive, which is attached with this cover note. This letter provides further information on the methodology and definitions used to measure overcrowding on trains.

Options

13. The Committee is invited to take a view on the specific requests for action made in the petition:

- that a limit is placed on the number of passengers travelling on public transport in Scotland; and
TRANSPORT AND THE ENVIRONMENT COMMITTEE

- that all dogs, apart from guide dogs, should be banned from public transport.

14. There are a number of options available to the Committee to take forward or conclude consideration of this petition. Members may wish to make a reasonably speedy response to the petitioner, as his petition was lodged almost two years ago.

Option A

15. To conclude the petition by writing to the petitioner to inform him which areas of his petition relate to reserved matters; to draw his attention to members’ comments on the petition as set out in the Official Report; and to forward to him a copy of the responses received from the Scottish Executive on his petition.

Other Action

16. The Committee can of course take any other competent action it deems appropriate, including, for example, seeking further information on the issues raised by the petition. If the petition is not concluded at this meeting, it will be brought back to the Committee at a future meeting for members’ further consideration. In light of the Committee’s other work commitments, members may consider it desirable to defer a decision on other action until the next meeting of the Committee, which will consider a paper on the Committee’s forward work programme.

Recommendation

17. The Committee is asked to consider how it wishes to respond to the petition.

Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
December 2001
Subject: Petition PE187 – Petition by the Scottish Gamekeepers Association

Meeting No: 31st Meeting, 2001

Meeting Date: 12 December 2001

Author: Note by the Assistant Clerk

Introduction

1. This paper invites the Committee to give further consideration to Petition PE187 by the Scottish Gamekeepers Association, calling for the Scottish Parliament to allow limited licensed culling of raptors under the terms of the 1981 Wildlife and Countryside Act in areas where local populations have increased beyond normal levels.

2. The following papers are attached with this cover note:
   - A copy of the petition
   - A Parliamentary briefing by the Scottish Gamekeepers Association
   - Letter from the Scottish Gamekeepers Association dated 1 August 2001
   - Letter from Scottish Natural Heritage dated 3 August 2001

Progress of Petition

3. On 9 May 2000, the Public Petitions Committee agreed to pass the petition to the Rural Affairs Committee and the Transport and Environment Committee to take into consideration with Petition PE8 by the Scottish Homing Union.

4. The Transport and the Environment Committee considered the petition at a meeting on 7 March 2001, and agreed that Maureen Macmillan MSP should be appointed as a reporter to take forward consideration of the petition. The Rural Development Committee have an interest in this petition, and is awaiting the outcome of the Transport and the Environment Committee’s consideration of the petition before taking any further action.

5. On 26 June 2001, the Committee considered a report on the petition by Maureen Macmillan MSP. Attached below are relevant paragraphs from the report. They are labelled (a) to (q):

Extracts from Report by Maureen Macmillan MSP

Report of the Raptor Working Group
(a) The Raptor Working Group (RWG) was established by the then Department of the Environment in 1995, with the following terms of reference: “to consider population status
TRANSPORT AND THE ENVIRONMENT COMMITTEE

of birds of prey; identify species alleged to be causing problems; identify, in particular, the impact of such species on game birds and moorland management and on racing pigeons; identify gaps in research and future needs, and identify possible sources of funding; and consider statutory and other mechanisms for the resolution of problems”1.

(b) The following bodies were represented on the UK Raptor Working Group: the Department of the Environment Transport and the Regions; the Joint Nature Conservation Committee; the Royal Society for the Protection of Birds; the Confederation of Long Distance Racing Pigeon Unions (also representing the Royal Pigeon Racing Association); the Scottish Landowners Federation; the Scottish Executive; the Institute of Terrestrial Ecology; the Game Conservancy Trust; the British Association for Shooting and Conservation; and the Scottish Raptor Study Groups.

SGA Position
(c) The SGA contend that there is mounting predation on wild birds and reared gamebirds within Scotland, due to a burgeoning population of certain raptor species. The SGA suggest that the raptor population in certain areas is artificially high and is being sustained at these levels through the availability of gamebirds as prey.

(d) Petition PE187 therefore calls for the Scottish Parliament to allow limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and Countryside Act in areas where local populations have increased beyond normal levels.

(e) The Wildlife and Countryside Act 1981 does allow for licences to be issued for killing otherwise protected species (such as peregrines) to prevent serious damage to livestock, but only if there is no satisfactory alternative solution. However, SPICe could find no evidence of such licenses having been issued and there are no examples of persons having been able to prove that they legally killed protected birds to safeguard livestock. The reporter welcomes the SGA’s opposition to the illegal killing of raptors, and strongly supports this position.

(f) In a Parliamentary briefing, the SGA argue in favour of “changes in the law to allow for the control of raptors to maintain an ecological balance”. The SGA advocate a quota system, whereby any birds found to be over the stated quota could be controlled providing they are high number species such a buzzards, peregrines or sparrowhawks. The SGA suggest that a relocation programme could be used for less numerous species such as kites and harriers. The SGA ask “for the right to protect our stock and the diversity of wildlife in the countryside and consequently the jobs of gamekeepers across Scotland”2.

Raptor Working Group Report
(g) The RWG Report considered the impact of raptors on gamebirds and moorland management.

(h) The Report did not consider that increasing raptor predation was the main cause of declining numbers of grouse. It suggests “that much of the long-term solution to the problems faced by grouse moor owners lies in the need to restore and enhance the extent and quality of heather moorland”. The Report suggests that “the long term decline in grouse stocks has been caused by loss of heather moors and reduced numbers of gamekeepers”. However, the Report did recognise that in some cases an increase in

2 Scottish Gamekeepers Association Parliamentary Briefing
raptor numbers could contribute to a suspension of driven grouse shooting. The Report recommends that measures are put in place to reduce the conflict between raptors and grouse.

(i) The RWG Report does not support measures to reduce the predation of raptors on gamebirds which would necessitate a derogation from the Wild Birds Directive (as implemented in the UK by the Wildlife and Countryside Act 1981). Instead, as a solution to the problem of raptor predation, the Report suggests that habitat management could increase grouse numbers, and that various species management measures could be implemented, including—

- Captive rearing and releasing of red grouse.
- Restocking local densities of red grouse by the transfer and release of birds trapped on other moorland areas.
- Burning or interfering with raptor nests not in use.
- Diversionary feeding of raptors during the breeding season.

(j) The Scottish Gamekeepers Association was not a member of the Raptor Working Group, and does not support its recommendations. The SGA did, however, attend a number of meetings of the RWG Group.

Derogations from the Wild Birds Directive

(k) Although the RWG Report does not support derogations from the Wild Birds Directive, it does make reference, in passing, to some species management measures which might require a derogation. These include—

- Using conditioned taste aversion, whereby baits of a dead prey species are laced with a chemical agent causing the predator to become unwell.
- The temporary movement of hen harrier young to aviaries to be released after the grouse shooting season has begun.
- Scaring hen harriers in the pre-breeding or breeding season.
- Translocation of hen harrier eggs and young to potential settlement areas.
- A quota system by which grouse moors have a target of achieving a set number of hen harriers per acre, beyond which number nests could be removed and fertile eggs destroyed
- Killing of individual raptors

Potential Obstacles to Receiving a Derogation

(l) The RWG Report rejects the methods of species management described above. This is in part because their implementation would require a derogation from the provisions of the Wild Birds Directive. Achieving this would not be straightforward, according to the RWG Report.

(m) First, methods of raptor control requiring a derogation could only be undertaken “where there is no other satisfactory solution” to the problems posed by raptors. Second, the Report considered that there was “legal uncertainty” as to whether derogations under the Wild Birds Directive could be undertaken to protect a shootable surplus of grouse.

(n) These obstacles would also be faced by the SGA, if it tried to implement its proposals for dealing with raptors.

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3 Wild Birds Directive (79/409/EEC)
Questions Raised by the Petition

(o) In light of these potential obstacles to receiving a derogation, it is unclear whether the request made in Petition PE187 (for a “limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and Countryside Act”) would be possible within the current legislative framework. It would be useful to receive clarification in writing from the Scottish Executive and/or Scottish Natural Heritage on a number of issues, including—

- Whether it is possible for a derogation to be obtained from the Wild Birds Directive to protect a shootable surplus of grouse.
- Whether any licences have so far been issued for the culling of raptors to protect gamebirds in Scotland.
- On what specific grounds might such licences be issued (protection of livestock?)
- If a gamekeeper was to receive a derogation, in what ways can gamebirds be protected from raptors (by shooting raptors? by pricking raptors’ eggs?)
- To what extent is the applicant seeking a derogation required to demonstrate, as the legislation requires, that “there is no other satisfactory solution” to the problem of raptor predation.
- What views in general do the Executive and SNH have on the petitioner’s proposals.

Recommendation – Petition PE187

(p) At present, it is not clear whether “a limited licensed culling of raptors, under the existing provisions of the 1981 Wildlife and Countryside Act” is possible. There is a need to clarify the current legal position.

(q) The reporter therefore recommends that the Committee writes to the Scottish Executive and/or SNH to request clarification on the issues raised in paragraph (o) above. The aim would be to see whether the petitioner’s request is possible within the current legal framework, or whether it would require a change in the law. The Committee can take any further action it considers appropriate on the petition once a response has been received. The reporter also recommends writing to the Rural Development Committee to inform it of the action taken on the petition.

Developments Since Maureen Macmillan’s Report

6. The Committee agreed to the recommendation set out at paragraph (q) of the report by Maureen Macmillan. Accordingly, during the Summer Recess, the Committee wrote to Scottish Natural Heritage (SNH) to request clarification on the particular issues set out at paragraph (o) of the report, in order to clarify whether the petitioner’s request was possible within the current legal framework.

7. A letter has been received from Scottish Natural Heritage (letter dated 3 August 2001) in response to the Committee’s queries. The Committee has also received a letter from the Scottish Gamekeepers Association (dated 1 August 2001) providing comments on the Committee’s report. Both letters are attached to this covering note.

8. The letter from Scottish Natural Heritage responds to the Committee’s specific questions regarding a possible derogation from the Wild Birds Directive. SNH advise that it is unlikely that a derogation could be obtained to protect a shootable
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surplus of grouse. SNH also contend that “an application to derogate from the Birds Directive would need to follow on from a substantial amount of work and evidence to show that non-lethal methods would not work”.

9. The SNH letter goes on to suggest that the problems set out in the petition would best be addressed via habitat recovery and management, through measures such as restoring heather cover. SNH suggest that there is scope for new practices to be introduced such as supplementary feeding of raptors, and that until these have been widely tested, there should not be culling of raptors.

10. The letter from SNH also notes that a Moorland Working Group has been established, with members from organisations such as the Scottish Landowners’ Federation, RSPB, the Game Conservancy Trust, and the Scottish Executive. According to SNH, the aim of this group is to secure agreement on how to tackle the moorland challenge regarding raptors, game birds, and habitat management.

11. The SGA disagree with the approach taken by SNH, and suggest, for example, that diversionary feeding might actually increase raptor numbers and attract other predators. In relation to a possible derogation from the Wildlife Directive, the SGA notes the viewpoint that this would not be straightforward. However, the letter states that “nothing is ever straightforward, as we all know, however we do not see this as a good reason not to explore the possibilities”.

Committee’s Response to the Petition

12. There are a number of options available to the Committee to take forward or conclude consideration of this petition.

Option A

13. To conclude the petition by noting it, and passing to the petitioner a copy of the Official Report of members’ discussions, as well as a copy of the response by SNH.

Option B

14. To conclude the petition by writing to the Scottish Executive and the SGA, to pass on members’ views on the issues raised by the petition. In reaching a view on the petition, members may want to take account of some of the following issues:

- the need to address the problems identified by the SGA
- the implications of the legal advice received from SNH
- the merits of obtaining a derogation from the Wild Birds Directive
- the merits of the work of the Moorlands Working Group, and the merits of methods of dealing with raptor predation which do not involve a derogation from the Directive
TRANSPORT AND THE ENVIRONMENT COMMITTEE

Other Action

15. The Committee can of course take any other competent action it deems appropriate. In considering the scope of other action on the petition, members may wish to take account of the Committee’s other agreed work commitments over the next few months. Members may therefore consider it desirable to defer a decision on other action until the next meeting of the Committee, which will consider a paper on the forward work programme.

Recommendation

16. The Committee is asked to consider how it wishes to respond to the petition.

Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
December 2001
Subject: Petition PE59 – Petition by Mr Frank Harvey calling for the Scottish Parliament to take certain steps to improve passenger safety on public transport in Scotland.

Meeting No: 31st Meeting, 2001

Meeting Date: 12 December 2001

Author: Note by the Assistant Clerk

Introduction

1. This paper invites the Committee to consider for a third time a petition from a Mr Frank Harvey which is concerned with (a) the passenger safety implications of overcrowding on public transport; and (b) the potential dangers caused by taking dogs on public transport. Mr Harvey is the sole signatory to the petition.

2. The following papers are attached with this cover note:
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4. The Transport and the Environment Committee first considered the petition on 2 February 2000, and agreed to seek further information on the policy of the rail industry with respect to safety and overcrowding prior to further consideration of the petition. The response which was received from the Scottish Executive is attached with this cover note – this is the letter dated 29 September 2000.

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5. Mr Harvey’s first request is that a limit is placed on the number of passengers travelling on public transport in Scotland. The background to this request is his concern that over-crowding on trains is compromising passenger safety.
TRANSPORT AND THE ENVIRONMENT COMMITTEE

6. Passenger safety on public transport is a reserved matter. The response received from the Executive indicates that it is specifically a matter for the Health and Safety Executive. The Executive response notes, for information, that the current franchise performance payments system for surface trains penalises overcrowding. In relation to buses, capacity levels are prescribed under Regulation 6 of the Public Service Vehicles (Carrying Capacity) Regulations 1984.

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Consideration of Petition PE59 – 5 September 2001

10. The Committee considered Petition PE59 for a second time, plus the Scottish Executive’s response to the petition, at a meeting on 5 September 2001.

11. Following discussions, the Committee agreed to write to the Scottish Executive to request further information on how overcrowding on trains is defined and monitored under the current train franchising arrangements, and to confirm that it is currently legal for dogs to be taken on public transport provided they are not dangerous.

12. A response, dated 4 October 2001, has been received from the Executive, which is attached with this cover note. This letter provides further information on the methodology and definitions used to measure overcrowding on trains.

Options

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- that a limit is placed on the number of passengers travelling on public transport in Scotland; and
TRANSPORT AND THE ENVIRONMENT COMMITTEE

- that all dogs, apart from guide dogs, should be banned from public transport.

14. There are a number of options available to the Committee to take forward or conclude consideration of this petition. Members may wish to make a reasonably speedy response to the petitioner, as his petition was lodged almost two years ago.

Option A

15. To conclude the petition by writing to the petitioner to inform him which areas of his petition relate to reserved matters; to draw his attention to members’ comments on the petition as set out in the Official Report; and to forward to him a copy of the responses received from the Scottish Executive on his petition.

Other Action

16. The Committee can of course take any other competent action it deems appropriate, including, for example, seeking further information on the issues raised by the petition. If the petition is not concluded at this meeting, it will be brought back to the Committee at a future meeting for members’ further consideration. In light of the Committee’s other work commitments, members may consider it desirable to defer a decision on other action until the next meeting of the Committee, which will consider a paper on the Committee’s forward work programme.

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Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
December 2001