



## TRANSPORT AND THE ENVIRONMENT COMMITTEE

### AGENDA

5th Meeting, 2003 (Session 1)

Tuesday 4 March 2003

The Committee will meet at 9.30 am in Committee Room 1 to consider the following agenda items:

1. **Items in private:** The Committee will consider whether to take agenda item 7 in private.
2. **Subordinate legislation:** Allan Wilson (Deputy Minister for Environment and Rural Development) to move motion S1M-3910—

that the Transport and the Environment Committee recommends that the Landfill (Scotland) Regulations 2003 (draft), be approved.

and motion S1M-3911—

that the Transport and the Environment Committee recommends that the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003 (draft), be approved.

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

the Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2003, (SSI 2003/65)

the Road Traffic (Permitted Parking Area and Special Parking Area) (Aberdeen City Council) Regulations 2003, (SSI 2003/70)

the Road Traffic (Parking Ajudicators) (Aberdeen City Council) Regulations 2003, (SSI 2003/71)

the Parking Attendants (Wearing of Uniforms) (Aberdeen City Council Parking Area) Regulations 2003, (SSI 2003/72)

4. **Public Petitions:** The Committee will consider the following petitions—

**PE 422, PE 430 and PE 454.** The Committee will consider a response from the Minister for Social Justice to an issue raised by the Committee in relation to three petitions on the sale of school playing fields: PE 422 by Mr James Docherty, PE 430 by Mrs M Glendinning and PE 454 by Mr Peter Watson.

**PE 517** by Mr Rob Kirkwood on environmental and planning issues relating to water treatment plants. The Committee will consider a letter from the Minister for Environment and Rural Development, in response to correspondence from the Committee seeking clarification on a number of issues in relation to the petition. The Committee will also consider how it intends to approach further consideration of the petition.

5. **Telecoms Developments (in private):** The Committee will consider the possible contents of a draft letter to the Minister for Social Justice in relation to its work on telecoms developments.
6. **Petition PE 377: Polluting Activities in Built-up Areas (in private):** The Committee will consider a draft report on petition PE 377.
7. **Legacy Paper:** The Committee will consider a legacy paper which will provide advice to its successor Committee, based on its experience of the first parliamentary session.

*At approximately 11.15 am.*

8. **Planning Briefing:** The Committee will take evidence on current planning issues from—

Des McNulty MSP, Deputy Minister for Social Justice

Jim Mackinnon, Chief Planner, Scottish Executive.

9. **Public Petitions:** The Committee will consider the following petitions—

**Petition PE 508:** The Committee will consider the response of the Scottish Executive to points raised by the Committee on petition PE 508 by Mr Philip Graves on the implementation of Environmental Impact Assessments and PAN 58 guidelines.

**PE 377** by Michael Kayes on on polluting activities in built-up areas. The Committee will consider whether to formally conclude its consideration of the petition.

**PE 425** by Mrs Anne-Marie Glashan on planning procedures for telecommunications developments. The Committee will consider whether to conclude its consideration of the petition.

**10. Subordinate legislation:** The Committee will consider the following negative instrument—

the Surface Water (Fishlife) (Classification) (Scotland) Amendment Regulations 2003, (SSI 2003/85)

Callum Thomson  
Clerk to the Transport and the Environment Committee  
Room 3.5, Committee Chambers

e-mail [Callum.Thomson@scottish.parliament.uk](mailto:Callum.Thomson@scottish.parliament.uk)

The following papers are attached for this meeting:

Covering note on the Landfill (Scotland) Regulations 2003 (draft) <i>(Agenda item 2)</i>	TE/03/5/1
Copy of the instrument (plus executive note) <i>(Agenda item 2)</i>	TE/03/5/2
Covering note on the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003 (draft) <i>(Agenda item 2)</i>	TE/03/5/3
Copy of the instrument (plus executive note) <i>(Agenda item 2)</i>	TE/03/5/4
Cover note on the Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2003, (SSI 2003/65) <i>(Agenda item 3)</i>	TE/03/5/5
Copy of the instrument (plus executive note) <i>(Agenda item 3)</i>	TE/03/5/6
Cover note on the Road Traffic (Permitted Parking Area and Special Parking Area) (Aberdeen City Council) Regulations 2003, (SSI 2003/70) <i>(Agenda item 3)</i>	TE/03/5/7
Copy of the instrument (plus executive note) <i>(Agenda item 3)</i>	TE/03/5/8

Covering note on the Road Traffic (Parking Ajudicators) (Aberdeen City Council) Regulations 2003, (SSI 2003/71) <i>(Agenda item 3)</i>	TE/03/5/9
Copy of the instrument (plus executive note) <i>(Agenda item 3)</i>	TE/03/5/10
Covering note on the Parking Attendants (Wearing of Uniforms) (Aberdeen City Council Parking Area) Regulations 2003, (SSI 2003/72) <i>(Agenda item 3)</i>	TE/03/5/11
Copy of the instrument (plus executive note) <i>(Agenda item 3)</i>	TE/03/5/12
Covering note on petitions PE 422, PE430 and PE454 <i>(Agenda item 4)</i>	TE/03/5/13
Covering note on petition PE 517 <i>(Agenda item 4)</i>	TE/03/5/14
Paper on telecoms developments (private paper) <i>(Agenda item 5)</i>	TE/03/5/15
Draft report on petition PE 377 on polluting activities in built-up areas (private paper) <i>(Agenda item 6)</i>	TE/03/5/16
Legacy Paper (private paper) <i>(Agenda item 7)</i>	TE/03/5/17
Note from SPICe on Planning Briefing <i>(Agenda item 8)</i>	TE/03/5/18
Covering note on petition PE 425 <i>(Agenda item 9)</i>	TE/03/5/19
Covering note on the Surface Water (Fishlife) (Classification) (Scotland) Amendment Regulations 2003, (SSI 2003/85) <i>(Agenda item 10)</i>	TE/03/5/20
Copy of the instrument (plus executive note) <i>(Agenda item 10)</i>	TE/03/5/21

**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Landfill (Scotland) Regulations 2003, (draft)

**Type of Instrument:** Affirmative

**Meeting:** 5th meeting, 4 March 2003

**Date circulated to members:** 19 February 2003

**Minister to attend T and E Committee meeting** Deputy Minister for the Environment and Rural Development

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes  
(Report attached at Annex)

**Affirmative Instrument – Procedure**

1. The instrument is laid under an affirmative procedure which means that Parliament must approve the instrument before its provisions may come into force. The sponsoring Minister (Ross Finnie MSP, Minister for Environment and Rural Development) has accordingly lodged a motion that the Transport and the Environment Committee recommend approval of the instrument (S1M-3910).
2. The Committee has adopted the practice of holding an informal session before the formal debate on affirmative instruments to raise technical points of clarification. Minister's officials may take part in the informal discussion.
3. After the informal discussion, the Minister will be invited to formally move the motion. Committee members will then be invited to formally debate the motion (S1M-3910). The Minister will then be given an opportunity to respond to points raised in the debate and make any concluding remarks.
4. The question will then be put to the Committee as to whether the motion should be agreed to. Only members of the Committee can vote on the motion. If the motion is *agreed to*, the Committee has decided to approve the instrument, if the motion is *disagreed to*, the Committee has decided not to approve the instrument.
5. Under Rule 10.6 the Committee is required to report to the Parliament with its recommendation on whether to approve the instrument.
6. If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible, to allow sufficient time for a response to be received in advance of the Committee meeting.

## Annex

### The Landfill (Scotland) Regulations 2003, **(draft)**

#### *Background*

1. The Committee had four questions on these Regulations

#### *Question 1*

2. The Committee asked the Executive to explain why there is a difference in approach between Scotland and England and Wales as regards the time limit of 7 days, imposed by regulation 14(6), within which an operator must notify SEPA that waste has not been accepted at a landfill.

#### *Answer 1*

3. In its reply, reproduced at Appendix 1, the Executive notes that the equivalent provision in the English regulations provides no time limit other than "as soon as reasonably possible". The Executive explains that it has imposed a 7-day time limit on operators as it considers this limit to reflect the intention of the Landfill Directive "to notify without delay".
4. The Executive explains that it is very important that the relevant information should be conveyed to SEPA as quickly as possible for the reasons given in the Executive's response. The Executive accordingly takes the view that specifying a 7-day limit is reasonable and not over-onerous, as a landfill operator's obligation is only to inform SEPA rather than to take any action.

#### *Report 1*

5. This is a very full and helpful response that confirms the Committee's understanding. **The Committee therefore draws it to the attention of the lead committee and the Parliament for information.**

#### *Question 2*

6. The Executive was asked to confirm that the Regulations would not have any retrospective effect in light of paragraph 1(3)(a) and (c) of Schedule 5.

#### *Answer 2*

7. The Executive confirms that the Regulations do not have retrospective effect. The date 16<sup>th</sup> July 2002 was included in paragraph 1(3)(a) and (c) of Schedule 5 because reference is required to the date laid down in Article 14(a) of the Landfill Directive. Operators have, however, already been required to notify SEPA where they don't intend to accept waste after 16<sup>th</sup> July 2002 and SEPA has already required site-conditioning plans from existing licensed landfills. This has been achieved through the Landfill (Scotland) Direction 2002.

#### *Report 2*

8. Again, this is a full and helpful explanation that confirms the Committee's original understanding. **The Committee also draws it to the attention of the lead committee and the Parliament for information.**

### *Question 3*

9. The Executive was asked to confirm that the references in Schedule 6, paragraph 3(8) ought to be to regulation 23(1) and (5) and not to regulation 23(1) and (2).

### *Answer 3*

10. The Executive considers the references to regulation 23(1) and (2) in paragraph 3(8) of Schedule 6 to be correct. The Executive further takes the view that no amendment is required to import a reference to the Regulations into either regulation 23(4) or (5) of the PPC Regulations as it considers that references in them to "these Regulations" can refer only to the regulations under which the direction is given, namely the PPC Regulations.

### *Report 3*

11. This is a further helpful response that clarifies the position fully. The Committee agrees with the construction of regulation 23(4) and (5) of the PCC Regulations.

### *Question 4*

12. The Executive was asked to confirm whether it is intentional that there is no provision in regulation 19(3) and (4) in respect of partnerships.

### *Answer 4*

13. The Executive agrees that there is no reference to partnerships in regulation 19, but can confirm that regulation 19 as drafted will allow proceedings to be taken against partners as individuals, thus ensuring proper enforcement of the Regulations. The Executive therefore considers regulation 19 to be sufficient for that purpose. However, it will bear the point in mind when any amending regulations are made.

### *Report 4*

14. Regulation 19 is a pro forma provision that allows proceedings to be taken against directors and managers of companies as individuals as well as against companies themselves. The Committee observes that it is customary in Scottish legislation to include partnerships within the provision as Scots law, unlike English law, recognises a partnership as having legal personality. The Executive considers that the enforcement of the Regulations should not be affected to any material extent.
15. **Nevertheless, in the Committee's view, the failure to include the usual provision represents an unusually limited use of the enabling power on which ground the Committee draws the instrument to the attention of the lead committee and the Parliament.**



**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003, (draft)

**Type of Instrument:** Affirmative

**Meeting:** 5th meeting, 4 March 2003

**Date circulated to members:** 6 February 2003

**Minister to attend T and E Committee meeting** Deputy Minister for the Environment and Rural Development

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes  
(Report attached at Annex)

**Affirmative Instrument – Procedure**

1. The instrument is laid under an affirmative procedure which means that Parliament must approve the instrument before its provisions may come into force. The sponsoring Minister (Ross Finnie MSP, Minister for Environment and Rural Development) has accordingly lodged a motion that the Transport and the Environment Committee recommend approval of the instrument (S1M-3911).
2. The Committee has adopted the practice of holding an informal session before the formal debate on affirmative instruments to raise technical points of clarification. Minister's officials may take part in the informal discussion.
3. After the informal discussion, the Minister will be invited to formally move the motion. Committee members will then be invited to formally debate the motion (S1M-3911). The Minister will then be given an opportunity to respond to points raised in the debate and make any concluding remarks.
4. The question will then be put to the Committee as to whether the motion should be agreed to. Only members of the Committee can vote on the motion. If the motion is *agreed to*, the Committee has decided to approve the instrument, if the motion is *disagreed to*, the Committee has decided not to approve the instrument.
5. Under Rule 10.6 the Committee is required to report to the Parliament with its recommendation on whether to approve the instrument.
6. If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible, to allow sufficient time for a response to be received in advance of the Committee meeting.

## Annex

### *Background*

1. The Committee raised three questions on this instrument.

### *Question 1*

2. The Committee asked why paragraphs (1) and (2) of regulation 5(1) and (2) contain a reference to "designated authority" when the term used elsewhere in the Regulations and defined in regulation 2(1) is "designated local authority".

### *Answer 1*

3. In its reply, reproduced at Appendix 1, the Executive confirms that the reference in regulation 5(1) ought to be to a "designated local authority". The omission of the word "local" is a typing error. The Executive considers that, notwithstanding this typing error, regulation 5 can only be read as applying to a designated "local" authority, and that there can be no doubt as to the meaning and effect of the provision. The Executive will, however, consider a clarificatory amendment in the context of any future amending regulations.
4. As regards regulation 5(2), the Executive cannot identify a reference to "designated authority", but notes that the term "the authority" is used. The Executive considers that the references to "the authority" in that paragraph can only be read as referring to the "designated authority" in paragraph (1). Again, the Executive considers that the meaning of the provision is clear.

### *Report 1*

5. **The Committee draws this matter to the attention of the lead committee and the Parliament on the grounds of defective drafting acknowledged by the Executive.** The reference to regulation 5(2) was not intended as a separate point.

### *Question 2*

6. The Committee asked in relation to regulation 6(1)(a), how a local authority could be certain that a vehicle were about to pass through the area of the local authority for the purposes of this regulation.

### *Answer 2*

7. The Executive can confirm that if a local authority were testing outwith its own area, it considers that this could only be done adjacent or very close to the authority boundary in circumstances in which it would be clear that any vehicles would be about to pass through the authority's own area. It would be a question of fact in all the circumstances, but in accordance with general principles of administrative law, the authority is required to exercise the power reasonably. This point will be covered in guidance on operating the scheme that is to be issued to all participating local authorities.

### *Report 2*

8. The Committee acknowledges that this is to some extent a matter of policy. **It does, however, seem an unusual use of the powers particularly where failure to comply with a request carries a criminal sanction. The Committee therefore reports regulation 6(1)(a) on this ground.**

*Question 3*

9. The Executive was asked to explain why there are two references in regulation 20(7) to notices under paragraph (5) when paragraph (5) does not appear to relate to notices.

*Answer 3*

10. The Executive confirms that there are two typing errors in regulation 20(7) where the references to (5) ought instead to refer to (6). The Executive does not, however consider that these minor errors affect the validity of the instrument. In regulation 20 it is clear that the only notice which can be given under that regulation is the authority's notice referred to in paragraph (6). There is, accordingly, no provision to give notice contained in paragraph (5). The Executive takes the view, therefore, that there can be no doubt that the notice referred to in paragraph (7) means the notice given under paragraph (6). The Executive will, however, consider bringing forward a clarificatory amendment in any future amending regulations.

*Report 3*

11. **The Committee therefore reports regulation 20(7) to the lead committee and the Parliament on the ground of defective drafting acknowledged by the Executive.** The Committee offers no opinion on the effect of the error, which may well be as the Executive contends.



**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2003, (SSI 2003/65)

**Type of Instrument:** Negative

**Meeting:** 5th Meeting, 4 March 2003

**Date circulated to members:** 12 February 2003

**Motion for annulment lodged:** No

**T and E deadline to consider SSI:** 17 March 2003

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes  
(Report attached at annex)

## Annex

### The Domestic Water and Sewerage Charges (Reduction) (Scotland) 2003 (SSI 2003/65)

#### *Background*

1. The Committee raised two points with the Executive.

#### *Question 1*

2. The Committee noticed that no date has been inserted to indicate the Minister's date of signing and asked for an explanation of the omission.

#### *Answer 1*

3. In its response, reproduced at Appendix 1, the Department of Environment and Rural Affairs apologises and admits that the omission of the date of signature from the versions of the instrument submitted to the Parliament was an administrative error. The Department confirms that the Minister signed and dated the instrument and that the certified copies were correctly completed and the omission was also corrected prior to the instrument going to print.

#### *Report 1*

4. The Committee has on several occasions emphasised the need for the certified copy of an instrument and other copies supplied to the Parliament to be correct in every detail. In particular, the Parliament must be able to have confidence that a certified copy is indeed a true copy of the original. The Committee reiterates that view.
5. The Committee observes that omission of the date is in fact not unimportant. It gives an indication of when the instrument was made and is relevant both to the powers, (e.g. retrospectively) and to the formal requirements of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SSI 1999/1096). **The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on the grounds that the copies of the instrument supplied to the Parliament were incomplete.**

#### *Question 2*

6. The Committee asked for an explanation of the purpose of the words "payable in respect of the relevant year shall be less than it would be but for these regulations and" in regulation 3, which do not seem to make sense in the context. The words in quotes do not seem to have any useful purpose and indeed serve to confuse.

#### *Answer 2*

7. The words referred to have been used consistently in previous reduction regulations (SSI 2001/114 and 2002/47). The words reflect the terms of the enabling power (in particular section 40(2)(a) of the Water Industry (Scotland) Act 2002, which re-enacts section 81(1)(a) Local Government etc. (Scotland) Act 1994). They make clear on the face of the instrument that the reduced amount is an amount less than the amount it would be but for the regulations and that the amount of the reduction must be calculated in accordance with the formula in regulation 4. Notwithstanding the foregoing, the Department will consider when

making any subsequent reduction regulations whether the inclusion of those words is necessary.

*Report 2*

8. The Committee acknowledges that the words in question appear in the parent Act but in the context of a definition of the reduced amount where they make sense. Regulation 3 provides for the calculation of the amount of the reduction and, in the context of the regulation, the words do not appear to serve any useful purpose. **To that extent, the Committee considers that the Regulations fail to follow proper legislative practice and reports them to the lead committee and the Parliament on that ground.** The words should not, however, adversely affect the operation of the instrument.

## Appendix 1

### THE DOMESTIC WATER AND SEWERAGE CHARGES (REDUCTION) (SCOTLAND) 2003, (SSI 2003/65)

On 11 February 2003 the Committee asked the Executive-

1. The Committee notices that no date has been inserted to indicate the Minister's date of signing. The Committee asks the Executive for an explanation of the omission.
2. The Committee requests the Executive to explain the purpose of the words "payable in respect of the relevant year shall be less than it would be but for these regulations and" in regulation 3, which do not seem to make sense in the context. It is felt that the words in quotes do not seem to serve any useful purpose and indeed serve to confuse.

The Scottish Executive responds as follows:

#### First question

The Committee correctly notes that the Executive omitted to add the date of signature to the versions of the instrument submitted to the Parliament. This was an administrative error and assurance can be given that the Minister signed and dated the instrument and that the certified copies were correctly completed. The omission was also corrected prior to the instrument going to print. The Executive apologises for the oversight.

#### Second Question

The words referred to by the Committee have been used consistently in previous reduction regulations (SSI 2001/114 and 2002/47). Those words reflect the terms of the enabling power (in particular section 40(2)(a) of the Water Industry (Scotland) Act 2002, which re-enacts section 81(1)(a) Local Government etc. (Scotland) Act 1994). The words make clear on the face of the instrument that the reduced amount is an amount less than the amount it would be but for the regulations and that the amount of the reduction must be calculated in accordance with the formula in regulation 4. Notwithstanding the foregoing, the Executive will consider when making any subsequent reduction regulations whether the inclusion of those words is necessary.

Scottish Executive Environment and Rural Affairs Department

**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Road Traffic (Permitted Parking Area and Special Parking Area) (Aberdeen City Council) Designation Order 2003, (SSI 2003/70)

**Type of Instrument:** Negative

**Meeting:** 5th Meeting, 4 March 2003

**Date circulated to members:** 12 February 2003

**Motion for annulment lodged:** No

**T and E deadline to consider SSI:** 10 March 2003

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes  
(Report attached at annex)

## **Annex**

The Road Traffic (Permitted Parking Area and Special Parking Area) (Aberdeen City Council) Designation Order 2003, **(SSI 2003/70)**

### *Background*

1. The Committee raised six points with the Executive on this instrument, which in its view, appeared to contain a number of serious defects.

### *Question 1*

2. The name of the local government area as found in article 3 (and footnote (c) on page 1) is not consistent with Schedule 1 and the Explanatory Note (both the last two use, it is believed correctly, Aberdeen City local government area). The Executive was asked to confirm the position.

### *Answer 1*

3. In its reply, reproduced at Appendix 6, the Executive accepts that the appropriate designation is Aberdeen City local government area and apologises for any inconsistency in the usage. It should, however, be clear to the reader that the area to which the Order extends is the local government area of Aberdeen City.

### *Report 1*

4. It seems to the Committee that, although in practice the inaccuracy in nomenclature should not give rise to any difficulty, the legislation ought to get the name of the designated area right. **The Committee therefore reports the instrument for defective drafting in this respect as acknowledged by the Executive.**

### *Question 2*

5. Schedule 1 specifies the area that is designated as a permitted parking area and a special parking area as "Aberdeen City local government area, with the exception of those roads within the said area for which Aberdeen City Council is not the traffic authority within the meaning of section 121A(4) of the 1984 Act". The Committee asked where information might be obtained as to which roads those might be.

### *Answer 2*

6. The Committee has asked where information might be obtained as to the roads for which Aberdeen City Council is not the traffic authority. This information can be obtained from the traffic operations team of Aberdeen City Council, which maintains a list of roads for which the Council is the traffic authority.

### *Report 2*

7. The Executive has supplied the information requested although it might have been advisable to include this information in the Explanatory Note as recommended by the Guidance on the drafting of statutory instruments. **The Committee therefore reports the instrument for failure to follow proper legislative practice in this respect.** The Committee notes that the description of the area in this instance follows a different form from that adopted in previous instruments of this kind.

*Question 3*

8. Given that paragraph 4(2) of Schedule 2 modifies the Road Traffic Act 1991 to omit subsections (1) and (2) of section 73 which are relevant only to London the Executive was asked to explain why section 73(1A) which was inserted into section 73 by the Greater London Authority Act 1999 ("the 1999 Act") was not also omitted since it too appears to have no relevance for this Order.

*Answer 3*

9. The Committee has asked why section 73(1A) was not omitted in the modifications made by this Order. As the Committee points out, however, section 73(1A) has no relevance to this Order. It cannot apply in the absence of section 73(1), which has been omitted. The Executive does not therefore consider it necessary to omit section 73(1A).

*Report 3*

10. Whilst it is certainly true that the failure to disapply should have no practical effect for the reason given by the Executive, the Committee is in no doubt that it constitutes defective drafting. The effect of this instrument is to apply the whole of Part II of the 1991 Act as modified by the instrument. As this subsection (1A) has not been removed, it follows that it is applied to the Aberdeen parking area even although this will have no meaning. **It cannot be regarded as other than defective drafting to enact provisions that apparently have no meaning and the Committee reports the instrument for defective drafting in this respect also.**

*Question 4*

11. Schedule 2, paragraph 4(6) modifies section 73(5) of the 1991 Act to substitute "traffic commissioner" for "London authorities" yet "London authorities" no longer appears in section 73(5). Section 283(4) of the 1999 Act substituted "appointing authorities" for all references to "London authorities". The Executive was asked for an explanation.

*Answer 4*

12. The Executive accepts the point made by the Committee in relation to the amendment made by section 283(4) of the Greater London Act 1999 which substituted "appointing authorities" for all references to "London authorities". The Executive considers that the legal and practical effect of the modification is nonetheless clear and in accord with the policy but will make appropriate amendment at the next available opportunity.

*Report 4*

13. **Again, the instrument has been defectively drafted as acknowledged by the Executive and the Committee reports it on that ground.**

*Question 5*

14. Schedule 2, paragraph 4(12)(a) modifies section 73(18) of the 1991 Act to provide "for the words "Joint Committee", in each place where they occur, there shall be substituted "parking authority"". There is only one reference in subsection (18) to "Joint Committee" and that therefore the word "each" is inappropriate. This is a point that was specifically raised with the Executive in

connection with the Perth and Kinross Order and the provision acknowledged to have been defectively drafted. The Executive was asked why the error has been repeated in this instance.

*Answer 5*

15. The Executive accepts that there is only one reference to "Joint Committee" and therefore the words "in each place where they occur" are superfluous. Again, the Executive considers that that point will be of no practical or legal effect but will make appropriate amendment at the next available opportunity.

*Report 5*

16. **Again, this is a drafting error acknowledged by the Executive and the Committee reports it on that ground.** The Committee is particularly disappointed that an error, to which it had drawn attention on a previous occasion and which was acknowledged by the Executive, nevertheless recurred in this instrument.

*Question 6*

17. The Committee asks the Executive to explain why paragraph 6 of Schedule 2 which modifies section 82 of the 1991 Act does not modify subsection (6) to change the reference to a "Minister of the Crown" to "the Scottish Ministers".

*Answer 6*

18. A modification to section 82(6) of the 1991 Act is considered by the Executive to be unnecessary as the 1991 Act is a pre-commencement enactment to which section 117 of the Scotland Act 1998 applies.

*Report 6*

19. The Committee had difficulty with this answer. Section 117 of the Scotland Act provides that-

"So far as may be necessary for the purpose or in consequence of the exercise of a function by a member of the Scottish Executive within devolved competence, any pre-commencement enactment.... shall be read as if references to a Minister of the Crown (however described) were or included references to the Scottish Ministers".

20. Whilst the 1991 Act is a pre-commencement enactment, it seems to the Committee that the problem with the Executive's argument is that the reference to a "Minister of the Crown" was inserted into section 82(6) by the Greater London Authority Act 1999. That Act, is not a pre-commencement enactment nor stated to be treated as such an enactment.

21. In its original form section 82(6) provided simply that all regulations and orders made under the Act were to be made by statutory instrument. The reference to a Minister of the Crown was inserted into section 82(6) of the 1991 Act presumably because the 1999 Act amended the 1991 Act to confer order or regulation-making powers on bodies other than Ministers and Parliament did not consider that such powers should be exercisable by statutory instrument. As the reference to a Minister of the Crown was not effected by a pre-commencement enactment, even although it was inserted into such an enactment, it appears doubtful to say the least that section 117 can apply. If that is the case, then SSI 2003/71

(considered below) which is made in exercise of the powers conferred by Part III of the 1991 Act as modified by the above instrument, cannot be made as a statutory instrument nor be subject to Parliamentary procedure.

22. Furthermore, section 117 of the Scotland Act only applies where it is "necessary for the purpose of or in consequence of the exercise of a function by a member of the Scottish Executive" that a pre-commencement enactment is to be read as if references to a Minister of the Crown were or included references to the Scottish Ministers. It is not certain that it is necessary or in consequence of the functions of the Scottish Ministers that any legislation made under the powers conferred by the present instrument should be made in the form of a statutory instrument.
23. The Committee observes that the Executive appears tacitly to have acknowledged that Part II of the 1991 Act requires to be specifically amended to take account of devolution since the instrument itself changes all the relevant references to "Secretary of State" to "the Scottish Ministers" and the references in section 82(7) to "either House of Parliament" to "the Scottish Parliament". **The inconsistent approach of this instrument to textual amendments reinforces doubts as to the interpretation of section 82(6). The Committee therefore reports the instrument for defective drafting in this respect also.**

**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Road Traffic (Parking Adjudicators) (Aberdeen City Council) Regulations 2003, (SSI 2003/71)

**Type of Instrument:** Negative

**Meeting:** 5th Meeting, 4 March 2003

**Date circulated to members:** 12 February 2003

**Motion for annulment lodged:** No

**T and E deadline to consider SSI:** 10 March 2003

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes  
(Report attached at annex)

## Annex

### The Road Traffic (Parking Adjudicators) (Aberdeen City Council) Regulations 2003, (SSI 2003/71)

#### *Background*

1. The Committee asked the Executive three questions on this instrument.

#### *Question 1*

2. The Executive was asked to explain why the instrument has been made in the form of an SSI subject to annulment, given that SSI 2003/70 (considered above) failed to modify section 82(6) of the Road Traffic Act 1991.

#### *Answer 1*

3. In its reply, reproduced at [Appendix 7](#), the Executive states that the instrument has been made in the form of an SSI because it is an instrument which falls within the category of being an SSI as set out in article 4(1) and (2) of S.I. 1999/1096. The annulment procedure is as set out in section 82(7) of the 1991 Act.

#### *Report 1*

4. This point relates to the final point on SSI 2003/70 above. In terms of section 1 of the Statutory Instruments Act 1946 an instrument is only to be a statutory instrument if the enabling statute so provides. Article 4(1) and (2) of SSI 1999/1096 only apply where the instrument is a statutory instrument within the meaning of this definition.
5. The provision of the 1991 Act that states that Regulations made under that Act are to be statutory instruments is section 82(6) which, as noted above, has not been modified by SSI 2003/70. Accordingly, that subsection only appears to apply to regulations made by a Minister of the Crown not to instruments made by the Scottish Ministers. In terms of section 82(7) of the 1991 Act only instruments made in the form of statutory instruments are subject to annulment.
6. These Regulations are made under powers in the 1991 Act as amended by SSI 2003/70. In the light of the failure of that instrument to modify section 82(6) of the 1991 Act, there is doubt as to whether this instrument should have been made in the form of a statutory instrument and made subject to annulment. **The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on these grounds.**

#### *Question 2*

7. The Committee asked why the Regulations have not been drafted in gender-neutral terms.

#### *Answer 2*

8. These Regulations are drafted in identical terms to previous Regulations made for Edinburgh, Glasgow and Perth and Kinross. The Executive is fully supportive of the view that legislation of the Scottish Parliament should be drafted in gender-neutral terms where possible. In this case, as in previous cases, consideration was given to making these Regulations gender-neutral. It was feared, however,

that in doing so some of the meaning might have been lost and with the result that Regulations differed in some substantial respect to previous Regulations already in force.

*Report 2*

9. The Committee is not persuaded by this explanation. There seems little reason to perpetuate earlier errors in this instrument. **The Committee draws the attention of the lead committee and the parliament to the instrument on the ground of failure to follow proper legislative practice in this respect.**

*Question 3*

10. The Executive was asked to confirm why regulation 4 does not make any provision for information to an appellant of the outcome of a request for an extension to the time limit for appealing, given the Committee's comments on similar Regulations made for Edinburgh, Glasgow and Perth and Kinross.

*Answer 3*

11. The Executive is aware that the Committee has previously raised a query in relation to regulation 4. As the Committee has pointed out, regulation 4 does not make provision for informing an appellant of the outcome of a request for an extension to the time limit for appeal. The request for an extension arises in regulation 3(3). This issue arose at the time of the Committee's consideration of SSI 1999/60 and SSI 2002/400.

12. As previously explained, the procedures introduced are identical to those already in force for Glasgow, Edinburgh and Perth and Kinross. To maintain consistency the Regulations have been framed in identical terms. If further provision were to be made to either regulation 3 or 4, then amendments would be required for the Glasgow, Edinburgh and Perth and Kinross Regulations. The Executive has received no comment to the effect that these Regulations are failing to operate effectively and similarly the Executive has received no requests from any of the Councils operating a scheme to amend the Regulations in the manner suggested by the Committee.

*Report 3*

13. **The Committee is disappointed by this response. It draws the attention of the lead committee and the Parliament to the provision on the ground of unusually limited use of the powers.**

**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Parking Attendants (Wearing of Uniforms) (Aberdeen City Council Parking Area) Regulations 2003, (SSI 2003/72)

**Type of Instrument:** Negative

**Meeting:** 5th Meeting, 4 March 2003

**Date circulated to members:** 12 February 2003

**Motion for annulment lodged:** No

**T and E deadline to consider SSI:** 10 March 2003

**SSI drawn to Parliament's attention by Sub Leg Committee:** Yes  
(Report attached at annex)

## Annex

The Parking Attendants (Wearing of Uniforms) (Aberdeen City Council Parking Area) Regulations 2003, **(SSI 2003/72)**

### Question

1. The Committee asked why the Explanatory Note states that the Scottish Ministers determine the uniform to be worn when in fact, according to section 63A(4) of the Road Traffic Regulation Act 1984 as modified by SSI 2003/70, it is the local authority that performs this function.

### Answer

2. In its reply, reproduced at Appendix 8, the Executive agrees that the local authority performs the function of determining the uniform worn by parking attendants and therefore accepts that the Explanatory Note is misleading in that regard. The local authority will, however, be aware of the function under section 63A(4) of the 1984 Act. The Executive considers that it is therefore unlikely that, in practice, there will be any misunderstanding in the carrying out of the function. Nevertheless the Executive will amend the reference in the annual volume of Scottish Statutory Instruments and on the HMSO website.

### Report

3. As the error in the Explanatory Note it will have no adverse effect in law and can be amended in the manner proposed by the Executive. It is nevertheless important that an Explanatory Note should reflect accurately the terms of the instrument to which it relates. **The Committee therefore reports the instrument on the ground of defective drafting of the Explanatory Note, not however affecting the operation of the instrument.**

**Subject: Petitions on Playing Fields**

Petition PE 422 by Mr James Docherty on protection for school playing fields.

Petition PE 430 by Mrs M Glendinning on the sale of school playing fields.

Petition PE 454 by Mr Peter Watson on the sale of playing fields.

**Meeting No:** 5th Meeting

**Date:** 4 March 2003

**Author:** Note by the Assistant Clerk

**Introduction**

1. Following the referral of the petitions by the Public Petitions Committee on 12 February 2002, this Committee has considered petitions PE 422, PE 430 and PE 454 on three occasions. The background to the Committee's previous consideration of these petitions is summarised in annex A.
2. The following items are attached at annex B for members' information—
  - a letter from the Convener to sportscotland and its response; and
  - a letter from the Convener to the Minister for Social Justice and its response.

**Consideration of the Petitions**

3. The Committee considered responses from Sportscotland and CoSLA on the adequacy of the current planning guidelines and the planning guidelines being developed by the Executive at its meeting on 4 January 2003.
4. On this occasion, members of the Committee sought clarification as to the provisions of Section 77 of the Schools Standards and Framework Act, 1988 in England and Wales as the Act is referred to within the wording of petition PE 422. In response to this, a copy of a letter from the Executive to the PPC on PE 422, which details the provisions of the Act, was circulated to members. This letter was previously considered by the Committee at its meeting on 6 June 2002.
5. Members also noted at the meeting that the sportscotland response raises the issue of council schemes for replacement schools. The response states that replacement schools are often built on existing school playing fields and notes that, whilst schools require high-quality facilities, local authorities are required to deliver replacement schools within limited budgets. The response also notes that sportscotland has approached the Executive about preparing guidance on appropriate standards for playing field provision but as yet have been unable to secure its support for this work.

## **TRANSPORT AND THE ENVIRONMENT COMMITTEE**

6. The Committee noted concern that sportscotland had not secured the Executive's support for the proposed guidance. The Committee agreed to write to the Minister for Social Justice in order to ascertain the Executive's views on the comments of sportscotland regarding guidance on appropriate standards for playing field provision.

*Executive response - February 2003*

7. The response notes that sportscotland made an approach to the Executive, regarding the preparation of guidance on playing field provision at schools, at a meeting held two days after sportscotland responded to the Committee. The response notes that the result of this meeting was an indication to sportscotland that the Executive had no objections with the proposal to prepare guidance.

### **Options for Action**

8. The Committee may consider that there is no need for any further action on these petitions at the present time, given that the outstanding issue raised by the Committee during its last consideration of the petitions has been addressed in the Executive's response.
9. Members could therefore agree to conclude the consideration of these petitions, and write to the petitioners informing them of the Committee's policy not to take a view on individual local planning decisions, and providing them with copies of the correspondence received by the Committee.
10. Alternatively, the Committee can take any other action it considers appropriate.

### **Recommendation**

11. The Committee is asked to consider the response received from the Minister for Social Justice and agree how it wishes to deal with the petitions.

Roz Wheeler  
Assistant Clerk to the Committee  
February 2003

# TRANSPORT AND THE ENVIRONMENT COMMITTEE

## Annex A

### **Background to the Committee's consideration of petitions PE 422, PE 430 and PE454**

#### **Introduction**

The Public Petitions Committee considered these petitions on 12 February 2002 and agreed to refer them to the Transport and the Environment Committee. The Public Petitions Committee requested that these petitions be considered together due to similarities in subject matter.

The Public Petitions Committee recommended that further consideration be given to the adequacy of current procedures and potential conflicts of interests arising from the selling of public land by local authorities and the granting of planning permission for the development of the land by the same authorities.

The Transport and the Environment Committee considered the petitions at its meeting on 6 June 2002 and agreed to write to the Minister for Social Justice on issues arising from the petitions.

The Committee considered the response from the Minister for Social Justice at its meeting on 9 October 2002. The Committee agreed to write to Sportscotland and CoSLA on issues arising from the Executive response.

The Committee considered the responses from CoSLA and sportscotland at its meeting on 4 January 2003 and agreed to write to the Minister for Social Justice on an issue arising from the response from Sportscotland.

#### **Contents of Petitions**

##### *Petition PE 422*

The petitioner is calling for the Scottish Parliament to take necessary steps to implement a similar protection for school playing fields in Scotland as provided by Section 77 of the Schools Standards and Framework Act, 1988 in England and Wales.

##### *Petition PE 430*

The petitioners are calling for the Scottish Parliament to consider (a) whether it is appropriate for local authorities as owners of school playing fields to be able to sell such assets and also grant planning permission to a developer, when such a sale is opposed, and (b) whether in the circumstances of an opposed sale, there should be legally binding guidelines as to the method of consultative procedures.

## TRANSPORT AND THE ENVIRONMENT COMMITTEE

### *Petition PE 454*

The petitioner is calling for the Scottish Parliament to (a) investigate whether the rules governing the disposal of playing fields in Scotland are strong enough and if those rules are being adhered to by local authorities and (b) ensure that planning legislation disallows planning authorities from agreeing a sale of playing fields and designating them a suitable for housing development where they have a conflict of interest.

### **Consideration of the Petitions**

The letter from the Convener, dated July 2002 to the Minister for Social Justice detailed the planning guidelines currently in place in respect to the development of open spaces and playing fields. The letter sought to ascertain the Executive's position on the local authorities' application of these planning guidelines.

### *Executive Response - July 2002*

The Executive response details the safeguards currently in place for the protection of playing fields and states that the Executive are of the view that adequate arrangements are in place. These safeguards include:

- the Town and Country Planning (Notification of Applications) (Scotland) Direction 1997 which requires ministers to be notified if a planning authority has a financial interest in a development;
- the publication of a document entitled *Planning Policy for the Protection of Playing Fields* from sportscotland which has been issued to local authorities;
- planning advice note 65 prepared to support NPPG 11 on sport, recreation and open space which sets out a policy framework for local authorities considering proposals for the redevelopment of playing fields (PAN 65 was published in January 2003); and
- draft NPPG 3 which states that, where a planning proposal from a local authority involves the development of an open space and playing fields in their ownership, ministers must be notified.

The Committee considered the Executive response at its meeting on 9 October 2002. At this meeting, members of the Committee acknowledged the ongoing work being undertaken by the Executive in relation to the protection of school playing fields.

The Committee agreed to write to Sportscotland and CoSLA for their views on the adequacy of the current planning guidelines and the planning guidelines being developed by the Executive.

### *CoSLA response*

In relation to the current planning guidelines available to local authorities in considering planning applications for the development of playing fields, the response states that, in principle there is fairly clear legislative control on planning authorities in such matters and goes on to provide examples of this control.

## TRANSPORT AND THE ENVIRONMENT COMMITTEE

### *sportscotland response*

The response states that sportscotland is satisfied with the guidance within Draft NPPG 3 and NPPG 11, particularly as they advise that local authorities should lead by example in resisting the development of playing fields in their ownership. The response also notes that sportscotland was part of a steering group set up by the Executive to examine local authority open space policies and that the conclusions of the steering group would be reflected in the Executive's PAN on open space. The response states that sportscotland takes its role very seriously and that the planning system is working effectively to this end.

The response raises the issue of council schemes for replacement schools which are often built on existing school playing fields and notes that, whilst schools require high-quality facilities, local authorities are required to deliver replacement schools within limited budgets. The response also notes that sportscotland has approached the Executive about preparing guidance on appropriate standards for playing field provision but as yet have been unable to secure its support for this work.

The Committee considered the responses from sportscotland and CoSLA at its meeting on 4 January 2003. The Committee agreed to write to the Minister for Social Justice in order to ascertain the Executive's views on the comments of sportscotland regarding guidance on appropriate standards for playing field provision.

## **Annex B**

### **LETTER FROM THE CONVENER TO SPORTSCOTLAND**

#### **PETITION 422, 430 AND 454: DISPOSAL OF PLAYING FIELDS**

At its meeting on 6 June 2002, the Transport and the Environment Committee considered three petitions on the disposal of playing fields. These petitions are all concerned with specific local authority planning decisions allowing local authorities to sell playing fields in their ownership for the purpose of building housing developments. Due to the similar nature of the subject matter, the Committee considered all three petitions together.

Following discussion at the meeting, the Committee agreed to write to the Minister for Social Justice to ascertain the Scottish Executive's position on local authorities' application of the planning guidelines in respect to the development of open spaces and playing fields. I attach a copy of this letter and its response for your information. The Committee considered the Executive response at its meeting on 9 October 2002.

The Executive response mentions Category 17 of the Town and Country Planning (Notifications of Applications) (Scotland) Direction 1997. The response notes that sportscotland must be notified of any proposed development affecting playing fields and that in instances where sportscotland advises against a development, ministers must be notified.

Members noted that the response from the Executive states that only two planning applications for developments on playing fields have been called in by Ministers since 1997 as a result of the Direction. The Committee noted that this represented a comparatively small number of applications. The Committee agreed that I should write to you to seek your views on the effectiveness of the current application of the 1997 Direction in light of the limited number of applications called in by Ministers.

The Executive's response also highlighted the work being undertaken by the Executive towards improving the approach of local authorities to open space planning, including the protection of playing fields. This work included the preparation of a Planning Advice Note on planning and open space and a National Planning Policy Guideline on planning and housing. The Committee agreed that I should write to you to ascertain sportscotland's views on the new guidance currently being prepared by the Executive and the role of sportscotland in ensuring the effective application of this guidance.

I should be grateful if you would comment on these issues and I look forward to hearing from you.

I should be grateful for a response by 30 November and for your response to be copied to the clerk to the Transport and the Environment Committee.

Copies of this letter go to the petitioners, Mr James Docherty, Mrs M Glendinning and Mr Peter Watson.

## LETTER FROM SPORTSCOTLAND TO THE CONVENER

Our ref: F7/1/4/2 SC  
Your ref:  
Direct Dial: 0131 472 7518  
email:stewart.cargill@sportscotland.org.uk

**sportscotland**

widening opportunities • developing potential • achieving excellence

27 November 2002

Mr Bristow Muldoon MSP  
c/o Room 3.5  
Transport & Environment Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Dear Mr Muldoon

### **Petitions 422, 430 and 454: Disposal of Playing Fields**

Thank you for your letter of 31 October 2002. I welcome the opportunity to advise you of **sportscotland's** views on the effectiveness of current procedures to protect playing fields.

**sportscotland's** approach to this issue is set out in our *Planning Policy for the Protection of Playing Fields* which was published earlier this year. A copy is enclosed for your information. The overall quality of Scotland's playing fields and changing accommodation is very poor. We are making some progress in tackling this problem with assistance from **sportscotland's** capital programmes but the level of investment required to bring facilities up to a decent standard is considerable. We endeavour to use our role in the planning system to secure improvements in the quality of the playing field stock and to ensure that there are sufficient sports pitches to meet current and future demand.

**sportscotland** is consulted on approximately 50 planning applications per year which involve development on playing fields. In around a third of cases we do not raise objections primarily in cases where the proposals do not diminish the value of the field for team sports, where replacement provision was already proposed, or where the field was in a derelict condition and reinstatement was not feasible. In around two thirds of cases **sportscotland** lodges an objection. In many of these cases the application may be amended to address our concerns or we are able to negotiate acceptable conditions for the provision of replacement or improved playing fields at a nearby location. Consequently the number of applications which have to be referred to the Executive because of a **sportscotland** objection is relatively small, around five per year. It is therefore not surprising that the number of applications called in by the Executive – three to date – is small.

In **sportscotland's** view, the referral procedures under the Notification of Applications Direction 1997 are working effectively to protect playing fields. The procedures ensure that **sportscotland's** objections carry considerable weight and the threat of call-in once an application has been referred to the Executive often leads to these objections being resolved during the intervening period between referral and call-in.



Caledonia House South Gyle Edinburgh EH12 9DQ tel 0131 317 7200 fax 0131 317 7202 website [www.sportscotland.org.uk](http://www.sportscotland.org.uk)

Chairman Alastair Dempster Chief Executive Ian Robson

*sportscotland* is the trading name of the Scottish Sports Council

Only a small number of grass pitches are lost each year, and this has to be considered in the context of Scotland's total pitch stock of around 5,000 pitches, the impact of urban regeneration and changing settlement patterns. Most of the pitches which have been lost in recent years are blaes pitches which are gradually being phased out as unsuitable for modern use. In addition we now have over 100 synthetic grass pitches which can take much more intensive use all year round and in all weather.

The draft National Planning Policy Guideline 3: *Planning for Housing* advises that new housing development should not be located on established open space which contributes to local community needs, and this is cross-referenced to the advice in NPPG 11 to safeguard facilities for sport and recreation. **sportscotland** is satisfied with these guidelines, particularly the advice that local authorities should lead by example in resisting the development of open space and playing fields in their ownership.

In relation to the role of **sportscotland** in ensuring the effective application of this guidance, as well as our consultee status for planning applications we advise planning authorities on the preparation of their Structure Plans and Local Plans. We seek to ensure that playing fields are specifically protected on Local Plan Proposals Maps and that all plans contain policies to protect playing fields from other forms of development. **sportscotland** also encourages local authorities to develop their own playing field strategies. This involves making a local assessment of the supply and demand for all types of sports pitches and developing an action plan for improving provision. We have issued guidance to every local authority on how to do this. We have assisted the City of Edinburgh Council with its playing field strategy, which is nearing completion, and we are just about to start work with Aberdeen.

In our experience objections to the loss of playing fields often come from neighbouring residents who are concerned about the loss of open space rather than the loss of a facility used for sport. This is not to imply that the amenity value of playing fields and their role in providing for informal recreation are unimportant, but our view is that such issues are local issues which are more appropriately considered at a local level by the local planning authority rather than **sportscotland** as a national agency. However we do recognise the multi-functional nature of much of our open space and how well designed and accessible open spaces can promote greater physical activity. **sportscotland** is part of the steering group set up by the Executive to examine local authority open space policies which led to the publication of the research report *Rethinking Open Space* last year and will be reflected in the Executive's forthcoming Planning Advice Note on open space.

Currently one of the most difficult planning issues for **sportscotland** to deal with concerns council PPP schemes for replacement schools, many of which have been built on existing school playing fields or involve disposal of surplus school playing fields. We are keen to ensure that new schools have high-quality facilities for sport, including pitches for outdoor team sports, while local authorities are under pressure to deliver projects within limited budgets. This makes it difficult for local authorities to adhere to the advice provided in NPPG 11 and draft NPPG 3 about the need for local authorities to lead by example in resisting development of playing fields in their ownership. We have approached the Executive about preparing guidance on

appropriate standards for playing field provision at schools but as yet have been unable to secure its support for this work.

I hope that I have been able to reassure you that **sportscotland** takes its role in protecting playing fields very seriously and that the planning system is working effectively to this end. If I can be of any further assistance please do not hesitate to contact me.

Yours sincerely



Stewart Cargill  
Senior Planner

Enc

cc Clerk to the Transport and Environment Committee

## LETTER FROM THE CONVENER TO THE MINISTER FOR SOCIAL JUSTICE

### **PETITION 422, 430 AND 454: DISPOSAL OF PLAYING FIELDS**

At its meeting on 9 October 2002, the Transport and the Environment Committee gave further consideration to three petitions on the disposal of playing fields. The Committee discussed in some detail your letter dated 22 July 2002. On that occasion, the Committee agreed that I should write to **sportscotland** and CoSLA on issues arising from your response.

The Committee considered responses from these two bodies at its meeting on 8 January (copies enclosed).

While **sportscotland** was able to reassure the Committee that it takes its role in protecting playing fields very seriously and that the planning system is working effectively to this end, the Committee did note **sportscotland's** comments that the overall quality of Scotland's playing fields is poor.

The response from **sportscotland** outlines the difficulty local authorities face in resisting the development of playing fields in their ownership when under pressure to complete PPP schemes for replacement schools within limited budgets. According to **sportscotland**, many of these schools have been built on school playing fields or have led to the disposal of surplus school playing fields.

Members noted that **sportscotland** has approached the Executive about preparing guidance on standards for playing field provision where PPP schemes are being used to build replacement schools.

The Committee agreed that I should write to ascertain the Executive's views on **sportscotland's** comments on this matter. In particular, can you inform me what plans the Executive has to prepare guidance on appropriate standards for playing field provision at these new schools (and if the Executive has no such plans, the reasons for this position).

I should be grateful for a response by 14 February 2003 and for your response to be copied to the clerk to the Committee, Callum Thomson.

Copies of this letter go to the petitioners, Mr James Docherty, Mrs M Glendinning and Mr Peter Watson.

# LETTER FROM THE MINISTER FOR SOCIAL JUSTICE TO THE CONVENER



## SCOTTISH EXECUTIVE

Minister for Social Justice  
Margaret Curran MSP

Victoria Quay  
Edinburgh EH6 6QQ

Bristow Muldoon MSP  
Convener  
Transport & Environment Committee  
c/o Room 3.5  
Committee Chambers  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Telephone: 0131-556 8400  
scottish.ministers@scotland.gsi.gov.uk  
<http://www.scotland.gov.uk>

REC  
13 Feb 2003 10 February 2003

Dear Bristow,

Thank you for your letter of 15 January about your consideration of petitions 422,430 and 454 on the disposal of playing fields and comment received from **sportscotland** and CoSLA. I can confirm that **sportscotland** made an approach to the Scottish Executive about work which they were proposing to commission on the preparation of guidance on playing field provision at schools. This was discussed at a meeting between Executive officials and representatives of **sportscotland** on 29 November 2002 - coincidentally two days after **sportscotland**'s letter to the Committee. The Executive indicated to **sportscotland** at that meeting that they had no objections to **sportscotland** going ahead with their proposal.

The Executive has no separate plans to develop guidance on this topic. We published on 3 February a strategy for the school estate - "Building our Future - Scotland's School Estate" - which stresses the importance of good design during the planning and development process of school buildings and their associated facilities

We have noted that **sportscotland** have observed that school PPP projects are currently one of the most difficult planning issues with which they have to deal. PPP projects are providing a very significant opportunity for education authorities to replace school buildings and their associated facilities, leading to a marked improvement in the educational environment for pupils and teachers and to the overall range of facilities which can be made available to the wider community where there is demand.

Where schools are replaced or relocated to better match the demands of current settlement patterns, whether through PPP arrangements or other funding routes, there may be circumstances in which some areas of sites occupied by schools can be considered for disposal by the local authorities. Where development proposals are brought forward for school playing fields, they are subject to the consultation and notification procedures which **sportscotland** have described to the Committee. We have noted that **sportscotland** are satisfied that these procedures are working effectively to protect playing fields.



A copy of this letter has been copied to the clerk to the Committee as requested. I hope that this information reassures the Committee that there are adequate arrangements in place to protect playing fields

*Best wishes,*

*Margaret*

**MARGARET CURRAN**



**TRANSPORT AND THE ENVIRONMENT COMMITTEE**

**Subject:** Petition PE517 by Mr Rob Kirkwood on water treatment plants

**Meeting No:** 5th Meeting, 4 March 2003

**Author:** Note by the Senior Assistant Clerk

**Introduction**

1. This paper invites the Committee to consider a letter from the Minister for Environment and Rural Development, which responds to questions raised by the Committee in relation to Petition PE517 by Mr Rob Kirkwood on water treatment plants.

**Background**

2. The petition expresses concern that local authorities appear to be able to allow water treatment plants to operate outwith the terms of existing environmental protection and planning legislation. The petitioner call for the Scottish Parliament to investigate this situation.
3. The petitioner is also calling for the Parliament to investigate possible solutions to the problem of noxious odours and airborne bacteria released from such plants. The petitioner suggests covered conical shaped tanks positioned far away from residential communities as a possible solution.
4. The petitioner is specifically concerned with sewage processing at the Seafield Water Treatment Plant in the Leith Links area of Edinburgh. The petitioner is concerned that the odours and gases from this plant are having a detrimental impact on the health and quality of life of nearby communities.
5. Members will recall that this petition was first considered at a meeting of the Committee on 8 January 2003. At this meeting a covering note was circulated on the petition, along with correspondence relating to the petition collated by the Public Petitions Committee. If any members wish an additional copy of this covering note, they should contact the clerk in advance of the meeting on 4 March. A summary of the main issues raised in the petition (which was contained in the covering note) is reproduced at Annex A.

**Action by the Committee**

6. At the meeting on 8 January, the Committee agreed to write to the Minister for Environment and Rural Development to seek his view on a number of issues arising from the petition. The letter from the Convener to the Minister is attached at Annex B of this covering note. As well as outlining some of the Committee's general views on the petition, the letter requests further information in response to four questions:

- What is the Executive's understanding of the respective role for local authorities; SEPA; HSE and Scottish Water in regulating water treatment plants in respect of odour nuisance? In the Executive's opinion, how effective is the current regulatory system?
  - What is the Executive's understanding of the benefits of covering primary tanks, or the use of conical primary tanks in the water treatment process?
  - Has the issue of responsibility for odour control been considered during the review of SEPA's responsibilities? When will this review be concluded?
  - What is the Executive's understanding of the regulatory regime for controlling odour nuisance in England & Wales and elsewhere in Europe?
7. At the meeting on 8 January, the Committee noted that the limited time available in the period before dissolution meant that it would be impracticable to carry out further examination of this issue following receipt of the response from the Minister. The Committee noted, however, that it would be open to the Committee to refer the petition to the Public Petitions Committee so that it could be reallocated to a future Committee at the start of the next parliamentary session.

### **Response from the Minister for Environment and Rural Development**

8. The response to the Convener's letter from the Minister for Environment and Rural Development is attached at Annex C of this covering note. It refers to each of the four points raised by the Committee. The response acknowledges that circumstances can arise in which measures to control odour nuisance prove not to be effective or appropriate.
9. The response also notes recent developments in England and Wales, where a recent court decision meant that local authorities could be prevented from taking enforcement action against Water Companies that did not comply with removing offensive odour. In light of this decision, the Department for Environment Food and Rural Affairs (Defra) issued a consultation on alternative approaches for dealing with odour nuisance from public sewers and sewage treatment works.
10. The consultation was issued on 23 December 2002, with a closing date of 28 March 2003, and it is attached at Annex D of this covering note.<sup>1</sup> Members may wish to note that the consultation document includes a response form which indicates the specific matters on which Defra is seeking views.
11. The Minister for Environment and Rural Development's letter indicates that the court decision in England and Wales may have implications in Scotland. The letter therefore states that the Executive proposes to undertake a parallel consultation in Scotland with the aim of enhancing the guidance and legislation for remedying odour problems from sewage treatment works. This consultation

---

<sup>1</sup> Link to consultation is set out below:

[http://www.defra.gov.uk/environment/consult/sewageodour/pdf/sewage\\_odour\\_consult.pdf](http://www.defra.gov.uk/environment/consult/sewageodour/pdf/sewage_odour_consult.pdf)

process will include the commissioning of a full regulatory impact assessment, which will include comparisons with other regulatory regimes in Europe.

### **Recommendation**

12. The Committee has previously agreed that it would not be feasible to take any further action on the petition prior to dissolution. One option, however, is to refer the petition to the Public Petitions Committee so that it could be reallocated to a future Committee at the start of the next parliamentary session. If members were minded to do this, it is recommended that any further action on the petition is left to its successor committee so that committee is not bound to a particular course of action.
13. Alternatively, members may feel that proposed consultation by the Executive represents a suitable means of addressing the petitioner's concerns, and therefore that it would be appropriate to conclude the petition by making the petitioner aware of the proposed consultation.
14. The Committee is invited to consider whether, in light of the response by the Minister for Environment and Rural Development to the issues raised by the Committee, it wishes to conclude the petition or refer it back to the Public Petitions Committee for reallocation to a future Committee.

Alastair Macfie  
Senior Assistant Clerk  
February 2003

## **ANNEX A: SUMMARY OF ISSUES RAISED IN PETITION PE 517**

[Extract from covering note on Petition PE 517 circulated for meeting on 8 January]

### *Role of local authorities in the regulation of water treatment plants*

1. The Public Petitions Committee raises the issue of local authorities considering planning applications for developments which they own. The petitioner is concerned that local authorities are not exercising the powers available to them to prevent the release of offensive odours from water treatment plants.
2. The Chief Executive of Edinburgh City Council, in his response to the Clerk from the PPC, notes that the Seafield plant development was proposed by the Edinburgh Corporation, the authority responsible for granting planning permissions and setting planning conditions. Under the Town and Country Planning (Development Local Planning Authorities) (Scotland) Regulations 1949, which were in place when the Seafield plant was approved, a local authority proposing its own development was required to inform the Secretary of State of the proposal. The Secretary of State was required to inform the authority of any objection within one month of this notification, otherwise the proposal was automatically approved.
3. The response notes that the Seafield plant was automatically approved, and that under the 1949 Regulations, no planning conditions were required to be placed on the plant as the authority responsible for enforcing the plant's conditions owned the plant itself, rendering planning conditions impracticable. Therefore no planning conditions were placed on the Seafield plant when it was initially approved.
4. The first planning condition of relevance to the prevention of the emission of offensive odours was placed on the plant in 1998 when an application for the modification of the works and new process buildings was approved.
5. The Chief Executive of Edinburgh City Council's response to the PPC, outlines the provision within the Town and Country Planning (Scotland) Act 1997 which enables the planning authority responsible for enforcing planning conditions to serve an enforcement notice on any operator which breaches a planning condition.
6. Planning condition EJ2 for the Seafield plant states that the hydrogen sulphide level should be below 10 parts per billion at the sewage works boundary for 95% of the time (Hydrogen sulphide is a common source of offensive odours). The Council's response states that no breach of planning conditions at the Seafield has ever been suggested.
7. The Chief Executive of Scottish Water's response to the PPC states that the PFI contract for the Seafield plant, mirrors the planning conditions to a great extent. The contract includes the same provision for controlling hydrogen sulphide as is

contained in planning condition EJ2. The response notes that hydrogen sulphide levels are measured continually at six points around the boundary of the works. Each failure to meet the standard results in a financial penalty. The response notes that financial penalties for failure to meet odour standards at the Seafield plant have been substantial.

8. The response from Edinburgh City Council notes that Section 79 of the Environmental Protection Act 1999 established statutory nuisances including smell nuisance and provides local authorities with the power to serve a Notice requiring abatement on such nuisances. Conviction for failure to comply with an abatement notice can result in a fine of up to £20,000. The response states that nuisance caused by odours is objective and difficult to substantiate, and that in order for the Council to prosecute, the smell would require to be witnessed by two or more Council officers.

#### *Role of SEPA in the regulation of water treatment plants*

9. The Chief Executive of SEPA's response to the PPC outlines SEPA's role in the regulation of water treatment plants in relation to odours. It states that the Controlled Waste Regulations 1992 prescribes that sewage treated within a sewage treatment works is not treated as industrial or commercial waste and therefore SEPA does not have powers to control the treatment process or the odours produced by the sewage being processed.
10. It states that SEPA is responsible for sewage imported from other works processed in sludge management facilities such as the facility at the Seafield plant. The response states that the malodorous air produced from this facility is treated in odour abatement plants and then assessed by SEPA. The response claims that this processed air is not the cause of the odour problems.

#### *The Control of Substances Hazardous to Health Act 1998*

11. The petition mentions the need for water treatment plants to adhere to the provisions of the Control of Substances Hazardous to Health Act 1998. In a response to the PPC, a Scottish Executive official explains that the Seafield plant is subject to stringent safety standards aimed at preventing biological hazards associated with airborne bacteria. These safety standards are enforced by the Health and Safety Executive which is responsible for ensuring that employees of water treatment plants are not exposed to hazardous substances. The response notes that matters relating to the work of the Health and Safety Executive are reserved to the UK Parliament.

#### *Health impacts on surrounding communities*

12. The petition claims that the odours and gases released from water treatment plants have a detrimental impact on the health of those living in nearby communities.
13. The Executive response to the PPC notes that there is some research evidence which indicates that sewage treatment plants can generate aerosols containing

micro-organisms which are hazardous health. The response states that there is evidence suggesting work activities involving sewage can lead to bad health and notes that compensation claims from East of Scotland Water (EoSWA) staff, alleging health problems due to aerosols, are due to be heard in the courts.

14. The response states that bacteria suspended in such aerosols can be isolated up to 10 miles downwind of a waste water treatment plant, but that it is unclear whether or not bacteria retain any virulence and are present in sufficient numbers to cause harm to human health when released from water treatment plants. In considering the health aspects of the petition, Members may wish to bear in mind that health issues do not primarily fall within the remit of the Transport and the Environment Committee.

#### *Solutions to the Odour Nuisance*

15. The petitioner claims that the investment necessary to solve the problem of odour nuisance has not been undertaken at water treatment plants under PFI contracts such as the Seafield plant. The petitioner suggests that conical shaped covered primary tanks, situated away from residential areas provide a solution to the problem of odour nuisance from water treatment plants.
16. Scottish Water's response to the PPC notes that there have been significant problems at the Seafield plant and that the only remaining problems are caused by the primary tanks. The response notes a large number of complaints in March 2002 when problems occurred during maintenance but also notes that, on the whole, the number of complaints has been substantially reduced following investment by Stirling Water under the PFI contract.
17. In relation to the petitioner's suggestion of conical shaped primary tanks, the response states that Scottish Water has no plans to replace the primary tanks at the Seafield plant. The response suggests that the problem with the primary tanks used at present is that the sewage sludge is not moving through the tanks briskly enough and is becoming septic and produces offensive odours. The response outlines a plan currently being put into action by Stirling Water to address this problem and notes that it will take time to confirm that these measures are successful.
18. In relation to the petitioner's request for primary tanks to be covered, the response from Edinburgh City Council to the PPC points out that covered tanks were identified as the 'only suitably convincing means of odour mitigation' by an Executive reporter investigating a water treatment plant at High Bogany, Rothesay in December 2001. However, the response from Scottish Water to the PPC notes that the petitioner's proposal to cover primary tanks would be unrealistic for the vast majority of water treatment plants due to the substantial costs involved.

## **ANNEX B: LETTER FROM THE CONVENER TO THE MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT**

### Transport and the Environment Committee

Ross Finnie MSP  
Minister for Environment and Rural Development  
Scottish Executive  
Pentland House  
47 Robbs Loan  
Edinburgh  
EH14 1TY

21 January 2003

#### **PETITION PE 517 ON ENVIRONMENTAL AND PLANNING ISSUES RELATING TO WATER TREATMENT PLANTS**

At its meeting on 8 January 2003, the Transport and the Environment Committee considered for the first time petition PE 517 by Rob Kirkwood on environmental and planning issues relating to water treatment plants. The petition is specifically concerned with sewage processing at the Seafield Water Treatment Plant in the Leith Links Area of Edinburgh. The petitioner claims that offensive odours and noxious gases released from the plant are having a detrimental impact on the health and quality of life of residents in nearby communities.

During its consideration of the petition, members of the Committee expressed their sympathies with residents in the Seafield area and noted that instances of odour nuisance occur throughout Scotland. The Committee also noted the frustration that communities can feel – because of the transient nature of the problem – in persuading the relevant authorities of the extent of the problem.

Members discussed the current system for regulating odours, noting that, SEPA is responsible for regulating odours that are emitted from water treatment plants processing sewage imported from other plants and local authorities are responsible for regulating odours from the processing of all other sewage. This system leads to situations such as that at Seafield where SEPA and the local authority are responsible for regulating different odours emitted from processing different types of sewage at the same plant.

The ongoing situation at Seafield allied to anecdotal evidence of problems elsewhere in Scotland led the Committee to think that the regulation of odour nuisance, including the relationship between local authorities and other regulators, is an issue that requires further examination.

The Committee recognises that this work will not be able to be carried out in the time remaining in this parliamentary session but it agreed that it would be useful to write to you to ascertain the Executive's position on a number of issues:

- What is the Executive's understanding of the respective role for local authorities; SEPA; HSE and Scottish Water in regulating water treatment plants in respect of odour nuisance? In the Executive's opinion, how effective is the current regulatory system?
- What is the Executive's understanding of the benefits of covering primary tanks, or the use of conical primary tanks in the water treatment process?
- Has the issue of responsibility for odour control been considered during the review of SEPA's responsibilities? When will this review be concluded?
- What is the Executive's understanding of the regulatory regime for controlling odour nuisance in England & Wales and elsewhere in Europe?

I should be grateful if you would respond by Friday 21 February 2003.

I am copying this letter to Beth Staffell, Environment and Rural Development Department Committee liaison officer and Callum Thomson, Clerk to the Committee.

Yours sincerely

**Bristow Muldoon MSP**

## ANNEX C: LETTER FROM THE MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT

Minister for Environment & Rural Development  
**Ross Finnie MSP**

Pentland House  
47 Robb's Loan  
Edinburgh EH14 1TY

Bristow Muldoon MSP  
Convener  
Transport and the Environment Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Telephone: 0131-556 8400  
scottish.ministers@scotland.gsi.gov.uk  
<http://www.scotland.gov.uk>

24 February 2003

---

Thank you for your letter of 21 January, following the referral to you by the Public Petitions Committee of Petition 517 from the Leith Links Residents Association. This petition related specifically to odours and airborne bacteria from waste water treatment plants.

You may be aware that Scottish Water, the Scottish Environment Protection Agency, The City of Edinburgh Council and my Department all gave detailed responses to the Public Petitions Committee last year about a number of the issues raised by this petition. Your letter develops some of the issues raised by the petition and by the PP Committee's consideration of it, and seeks the Executive's view on a number of specific aspects.

Four specific questions are covered in your letter and I would answer them as follows: -

- *What is the Executive's understanding of the respective role for local authorities; SEPA; HSE and Scottish Water in regulating (Waste) water treatment plants in respect of odour nuisance? In the Executive's opinion, how effective is the current regulatory system?*

### **Local Authorities**

As is described in greater detail in the section relating to the regulatory regime in England & Wales, local authorities have enforcement powers to deal with a range of statutory nuisances, including odour, under section 79 of the *Environmental Protection Act 1990*. Until recently, it had been assumed this would include odour nuisance from waste water treatment plants. However, as is made clear in that section, it has now been the subject of a decision in English case law, which suggests this is not the case.

Local authorities also have powers under planning legislation to impose conditions on approval of planning applications, and these could include requirements relating to odour

control. Failure to comply with such conditions would constitute a breach of planning control.

## **SEPA**

The legislative provisions for regulating odour from water treatment plants is complicated by several factors. These include the capacity of the plant, whether sludges are disposed of or recovered, and whether the sludge is imported from another plant. The respective roles of SEPA are as follows: -

Certain categories of water treatment plants (e.g. those with a capacity exceeding 50 tonnes per day that import non-hazardous waste which then undergoes treatment and the resultant sludges are disposed of) will fall within the scope of the *Pollution Prevention and Control (Scotland) Regulations 2000*. In these cases SEPA would be able to impose the odour control provisions contained in the PPC Regulations.

Other water treatment plants (e.g. those with smaller capacities or those that do not dispose of sludges) will not fall within the scope of the PPC Regulations. It is the Executive's understanding that most water treatment plants, including Seafield, do not dispose of sludges. Rather, they go for recovery under an exempt activity or in accordance with the *Sludge (Use in Agriculture) Regulations 1989*. In this case, the imported sludges would continue to be regulated under Part II of the *Environmental Protection Act 1990* which would allow SEPA to impose conditions to regulate odour emissions.

If a water treatment plant is currently regulated under Part I of the *Environmental Protection Act 1990* (IPC and LAPC controls), SEPA's authorisation can include conditions to control odour. However, the Executive understands that no water treatment plants in Scotland currently fall within the scope of Part I.

If a water treatment plant is only regulated under the *Control of Pollution Act 1974*, only discharges to water are regulated. In that case SEPA would be unable to regulate odour. Instead, that function would fall to local authorities under statutory nuisance controls.

Waste management legislation empowers SEPA to control odour from plants treating waste but the *Controlled Waste Regulations 1992* prescribe that sewage treated within the curtilage of a sewage treatment works as an integral part of the operation of the works is not treated as industrial or commercial waste. Consequently, SEPA does not have powers to control odour from these plants. Odour from these plants would be controlled through planning legislation or statutory nuisance legislation regulated by the local authorities.

Where sewage sludge is imported for treatment from another works it is no longer exempt from the waste categories referred to above. In the case of larger plants like Seafield, where the amount of sludge brought into the works exceeds 10,000 cubic metres per annum, there is a requirement that that part of the plant taking imported sludge must have a waste management licence under Part II of the *Environmental Protection Act 1990*. This licence can include conditions relating to the treatment of malodorous air from the plant such that it does not give rise to offensive odour outwith the site boundary. If the quantity of sludge brought into the works in any 12-month period does not exceed 10,000 cubic metres the activity can be registered exempt from the full waste licensing regime under the *Waste*

*Management Licensing Regulations 1994.* These regulations provide that operations must not cause nuisance through odour.

In summary, SEPA has powers under the Environmental Protection Act 1990 and the PPC Regulations to control offensive odours. SEPA is unable to control odour from premises falling within the scope of the Controlled Waste Regulations 1992 or regulated under the Control of Pollution Act 1974. In these cases, SEPA relies on local authorities to exercise statutory nuisance powers to regulate odour.

## **HSE**

Our understanding of the Health and Safety Executive's functions are that they ensure risks to people's health and safety from work activities are properly controlled, rather than that they have any specific role in relation to the regulation of operational matters in industry. Health and Safety legislation provides that employers have to look after the health and safety of their employees; that employees and the self-employed have to look after their own health and safety; and that all have to have regard to the health and safety of others, for example members of the public who may be affected by their activities.

## **Scottish Water**

Scottish Water has to have regard to the conditions imposed on it by the planning authority; by the legislative provisions relating to public health and the environment; by conditions required by the environmental regulator; and in relation to its own powers to impose conditions on discharges from its business customers.

## **Effectiveness of Current Regulatory Regime**

The regulatory regime has been explained in some detail above, and in the section below on the regulatory regime in England & Wales. There are a number of ways in which odour can be controlled. However, it seems clear that circumstances can arise in which these measures prove not to be effective or appropriate.

- *What is the Executive's understanding of the benefits of covering primary tanks, or the use of conical primary tanks in the (Waste) water treatment process?*

This is specifically an operational matter for Scottish Water and the water industry in general. Our understanding is that expenditure would not only involve the costs of covering tanks, but also the additional need for odour control and the difficulties of maintenance. Where tanks have been covered in Scotland, these were part of the design when built. Fitting covers after the tanks have been built is much more difficult.

- *Has the issue of responsibility for odour control been considered during the review of SEPA's responsibilities? When will this review be concluded?*

The current Policy and Financial Management Review of SEPA has been set the task of examining the role of SEPA in relation to other bodies with responsibilities for environmental protection and regulation. We expect that the review will be concluded by the summer

- *What is the Executive's understanding of the regulatory regime for controlling odour nuisance in England & Wales and elsewhere in Europe?*

## **England & Wales**

Odour nuisance from Sewage Treatment Works has been rising in profile both south and north of the border over the last year. It became apparent there was a gap in legislation preventing Local Authorities taking enforcement action against Water Companies that did not comply with removing offensive odour, where voluntary action between authorities had failed to resolve the situation.

This followed the English Court case of *East Riding of Yorkshire Council v Yorkshire Water Services Ltd (2001)*. This ruled that it was not Parliament's intention to include sewage treatment works within the meaning of "premises" in Section 79 of the Environment Protection Act 1990 (EPA) – at least as far as England and Wales were concerned. Effectively, this allowed Water Companies to ignore other Local Authority abatement notices under Section 79 of EPA 1990. The context of that case explains why on 23 December 2002 DEFRA issued its consultation paper putting forward alternative approaches for dealing with odour nuisance from public sewers and sewage treatment works.

The English consultation paper presents four options for consideration. The first is to maintain the existing arrangements with the addition of a new voluntary code of practice. The other three options (which would all require legislative change) involve bringing odour from sewage treatment works within the scope of the statutory nuisance regime of EPA 1990; the Local Air Pollution Prevention and Control Regime; or Integrated Pollution Prevention and Control (IPPC) respectively.

Although section 79 of the EPA 1990 has not been tested in a Scottish Court with regard to sewers and sewer treatment works, it is possible that similar arguments would prevail in similar circumstances.

Subsequent to DEFRA issuing their consultation on 23 December, Hounslow Council are to appeal to the High Court against the decision of the Yorkshire Court that S79 of EPA does not apply to Sewage Treatment works. That appeal is to be heard on 10 March. In view of the Appeal hearing, it has been recommended that any Scottish consultation be held back until that time. The Deputy Minister for Environment and Rural Development has agreed to a Scottish consultation after 10 March, pending the outcome of the Hounslow Council Appeal.

SE officials have agreed with DEFRA at official level that the consultant commissioned to undertake the England-only regulatory impact assessment (RIA) will as appropriate extend his contract to include Scotland. The RIA will include details of comparative regulatory regimes elsewhere in Europe.

## **Europe**

We understand the consultant did advise verbally that his research to date showed no European country having any national legislation relating to control of sewage odour.

Germany has some Federal Laws and France some Regional laws on odour under Nuisance control. By contrast, in the USA, there is no comparative legislation, and they rely entirely on private prosecutions to sue water companies.

**To sum up, the Executive intend to issue a parallel consultation on this issue, pending the outcome of the Hounslow Council Court Appeal on 10 March, with a view to enhancing the guidance and legislation for remedying odour problems from sewage treatment works. This will include the commissioning of a full RIA, which will include comprehensive comparative regulatory regimes in Europe.**

**ROSS FINNIE**

**TRANSPORT AND THE ENVIRONMENT COMMITTEE**

**Subject:** Briefing by Scottish Parliament Information Centre on Current Planning Issues

**Meeting No:** 5th Meeting

**Date:** 4 March 2003

**Introduction**

1. This covering note introduces a paper prepared by Alan Rehfisch of the Scottish Parliament Information Centre (SPICe) on recent developments in planning policy and proposed changes to legislation which are being considered by the Scottish Executive.
2. The SPICe paper was requested by members in advance of a briefing by the Deputy Minister for Social Justice and the Scottish Executive's Chief Planner on current planning issues. This briefing will take place at the Committee meeting on 4 March, and it is envisaged that the Deputy Minister and the Chief Planner will provide an introductory briefing before taking questions from members.

**SPICe briefing**

3. The SPICe briefing attached to this covering note sets out chronologically the changes to the Town and Country Planning system since the inception of the Scottish Parliament. It then highlights current planning issues which are subject to ongoing work by the Executive, and which members may wish to discuss with the Minister on 4 March. Finally, the briefing provides background information relating to Environmental Impact Assessment regulations and Planning Advice Note 58.<sup>1</sup>

**Petition PE 508**

4. Members will recall that Petition PE508 by Philip Graves on behalf of Strathblane Community Council raised concerns in relation to the implementation of the Environmental Impact Assessment (EIA) and Planning Advice Note 58 (PAN 58) guidelines. The Committee agreed at its meeting on 8 January 2003, to pursue these issues with the Scottish Executive at the planning briefing on 4 March.
5. The specific concerns highlighted in the petition were as follows—
  - that paragraph 27 of PAN 58, which highlights the importance of public consultation as early as possible in the construction of an EIA, is not being

---

<sup>1</sup> Hyperlinks to relevant Scottish Executive documents referred to in the paper can be found in the electronic version of the paper.

fully adhered to and consequently, the planning process is lacking transparency and speed.

- that the current system of the developer employing a consultant to carry out an EIA creates a conflict of interest for the consultant and creates the possibility of bias toward the developer.
  - that the EIA process is not properly overseen in particular in relation to the site selection process.
6. The context of the petition is the petitioners' experience of West of Scotland Water's (WoSW) application to build water treatment works near Milgavnie. The petitioners, who represent Strathblane Community Council, claim that they were unaware of the proposed application until a few months after the site had been recommended to WoSW Board.
  7. At the meeting on 8 January a covering note was circulated on the petition, along with correspondence relating to the petition collated by the Public Petitions Committee. If any members wish an additional copy of this covering note, they should contact the clerk in advance of the meeting on 4 March. A section of the SPICe briefing note attached to this paper sets out further information on EIA regulations and PAN 58.

### **Recommendation**

8. The Committee is invited to consider the attached briefing paper from SPICe. The Deputy Minister for Social Justice and the Scottish Executive Chief Planner will be present at the meeting on 4 March to answer questions on current planning issues.
9. Following the briefing session with the Deputy Minister and the Chief Planner, the Committee is invited to consider whether there are any outstanding issues in relation to Petition PE 508. While it would not be feasible to take further action on the petition prior to dissolution, it would be open to the Committee to refer the petition to the Public Petitions Committee so that it could be reallocated to a future Committee at the start of the next parliamentary session.

Alastair Macfie  
Senior Assistant Clerk  
February 2003

# BRIEFING PAPER BY SPICe ON TOWN AND COUNTRY PLANNING

## 1. Purpose of Report

The purpose of this report is to outline recent developments in planning policy and proposed changes to legislation, which are being considered by the Scottish Executive.

## 2. Background

This section provides a chronology of changes proposed by the Scottish Executive to the Town and Country Planning system since the inception of the Scottish Parliament.

6 January 1999: Land Use Planning Under a Scottish Parliament: Callum Macdonald MP, then Scottish Planning Minister, launched the Land Use Planning Under a Scottish Parliament consultation paper, which posed 13 questions on how the planning system could be improved.

30 October 1999: Land Use Planning Under a Scottish Parliament: Overview of responses to consultation: This document briefly summarised the 128 responses to the Land Use Planning Under a Scottish Parliament consultation. The main conclusions being:

- many people believe that the main elements of the system are sound
- concerns were raised about delays in plan preparation, poor strategic plans, mediocrity of development and failure of the system to be proactive and positive
- planning legislation should contain specific reference to sustainable development
- concerns about subsidiarity, information and accountability
- need for a more positive and proactive approach to managing the system to the advantage of Scotland as a whole

Land Use Planning Under a Scottish Parliament: Digest of Responses: A comprehensive summary of the responses to the Land Use Planning Under a Scottish Parliament consultation.

24 November 2001: Sam Galbraith MP MSP, the then Minister responsible for Planning, announced the Scottish Executive's intention to undertake a review of strategic planning in Scotland in a speech at the Royal Town Planning Institute's annual conference.

15 June 2001: Review of Strategic Planning: This document outlined the Scottish Executive's proposals for changes to the Strategic Planning system, the key proposals being:

- Preparation of a Scotland wide planning document
- Sharper focus for National Planning Policy Guidelines (NPPGs)
- Removal of the blanket requirement for two-tier plans
- A requirement for strategic plans for Scotland's four main city regions

The document went on to pose 18 specific questions, relating to:

- the role of the Scottish Executive in the statutory planning system
- the form and function of Structure Plans
- the form and function of local plans
- the relationship between waste subject plans and the statutory planning system
- minerals planning

Replies were requested by 31 October 2001.

16 November 2001: Getting Involved in Planning Consultation Paper: This consultation paper posed 32 questions covering many aspects of the planning system, with a particular focus on the involvement of people and communities in:

- national planning policy
- development plans
- planning applications
- enforcement

Responses were requested by 31 March 2002.

27 February 2002: Review of strategic planning consultation paper: Analysis of responses: The Executive commissioned Geoff Peart Consulting to produce this document, which analysed the 311 responses received to the review, including 151 relating specifically to concerns about the possible break up of the Fife structure plan area.

25 April 2002: Review of Strategic Planning: Digest of responses to consultation: This paper provided brief details of the responses made to the questions posed in the consultation under the following categories:

Local authorities, Non-departmental public bodies, Other public bodies, Development industry, Infrastructure providers, Mineral operators, Other businesses, Professional organisations, Academic/Research units, Consultants, Community Councils, Voluntary Organisations and Private Individuals

27 June 2002: Review of Strategic Planning – Conclusions and next steps: This document analysed the responses received to the review of strategic planning and outlined the Executive's thinking with regard each question posed in the consultation. The document contained firm proposals from the Executive, which would not require legislation, to:

- rename National Planning Policy Guidelines as Scottish Planning Policies
- publish a non-statutory National Planning Framework, to cover the period up until 2025, by late 2003
- commission consultants to work on model plan policies, which might apply across Scotland
- encourage greater use of supplementary guidance by local authorities, to supplement statutory plans

- undertake a review of the examination in public, local plan inquiries and public local inquiries under the title “Streamlining Inquiries”

The following proposals, which the Executive indicated it intends to pursue, are likely to require primary legislation and could form the basis of a Planning Bill:

- a statutory requirement to establish a joint Committee to oversee the preparation of strategic development plans (the replacement for structure plans)
- strategic development plans should be more focused and action oriented
- strategic development plans should be locationally rather than site specific
- strategic development plans and local plans should be accompanied by action plans with a two-year life
- there will be a statutory requirement to hold a public examination of a strategic development plan
- strategic development plans need only be drafted for the four city regions

21 October 2002: Getting Involved in Planning: Summary of Evidence: The Scottish Executive commissioned Geoff Peart Consulting to analyse and summarise the key outcomes of three distinct research and consultation projects, namely:

- Getting Involved in Planning
- Getting Involved in Planning: Perceptions of the wider public
- Planning issues omnibus survey

21 October 2002: Getting Involved in Planning: Perceptions of the wider public: The Scottish Executive commissioned the School of Planning and Housing at Heriot-Watt University/Edinburgh College of Art to undertake research into the public’s perception of the planning system and their role within it. The researchers made three key recommendations:

1. The Executive should produce national policy guidance on public participation in planning
2. The Executive should establish a training programme aimed at promoting changes in attitude and provide for capacity building
3. The Executive should establish a pilot project support fund to promote the creation of new forms of interaction with the public and decision-making within local authorities and disseminate best practice

22 October 2002: Getting Involved in Planning: Analysis of Consultation Responses: The Scottish Executive commissioned Geoff Peart Consulting to analyse the 402 responses to the Getting Involved in Planning consultation. The main findings can be summarised as follows:

- Most respondents considered effective involvement was not only a matter of better information and procedures but also required increased capacity building amongst participants.
- The proposal to set up local policy planning forums had broad support.
- Giving people early warning of changes to plans, which might affect them, was generally supported although planning authorities were concerned about the practicalities of the process.

- All groups supported measures intended to strengthen the independence of the Reporter. There was also support for less legal and more informal and convenient Public Local Inquiries.
- There was substantial support for all of the proposed changes to development control procedures, with the exception of those affecting non-domestic lessees. Local authorities expressed concerns about the resource implications of assuming neighbour notification duties.
- There was a majority view that mediation in planning was worth trying as an additional option in some dispute resolution circumstances, however, many practical issues still needed to be resolved. Improved national co-ordination of planning policy, development of electronic opportunities and Helpline services all attracted wide support.
- Local authorities suggested that the review of funding should be wider than the proposed review of fee levels.
- There were tensions between objectives of greater involvement and a more speedy process.

31 October 2002: Getting Involved in Planning: Digest of Responses to Consultation: The Scottish Executive commissioned Geoff Peart Consulting to produce a detailed analysis of the responses to the Getting Involved in Planning consultation broken down by stakeholder group.

15 November 2002: Scottish Planning Policy SPP1: The Planning System: The first SPP is published. This is a direct replacement for NPPG1: The Planning System.

### 3. Current Position

**National Planning Framework:** The Executive is committed to producing a document that will identify key strategic infrastructure needs, settlement patterns, economic prospects and environmental challenges over the next 25 years. They are currently undertaking consultations with key stakeholders with a view to publishing the National Planning Framework towards the end of 2003.

**Town and Country Planning (Scotland) Bill:** The Executive set out some of the possible topics for inclusion in a Planning Bill in Review of Strategic Planning – Conclusions and next steps, as described above. The Executive will not introduce the Bill in this Parliament, therefore the contents and possible timetable for the Bill are unavailable

**Getting Involved in Planning Consultation:** A series of papers examining responses to this consultation document were published during October 2002. To date the Executive has not set out how it intends to proceed, although the Minister for Social Justice stated that a White Paper would be published towards the end of 2002<sup>2</sup>. It is likely that some changes to public involvement in planning would require legislative change.

**Streamlining Inquiries:** This consultation, which was announced on 27 June 2002 with the publication of Review of Strategic Planning – Conclusions and next steps, is

---

<sup>2</sup> Scottish Executive Press Release SESJ076a/2002

yet to begin. The Executive initially indicated that it would start in late summer 2002<sup>3</sup>.

#### 4. Petition PE508

The Committee first considered Petition PE508, which calls for Parliament to review the implementation of Environmental Impact Assessment (EIA) regulations and Planning Advice Note 58, at its meeting of 8 January 2003. This section provides a brief summary of the statutory basis for EIA, a summary of how the system currently operates and highlights the areas of concern in petition PE508.

**Statutory Basis of EIA:** The statutory requirement for EIA was set out in European Council Directive 85/337/EEC "on the assessment of the effects of certain public and private projects on the environment". This was amended by Council Directive 97/11/EC. The Environmental Impact Assessment (Scotland) Regulations 1999 transpose the EIA Directive, as amended, into Scottish planning law.

**The EIA Process:** There are two main stages in the EIA process. In the first stage the applicant undertakes an assessment so that environmental issues can be taken into account during the design of a development proposal. This involves consultation, data collection and environmental studies to identify the effects of the development on the environment and propose mitigation measures to prevent, reduce and offset them. This is reported in an environmental statement (ES) which is submitted to the relevant local authority in conjunction with the planning application.

The planning authority then undertakes the second stage by evaluating the statement, seeking further information from the applicant if necessary and taking into account additional consultations and public representations. This is to ensure the planning authority has sufficient reliable information to understand the likely environmental effects and specify any mitigation measures before the planning application is determined.

**Petition PE508: Local Consultation:** Article 6 of the European Council Directive 85/337/EEC, as amended, requires that:

*"2. Member States shall ensure that any request for development consent and any information gathered pursuant to Article 5 are made available to the public within a reasonable time in order to give the public concerned the opportunity to express an opinion before the development consent is granted."*

A summary of the requirements of the Scottish system is set out in paragraph 27 of PAN58, which states:

*"There is also a requirement for public involvement. The submission of an environmental statement must be advertised and copies made available for inspection or purchase at reasonable cost. Local and national interest groups, and members of the public may all have useful comments to make on the*

---

<sup>3</sup> Review of Strategic Planning – Conclusions and Next Steps, Next Steps, Paragraph 3

*scope of the assessment, the existing environment, potential impacts and mitigation measures. Local knowledge may raise issues of which the statutory bodies are unaware, and for this reason, notwithstanding the statutory consultation requirements the public should be invited to participate in the process as early as is possible.”*

The statutory requirements mentioned in PAN58 are laid out on Section 13 of The Environmental Impact Assessment (Scotland) Regulations 1999. This places a duty on applicants to inform any party with a notifiable interest in neighbouring land that the statement is available for inspection at the local authority’s offices for a period of 4 weeks and that representations may be made. This is in addition to the usual neighbour notification, consultation and advertising procedures, which apply to all planning applications.

**Objectivity and appointment of consultants:** Directive 85/337/EEC requires the developer to supply the competent authority, either the local authority or Scottish Ministers depending on which is deciding the application, with the information required by the Directive. It does not specify how the developer should go about collecting this information.

**Terms of reference of EIA:** The Environmental Impact Assessment (Scotland) Regulations 1999 allow a developer to approach the planning authority for a “screening opinion” on the need for a, EIA and, if one is necessary, a scoping opinion on what issues should be covered in the Environmental Statement. Although developers are responsible for producing the Environmental Statement, the planning authority has the right to ask for any additional information it considers necessary to make an informed decision.

Alan Rehfishch  
Research Team Leader  
Research Service  
Scottish Parliament Information Centre

**PETITION PE425 – PLANNING PROCEDURES FOR TELECOMMUNICATIONS DEVELOPMENTS**

**Meeting No:** 5th Meeting

**Date:** 4 March 2003

**Author:** Assistant Clerk to the Committee

**Introduction**

- 1 This paper updates the Committee on the progress of petition PE425 on the planning procedures for telecommunications developments.

**Background**

2. The petition suggests that there is no evidence that non-ionising radiation from mobile phone mast base stations is safe. The petition also expresses concern that no long-term epidemiological studies have been carried out in this area. The petition therefore requests that the Scottish Parliament adopts a precautionary approach of the kind identified in the Transport and the Environment Committee's 2000 report into telecommunications developments. The petition requests an end to the siting of masts in densely populated areas or within 600 metres of schools, residential care homes or hospitals.
3. At its meeting on 8 January 2003 the Committee agreed to write to the PPC asking for a formal referral of the petition. On 8 January the Committee also agreed that it would consider the issues raised in the petition within its forthcoming inquiry into telecoms developments.
4. The Committee has now held two evidence sessions on telecoms developments. During these evidence sessions the issues highlighted within the petition have been raised with the witnesses. At today's meeting the Committee will consider the content of a draft letter to the Minister for Social Justice on telecoms developments.

**Recommendation**

5. In light of the consideration given to the issues raised within the petition during the Committee's telecoms developments inquiry the Committee is invited to conclude the petition by writing to the petitioner, informing her that she will be sent a copy of the letter to the Minister for Social Justice.

Euan Donald  
Assistant Clerk, Transport and the Environment Committee

**SSI Cover Note For Committee Meeting**

**SSI title and number:** The Surface Water (Fishlife) (Classification) (Scotland) Amendment Regulations 2003, (SSI 2003/85)

**Type of Instrument:** Negative

**Meeting:** 5th Meeting, 4 March 2003

**Date circulated to members:** 19 February 2003

**Motion for annulment lodged:** No

**T and E deadline to consider SSI:** 17 March 2003

Due to the parliamentary timescale for considering this instrument, the Subordinate Legislation Committee will not have reported on the instrument in advance of the meeting on 4 March. The Subordinate Legislation Committee will however have considered the instrument by the time the Committee comes to consider the instrument on 4 March and the Committee will be informed of its deliberations before beginning its own considerations.

