TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

6th Meeting, 2002 (Session 1)

Wednesday 13 February 2002

The Committee will meet at 9.30 am in Committee Room 2, to consider the following agenda items:

1. Item in Private: The Committee will consider whether to take agenda item 3 in private.

2. Subordinate Legislation: The Committee will consider the following draft affirmative instrument—
   The Forth Estuary Transport Authority Order 2002.

3. Aquaculture Inquiry: The Committee will consider a draft report on the first phase of its inquiry into aquaculture.

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The following public papers are relevant for this meeting:

| Covering note on the Forth Estuary Transport Authority Order 2002 (Agenda item 2) | TE/02/6/1 |
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| Copy of the Order (plus Executive note) (Agenda item 2) | TE/02/6/2 |
Background – The Forth Estuary Transport Authority Order 2002

1. The Forth Estuary Transport Authority Order 2002 was laid on 31 January 2002 and has been assigned to the Transport and the Environment Committee for consideration. It replaces an earlier instrument which was revoked, and is accompanied by an Executive note.

2. The Report is laid under an affirmative procedure which means that Parliament must approve the report before its provisions may come into force. The sponsoring Minister (Wendy Alexander, Minister for Enterprise, Transport and Lifelong Learning) has accordingly lodged a motion that the Transport and the Environment Committee recommend approval of the instrument (S1M-2651). This motion is supported by the Deputy Minister for Enterprise, Transport and Lifelong Learning, Lewis Macdonald, who will be attending the meeting of the Transport and the Environment Committee to move the motion.

3. Parliament has until 16 March 2002 to deal with the instrument and the Transport and the Environment Committee is required to report on the instrument by 11 March 2002.

Details of the Instrument

4. The instrument dissolves the Forth Road Bridge Joint Board and replaces it with the Forth Estuary Transport Authority. The new body will be established with wider powers. The instrument is being made under section 69 of the Transport (Scotland) Act 2001.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered the instrument at its meeting on 5 February 2002 and agreed to raise points with the Executive on the instrument. An extract from the Official Report of that meeting is attached as an Annex to this note. The Subordinate Legislation Committee will consider the instrument again on 12 February 2002, in order to agree the contents of its report on the instrument.
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6. The Convener of the Transport and the Environment Committee will brief members on the Subordinate Legislation Committee’s consideration of the instrument at the Transport and the Environment Committee meeting on 13 February 2002. In addition, members will be circulated copies of the Subordinate Legislation Committee’s letter to the Executive raising points on the instrument, and a copy of the Executive’s response, once this becomes available.

Format of the Debate

7. The Deputy Minister for Enterprise, Transport and Lifelong Learning and supporting Officials will be attending the meeting of the Transport and the Environment Committee on 13 February to answer any questions members may have on the instrument. The Minister will then move the motion S1M-2651 and the Committee may formally debate the motion.

8. Under Rule 10.6 the Committee is required to report to the Parliament with its recommendation on whether to approve the instrument.

Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
February 2002
The Convener: I do not know whether this is to annoy us, or whether the Executive has forgotten, but we are considering the order once again. I do not know why we cannot call the Forth estuary the Firth of Forth at this stage.

Colin Campbell: Perhaps the Executive is being obtuse.

The Convener: No, we are being correct.

Colin Campbell: No, I said that the Executive was being obtuse.

The Convener: I do not know, but we can request that it considers the order again and ask why it persists—

Bristow Muldoon: The term flows from the Transport (Scotland) Act 2001, which refers to estuary crossings. Perhaps that is where the pass was missed.

The Convener: We shall mention it anyway.

We had so many concerns about the previous draft order that it was withdrawn and we are now considering another draft. It is unfortunate that there are still some difficulties and we might want to draw those to the attention of the drafters.

Article 6 and schedule 1 are on setting up the new board and making rules. However, that does not appear to be permitted by the enabling power. The power that the Executive has appears to be confined to specifying the constituent authorities of the board. We have to go back to the Executive about that, because it is fundamental to the power that the minister would have.

The power in sections 69(1) and 69(2) appears to be restricted to dissolving the board and transferring its functions to a new board on which new functions can be conferred.

There is doubt about the vires of article 11(1), which relates to tolls. The enabling power is very wide, but the provision is not effected as a textual amendment of existing legislation. Tolls normally require a specific authorising power in parent legislation that the Transport (Scotland) Act 2001 does not contain.

We drew the Executive's attention to the provision for penalties in schedule 3, and although that provision has been removed, the provision relating to exemptions has been retained, as has the extension of the toll period. Neither of those provisions appears to be related to the transfer of functions to the new board. Given that the law requires that powers to provide for the charging of tolls must be specifically conferred
in the parent legislation—a test that the Transport (Scotland) Act 2001 does not fulfil—there must be doubt about the vires of paragraphs 2 and 3 of the draft order.

That is quite serious stuff. How will we deal with it?

**Bristow Muldoon:** When do we have to report on the order?

**The Convener:** We have enough time to write to the Executive saying, "Thank you very much, but we must draw this to your attention" and to consider the order again next week.

**Bristow Muldoon:** In that case we should put those questions to the Executive and ask it to respond.

**The Convener:** The inadequacy of the enabling power underlies all the difficulties that we have spotted.

**Ian Jenkins:** We will write to the Executive on those points.

**The Convener:** We must write to the Executive. It will have the power to make byelaws, but it does not have the power to ensure that they are enforced. That is a weakness.

**Bristow Muldoon:** We do not want a Robbie the Fifer campaign.

**The Convener:** We will write to the Executive on the points that we want to raise and consider the order again next week.