The Committee will meet at 10.00 am in Committee Room 1, to consider the following agenda items:

1. **Items in Private:** The Committee will consider whether to take items 6 and 7 in private.

2. **Subordinate Legislation:** The Committee will consider the following draft affirmative instrument—

   The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2002.

3. **Subordinate Legislation:** The Committee will consider the following negative instruments—


4. **Finance Committee Inquiry into PFI/PPP:** The Committee will consider a letter from the Clerk to the Finance Committee.

5. **Public Petition:** The Committee will consider Petition PE403 by Mr Allan McDougall on congestion on trunk roads.

6. **Rail Inquiry:** The Committee will consider the names of possible advisers in connection with its inquiry into rail services in Scotland.

7. **Aquaculture Inquiry:** The Committee will consider contract arrangements for its adviser on aquaculture.
The following public papers are relevant for this meeting:

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Subject: The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2002

Meeting No: 7th Meeting, 2002

Meeting Date: 27 February 2002

Author: Note by the Assistant Clerk

Background

1. The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2002 was laid on 24 January 2002 and has been assigned to the Transport and the Environment Committee for consideration. It 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 (Iain Gray, Minister for Social Justice) has accordingly lodged a motion that the Transport and the Environment Committee recommend approval of the instrument (S1M-2679). This motion is supported by the Deputy Minister for Social Justice, Margaret Curran, who will be attending the meeting of the Transport and the Environment Committee to move the motion.

3. Parliament has until 9 March 2002 to deal with the instrument and the Transport and the Environment Committee is required to report on the instrument by 4 March 2002.

Details of the Instrument

4. The instrument’s purpose is to restore and maintain the policy target of achieving full recovery of those local authority costs associated with the processing of planning applications from initial registration to decision stage. All fees are increased by approximately 5 per cent to apply on or after 1 April 2002.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered the instrument at its meeting on 29 January 2002 and in its 5th report the Committee determined that the attention of the Parliament need not be drawn to the instrument.

Format of the Debate

6. The Deputy Minister for Social Justice and supporting Officials will be attending the meeting of the Transport and the Environment Committee on 27 February to
TRANSPORT AND THE ENVIRONMENT COMMITTEE

answer any questions members may have on the instrument. The Minister will then move the motion S1M-2679 and the Committee may formally debate the motion.

7. 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
Subject: The Local Authorities’ Traffic Orders (Procedure) (Scotland) Amendment Regulations 2002, (SSI 2002/31)

Meeting No: 7th Meeting

Date: 27 February 2002

Author: Note by the Assistant Clerk

Introduction and Background

1. The Local Authorities’ Traffic Orders (Procedure) (Scotland) Amendment Regulations 2002, (SSI 2002/31) was laid on 29 January 2002. The regulations come into force on 1 March 2002. The Transport and the Environment Committee has been designated as the lead committee for the consideration of this instrument. An Executive note accompanies the regulations.

2. The order was laid under a "negative procedure" which means that the Parliament has the power to annul the order by resolution within 40 days, excluding recess. The time limit for Parliamentary action expires on 14 March 2002.

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 11 March 2002. 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 the Instrument

4. The Regulations amend the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999 to correct two minor errors in the earlier regulations.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its meeting on 5 February 2002 and agreed to raise points with the Executive on the instrument. The Committee considered the instrument again at its meeting on 12th February 2002. In its 10th report the Committee determined that the attention of the Parliament should be drawn to the instrument. An extract of the report is attached to this note.

Recommendation

6. The Committee is invited to agree its report on the instrument.

Rosalind Wheeler
Assistant Clerk to the Transport and the Environment Committee
February 2002
The Local Authorities’ Traffic Orders (Procedure) (Scotland) Amendment Regulations 2002, (SSI 2002/31)

The Committee raised three points with the Executive.

Question 1
The Committee requested an explanation of the power that authorises the apparent retrospection in new regulation 21 of the principal Regulations as inserted by regulation 3 as no mention can be found in the Explanatory Note of appropriate authorisation.

Answer 1
The Executive's response is printed at Appendix D. The amendment made to the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999 followed a report from the Joint Committee on Statutory Instruments (JCSI) in which it commented on regulation 21. That committee was concerned that an implicit cross-reference to the Local Roads Authorities’ Traffic Orders (Procedures) (Scotland) Regulations 1987 should have been explicit. The Executive accepted this observation and undertook to remedy the defect. There then followed a period of consultation. The amendment is merely correcting and clarifying the earlier provision. The Executive does not accept that this amounts to retrospection.

Comment 1
The Committee is aware of the JCSI's report and of the undertaking given by the Department at that time. The principal Regulations came into effect on 1st April 1999. The amendment Regulations above effect a textual amendment to the principal Regulations by substituting a new regulation 21. The new regulation refers to "the date of coming into force of these Regulations". As this is a textual amendment the date referred to is the date of coming into force of the 1999 Regulations (that is 1st April 1999) not the date of coming into force of the amending Regulations (1st March 2002).

To avoid retrospection, the new provision can only have effect from the date of coming into effect of the amending Regulations and cannot, without express authority in the enabling Act, be backdated to cover the period between 1st April 1999 and 1st March 2002. From the drafting of the provision and the Executive’s response it is not clear that this is the intention. It appears that, as regulation 21 was a transitional provision, the Regulations may be intended to correct the errors in the principal Regulations with effect from 1st April 1999. In the Committee’s view, this constitutes retrospection, which is not authorised by the parent Act.

The Committee notes that, in practice, the amendments appear to be relatively minor and the Executive has not suggested that the principal Regulations have been subject to interpretation in any way other than as intended. Nevertheless, the Committee draws the instrument to the attention of the lead committee and the Parliament on the grounds that it appears to be intended to have retrospective effect, not authorised by the parent Act, in the above respect.
Question 2
The Committee was unclear why the Executive has proceeded with what appears to be an amendment to a transitional provision in the principal Regulations some three years after those Regulations came into force. The Committee sought further background to the making of the instrument, with particular reference to the time elapsed since the principal Regulations came into force.

Answer 2
The Executive apologises for the delay in making the amendment to these Regulations. Unfortunately, due to other pressures the need to make this slight amendment was lost sight of. Although it is unfortunate that there has been a lengthy time delay between the making of the Regulations and this amendment the Executive nevertheless considers it a necessary amendment to clarify the provisions in the principal Regulations.

Comment 2
The Committee refers to its comments above. It appears to the Committee to be an unusual or unexpected use of the powers to effect an amendment to a transitional provision so long after the provision in question came into force. The Committee observes that this might have had a serious effect on those affected by the change although, fortunately, no harm appears to have been done in this instance. The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on the grounds of an unusual or unexpected exercise of the power in this respect.

Questions 3 and 4
The Committee asked for an explanation as to why the heading to regulation 1 is given as "Citation, commencement and extent", where there is no provision that relates to the extent of the Regulations.

The Committee also noted that regulation 2 contains a definition of the principal Regulations that appears to be entirely unnecessary in the context of this instrument, and requested clarification on this issue.

Answers 3 and 4
The Executive thanked the Committee for the observation on the heading to regulation 1. The reference to "extent", it agrees, is superfluous. The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on the grounds that it is defectively drafted in this respect.

The Executive also thanked the Committee for pointing out what appears to be an unnecessary definition. The definition was included to prevent unnecessary duplication in regulation 3. It is accepted, however, that the definition is not strictly necessary. The Committee therefore also draws the instrument to the attention of the lead committee and the Parliament on the grounds that it fails to comply with proper legislative practice by the inclusion of an unnecessary definition.

The Committee notes, however, that neither defect detracts from the effectiveness of the instrument.
On 5 February 2002 the Committee asked the Executive for an explanation of the following matters:

1. The Committee requests an explanation of the power that authorises the apparent retrospection in new regulation 21 of the principal Regulations as inserted by regulation 3 as no mention can be found in the Explanatory Note of appropriate authorisation.

2. The Committee is unclear why the Executive has proceeded with what appears to be an amendment to a transitional provision in the principal Regulations some 3 years after those Regulations came into force. The Committee seeks further background to the making of the instrument, with particular reference to the time elapsed since the principal Regulations came into force.

3. The Committee seeks an explanation as to why the heading to regulation 1 is given as "Citation, commencement and extent", where there is no provision that relates to the extent of the Regulations.

4. The Committee notes that regulation 2 contains a definition of the principal Regulations that appears to be entirely unnecessary in the context of this instrument, and requests clarification on this issue.

The Scottish Executive responds as follows:

First Question
The amendment made to the Local Authorities' Traffic orders (Procedure) (Scotland) Regulations 1999 followed a report from the Joint Committee on Statutory Instruments in which they commented on regulation 21. They were concerned that an implicit cross reference to the Local Roads Authorities' Traffic Orders (Procedures) (Scotland) Regulations 1987 should have been explicit. The Executive accepted this observation and undertook to remedy the defect. There then followed a period of consultation. The amendment is merely correcting and clarifying the earlier provision. The Executive does not accept that this amounts to retrospection.

Second Question
The Executive apologises for the delay in making the amendment to these Regulations. Unfortunately due to other pressures the need to make this slight amendment was lost sight of. Although it is unfortunate that there has been a lengthy time delay between the making of the Regulations and this amendment it is nevertheless considered a necessary amendment to clarify the provisions in the principal Regulations.

Third Question
The Executive is grateful to the Committee for the observation. The reference to "extent", it is agreed is superfluous.
Fourth Question
The Executive is again grateful to the Committee for pointing out what appears to be an unnecessary definition. The definition was included to prevent unnecessary duplication in regulation 3. It is accepted however that the definition is not strictly necessary.

Scottish Executive Development Department
7 February 2002
Introduction and Background

1. The Water Services Charges (Billing and Collection) (Scotland) Order 2002, (SSI 2002/33) was laid on 1 February 2002. The regulations come into force on 1 April 2002. The Transport and the Environment Committee has been designated as the lead committee for the consideration of this instrument. An Executive note accompanies the order.

2. The order was laid under a "negative procedure" which means that the Parliament has the power to annul the order by resolution within 40 days, excluding recess. The time limit for Parliamentary action expires on 17 March 2002.

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 11 March 2002. 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 the Instrument

4. This Order is made under section 79(2) of the Local Government etc. (Scotland) Act 1994. It sets out provisions for the billing and collection of water and sewerage charges by local authorities in Scotland, as regards to the financial years 2002-2003 to 2004-2005.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered this instrument at its meeting on 12 February 2002. In its 9th report the Committee determined that the attention of the Parliament need not be drawn to the instrument.

Recommendation

6. The Committee is invited to agree its report on the instrument.
Finance Committee

Callum Thomson
Clerk, Transport and the Environment Committee
Room 3.6
Committee Chambers

7 February 2002

As part of its inquiry into PFI/PPP, the Finance Committee will shortly be undertaking a series of case studies in order to test the oral and written evidence it has taken in the context of specific projects. One of the reporter groups will examine an infrastructure project and is likely to take a waste water project as its case study.

The reporter group is likely to consist of three members of the Committee. The remit of the reporter groups is to establish:

1. the criteria used when considering the project for PFI
2. the extent of consultation with end users
3. the extent to which alternatives were considered
4. the extent to which budgetary considerations affect the deliberations as to funding
5. the critical success factors for successful project management
6. the impact on employment conditions and relations and
7. difficulties faced and lessons learned

The Committee will shortly be arranging a round-table discussion hopefully on site to discuss the above with people involved in the project such as the Chief Executive, Director of Human Resources, the Project Managers, representatives of service providers, and contractors. The Committee would like to extend an invitation to the Transport and the Environment Committee to nominate a member to accompany this reporter group on its visits and to participate in the meetings.

The Finance Committee would value input from a member of your committee in the formulation of the reporter group’s report. It will, of course, be for the designated reporter to finalise the content of the reports, but I would hope that the expertise in the subject area that your committee can provide would be put to good use. There may also be some benefit for your committee in gaining a first hand insight into procurement methods for public projects.

I would be grateful if you would indicate whether your committee would like to nominate a member to join the reporter group. I would expect the Finance Committee to finalise the
details of its case study in the next few weeks and I will be in touch again then, should your committee wish to become involved.

Kind regards,

David McGill
Acting Clerk to the Finance Committee
TRANSPORT AND THE ENVIRONMENT COMMITTEE

Subject: Petition PE403 by Mr Allan C McDougall on congestion on trunk roads

Meeting No: 7th Meeting

Date: 27th February 2002

Author: Note by the Acting Assistant Clerk

Introduction

1. This paper asks the Committee to consider for the first time petition PE403 by Mr Allan C McDougall on congestion on trunk roads. A copy of the petition is also circulated for this meeting.

2. The petition expresses concern at the current planning process which has led to the granting of planning permission to commercial developments which are sited directly on trunk roads. The petitioner is specifically concerned with a proposed supermarket development sited on the A90 trunk road, at North Anderson Drive, Aberdeen. In the petitioner’s opinion, such new developments should not be allowed on the already congested A90 in Aberdeen.

Background

3. According to the petitioner, the relevant planning guidance (National Planning Policy Guidance 17) was not adequately taken into account in the granting of the planning application for the supermarket. The guidance in NPPG 17 advises that, as far as practicable, access to developments should be via secondary roads, rather than trunk roads. NPPG 17 also states that trunk roads serve a national strategic role which should not be undermined by developments which encourage their use for short local trips.

4. The petitioner also believes that the decision to grant planning permission did not take into account the opposition from local residents. The petitioner believes that public meetings should be part of the decision making process, to allowing for “third party” input into the decision.

Progress of the Petition

5. The petition was considered by the Public Petitions Committee (PPC) at its meeting on 23 October 2001, when the Committee agreed to pass the petition to the Transport and the Environment Committee with the recommendation that (a) the petition be taken into account as part of the Committee’s work on integrated transport issues in Aberdeen, and (b) that the Committee should consider whether there is a requirement to examine further the wider issues raised in the petition, relating to planning guidance and public consultation.
Petition PE357 by Aberdeen City Council

6. Members will recall that the Committee has previously considered a petition on Aberdeen’s transport infrastructure – Petition PE357 by Aberdeen City Council. The Committee took evidence in Aberdeen on the petition, from Aberdeen City Council, Scottish Enterprise Grampian, and Aberdeen and Grampian Chamber of Commerce.

7. Following this meeting, the Committee agreed to take evidence from the Minister for Enterprise, Transport and Lifelong Learning in order to raise the points that had emerged in evidence. The Committee agreed to schedule this evidence session at a time that allowed it to cover matters relating to the Transport Delivery Plan; the development of national transport priorities; and issues arising from the petition.

Public Involvement in the Planning System

8. The petition makes reference to a specific planning decision on the siting of a supermarket. The Committee has previously taken the view that it should not become involved in individual local planning decisions. However, the petition does raise wider issues relating to public consultation within the planning system which it would be competent for the Committee to consider.

9. The Scottish Executive is currently undertaking a consultation on public involvement in the planning process entitled “Getting Involved in Planning”. The consultation is described as being a review of the existing arrangements for enabling people to become involved in planning issues. It seeks respondents’ views and experiences on how people in Scotland can be more effectively involved in the planning system.

Options for action

Option A
10. The Committee could write to inform the petitioner that while it cannot take a view on the individual planning decision cited in the petition, the Committee will take the petition into account as part of its on-going consideration of Petition PE357 on Aberdeen transport infrastructure.

Option B
11. Members could agree to provide the petitioner with information about the Scottish Executive’s current consultation on public involvement in the planning process, to allow the petitioner the opportunity to participate in this consultation.

Option C
12. The Committee can take any other action it feels appropriate.

Recommendation

13. The Committee is asked to consider and agree how it wishes to deal with the petition.