



TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

6th Meeting, 2003 (Session 1)

Tuesday 18 March 2003

The Committee will meet at 11.00 am in Committee Room 2 to consider the following agenda items:

1. **Items in private:** The Committee will consider whether to take agenda items 5 and 6 in private.
2. **Petitions PE 462, PE 463 and PE 464:** The Committee will consider three petitions on Scottish Natural Heritage's consultation procedures, PE 462 by Mrs Margie Currie, PE 463 by Councillor Donald Manford and PE 464 by Robert Cunyngham Brown.
3. **Petition PE 508:** by Mr Philip Graves on the implementation of Environmental Impact Assessments and PAN 58 guidelines. The Committee will consider the petition in light of the evidence given by the Deputy Minister for Social Justice and the Chief Planner of the Scottish Executive on 4 March.
4. **UK Railways and Transport Safety Bill:** The Committee will take evidence from the Deputy Minister for Enterprise, Transport and Lifelong Learning on the UK Railways and Transport Safety Bill.
5. **Annual report:** The Committee will consider its draft annual report.
6. **Witness expenses:** The Committee will consider a claim under the witness expenses scheme.
7. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2003, (SSI 2003/128)

the Pollution Prevention and Control (Scotland) Amendment Regulations 2003, (SSI 2003/146)

the Anti-Pollution Works (Scotland) Regulations 2003, (SSI 2003/168)

the Action Programme for Nitrate Vulnerable Zones (Scotland) Amendment Regulations 2003, (SSI 2003/169)

the Waste Incineration (Scotland) Regulations 2003, (SSI 2003/170)

the Waste Management Licensing Amendment (Scotland) Regulations 2003, (SSI 2003/171)

the Financial Assistance for Environmental Purposes (Scotland) Order 2003, (SSI 2003/173)

the Planning and Compensation Act 1991 (Amendment of Schedule 18) (Scotland) Order 2003, (SSI 2003/175).

Callum Thomson
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The following papers are attached for this meeting:

Covering note on petitions PE 462, PE463 and PE464 (<i>Agenda item 2</i>)	TE/03/6/1
Copies of the petitions PE462 PE463 PE464 (<i>Agenda item 2</i>)	TE/03/6/2
Covering note on PE 508 (<i>Agenda item 3</i>)	TE/03/6/3
Note from the Clerk on the UK Railways and Transport Safety Bill (<i>Agenda item 4</i>)	TE/03/6/4
Draft Annual Report (private paper) (<i>Agenda item 5</i>)	TE/03/6/5
Covering note on (SSI 2003/146), (SSI 2003/168), (SSI 2003/169), (SSI 2003/170), (SSI 2003/171), (SSI 2003/173) and (SSI 2003/175) (<i>Agenda item 7</i>)	TE/03/6/6

Covering note on the Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2003, (SSI 2003/128) (<i>Agenda item 7</i>)	TE/03/6/7
Copy of the instrument (plus executive note) (<i>Agenda item 7</i>)	TE/03/6/8
Copy of the Pollution Prevention and Control (Scotland) Amendment Regulations 2003, (SSI 2003/146) (<i>Agenda item 7</i>)	TE/03/6/9
Copy of the Anti-Pollution Works (Scotland) Regulations 2003, (SSI 2003/168) (<i>Agenda item 7</i>)	TE/03/6/10
Copy of the Action Programme for Nitrate Vulnerable Zones (Scotland) Amendment Regulations 2003, (SSI 2003/169) (<i>Agenda item 7</i>)	TE/03/6/11
Copy of the Waste Incineration (Scotland) Regulations 2003, (SSI 2003/170) (<i>Agenda item 7</i>)	TE/03/6/12
Copy of the Waste Management Licensing Amendment (Scotland) Regulations 2003, (SSI 2003/171) (<i>Agenda item 7</i>)	TE/03/6/13
Copy of the Financial Assistance for Environmental Purposes (Scotland) Order 2003, (SSI 2003/173) (<i>Agenda item 7</i>)	TE/03/6/14
Copy of the Planning and Compensation Act 1991 (Amendment of Schedule 18) (Scotland) Order 2003, (SSI 2003/175) (<i>Agenda item 7</i>)	TE/03/6/15

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Subject: Petitions PE 462 by Mrs Margie Currie on the scientific evidence used by SNH to make decisions regarding designating sites of special scientific interest.

Petition PE 463 by Councillor Donald Manford on the accuracy of consultation carried out by SNH.

Petition PE 464 by Mr Robert Cunyngham on the scientific justification used by SNH to classify certain areas as special protection areas for raingoose.

Meeting No: 6th Meeting

Date: 18 March 2003

Author: Note by Assistant Clerk to the Committee

Introduction

1. This paper asks the Committee to consider for the first time petitions PE 462, PE 463 and PE 464. The Public Petitions Committee (PPC) considered these petitions on 25 February 2003 and agreed to refer them to the Transport and the Environment Committee. The PPC has requested that these petitions be considered together due to similarities in subject matter. Copies of the petitions are also circulated for this meeting (TE/03/6/2).

PE 462

2. PE 462 by Mrs Margie Currie calls on the Scottish Parliament to ask Scottish Natural Heritage (SNH) to detail all the alleged hen harrier sites on Arran and to provide information as to the current, and proposed changes to, procedures for Site of Special Scientific Interest (SSSI) designations.

PE 463

3. PE 463 by Councillor David Manford calls on the Scottish Parliament to ask SNH why it allegedly published erroneous information about local public opinion on the Sound of Barra consultation carried out for the Scottish Executive. Furthermore, the petitioner also asks whether SNH is complying with duties required of it under section 3 of the Natural Heritage (Scotland) Act 1991.

PE 464

4. PE 464 by Robert Cunyngham Brown calls on the Scottish Parliament to ask SNH to provide scientific justification for the list of raingoose Special Protection Areas, classified by SNH. The petitioner also seeks information as to whether in

compiling the list, SNH complied with the statutory duty to take account of the interests of landowners, crofters and local communities.

Progress of the Petitions

5. The PPC first considered these petitions at its meeting on 26 February 2002, when it took evidence from the petitioners. The Committee then agreed to seek further information on issues raised by the petition from the Scottish Executive, SNH and the Advisory Committee on Sites of Special Scientific Interest (ACSSSI). Following consideration of these responses, the Committee took evidence from SNH and ACSSSI on 10 September 2002. The PPC then agreed to seek further written evidence from the Scottish Executive.

Issues raised by the PPC

6. The contents of the PPC letter and the response from the Executive are summarised below. A copy of the Executive's response is attached at Annex A.
7. The PPC wrote seeking the following information:
 - an indication as to whether the Executive would make a representation to the European Commission asking whether socio-economic aspects of designations could be considered during consultations with local communities.
 - whether the draft Nature Conservation Bill, which intends to provide local communities with a greater say in the designation of SSSIs, will also extend to SACs and SPAs.
 - comments on the ACSSSI's suggestion that there is a need to review the SSSI Selection Guidelines, with a view to encouraging greater transparency in the process.
8. The Executive responded to the letter in the following terms:
 - the Executive indicated that it did not intend make representations to the European Commission as appeals on socio-economic grounds rather than scientific grounds are not consistent with European and national law.
 - there was confirmation that the draft Nature Conservation Bill will seek to provide a greater voice for local communities in the designation and management of SSSIs. The majority of SACs and SPAs are underpinned by designation as SSSIs or are required to satisfy the European Commission that the conservation interest is being protected.
 - the Executive indicated that it was committed to ensuring the transparency of the decision making process and that the requirement to review SSSI guidelines was kept under review.

SNH Consultation Process

9. Members may also wish to note that SNH has challenged the assertion made in PE 463 that the Sound of Barra consultation was flawed. SNH has stated that it 15,000 owners and occupiers, local authorities and representative bodies were consulted – of which fewer than 1% lodged an objection. This would appear to contradict the impression given by the petitioner that consultation was improperly carried out.

Next Steps

10. On 25 February 2003, the PPC considered the response and agreed to refer the petitions to the Transport and the Environment Committee, with the request that it take a view as to whether its successor committee should be invited to consider conducting a review of SNH's consultation procedures and examine whether the remit of ACSSSI should be expanded to cover appeals on the scientific validity of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).
11. The Committee is asked to consider whether in the light of the response by the Executive and the additional information regarding PE 463 provided by SNH a review of SNH's consultation practices is desirable. In relation to the issue of appeals regarding designation of SACs and SPAs the response from the Executive also indicates that SACs and SPAs are normally underpinned by SSSI and, as such, within the remit of the ACSSSI.
12. Members of the Committee will also be aware that the Executive published a draft Nature Conservation Bill in early March. The notes which the Executive produced to accompany the draft bill state that the Executive has acknowledged "the need for greater transparency, wider consultation and access to new dispute-resolution processes" in the SSSI system.
13. The notes also state that "there are a wide range of parties with a genuine and legitimate interest in conservation designations and land use. Whilst the primary focus will always remain with those who have the most direct legal interest in the SSSI land, we are now providing for the involvement of a much broader group of stakeholders – including local communities and statutory undertakers – in decisions affecting SSSIs".
14. A consultation process has now been launched by the Executive on the draft bill. It would seem quite possible, therefore, that a Nature Conservation Bill will be introduced to the Parliament in the early part of the next session. Furthermore, it would seem highly likely that such a Bill would be referred to this Committee's successor and that it would be open to that Committee to consider the consultation processes on SSSI designation (including the role and remit of ACSSSI) in detail during Stage 1 consideration of the Bill.

Recommendation

15. The Committee has been asked to consider whether its successor committee should be invited to consider conducting a review of SNH's consultation

procedures and examine whether the remit of ACSSSI should be expanded to cover appeals on the scientific validity of SACs and SPAs.

16. In considering its response to the PPC, one option for the Committee is to conclude its consideration of the petitions at this stage on the basis that an opportunity to look at the issues raised by the petitions is likely to arise at an early stage in the next parliamentary session, as part of the scrutiny of any Nature Conservation Bill.

Euan Donald
Assistant Clerk

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Subject: Petition PE508 by Philip Graves on the implementation of Environmental Impact Assessments and PAN 58 guidelines

Meeting No: 6th Meeting

Date: 18 March 2003

Introduction

1. 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.
2. 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 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.
3. The context of the petition is the petitioners' experience of West of Scotland Water's (WoSW) application to build water treatment works near Milngavnie. 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.
4. At the meeting on 8 January the Committee agreed to incorporate its consideration of the petition within its planning briefing from the Scottish Executive on 4 March 2003. Having heard from the Deputy Minister the Committee agreed to postpone its consideration of the petition in order to assess the evidence it had taken.

Executive Response

5. The issues highlighted in point two of this paper were responded to as follows—
 - it was stated that whilst there remained no statutory requirement to consult the public in the production of an environmental statement it was strongly advised that the public should be involved and that these statements

should then be clear and coherent in order to elicit a further public response. The statutory requirement to consult community councils in addition to neighbourhood notification after an application has been submitted was also stressed.

- it was indicated that the independence of consultants, employed by developers, was safeguarded through the requirement placed upon developers to consult Scottish Water, the Scottish Environment Protection Agency, Scottish Natural Heritage and others in advance of reporting.
- it was re-emphasised that irrespective of whether an environmental statement is favourable to the application or not, it is still the role of the planning authority to grant or refuse planning permission. It was also emphasised that the environmental statement is only part of the process in deciding whether or not to grant planning permission and that government policy, the views of the statutory consultees and the general public play an equally important role.

Research into Environmental Impact Assessments

6. The Deputy Minister and the Chief Planner both indicated that, as far as they were aware, the issues raised by the petition were not illustrative of a wider problem with environmental impact assessments. The Chief Planner did, however, state that if the Committee was of the view that there were problems relating to environmental impact assessments (and the effectiveness and transparency of procedures and consultation processes), then it may be possible for the Executive to commission research to consider these issues. The Deputy Minister stated that any recommendation for research made by the Committee would be assessed carefully by the Executive.

Recommendation

7. In light of the limited time available before dissolution the Committee may want to conclude consideration of the petition at this meeting. In doing so, the Committee may wish to take account of the Executive's willingness to consider undertaking research into environmental impact assessments. The Committee may wish to consider whether to recommend that such research be carried out and, if so, what specific issues such research should address.

Euan Donald
Assistant Clerk
13 March 2003

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Subject: UK Parliament Railways and Transport Safety Bill

Meeting No: 6th Meeting, 18 March 2003

Author: Note by the Senior Assistant Clerk

Introduction

1. This note sets out arrangements for the Committee's consideration of devolved matters which are contained within a UK Bill – the Railways and Transport Safety Bill.
2. Parliament is due to debate a 'Sewel Motion' on 20 March, which will invite the Parliament to endorse the principle of introducing alcohol and drug testing for mariners as set out in the Railways and Transport Safety Bill, and agree that the relevant provisions in the Bill on these issues which relate to devolved matters should be considered by the UK Parliament.
3. The Deputy Minister for Enterprise, Transport and Lifelong Learning will appear before the Transport and the Environment Committee on 18 March to answer any queries members may have on the Sewel Motion, in advance of the debate in the Parliament.

Sewel Motions

4. A Sewel Motion is device by which the Executive invites the Parliament to agree to allow the UK to legislate on relevant devolved matters. They are a matter of convention rather than law, and the decision of the Parliament therefore has no legal effect. Instead, in agreeing or disagreeing to the motion, the Parliament will be expressing a view on the matters referred to in the motion. A SPICe note is attached at Annex A which provides further information on previous Sewel Motions taken by the Parliament.

Executive Memorandum

5. The Executive has prepared a memorandum – attached at Annex B – which outlines the terms of the UK Railways and Transport Safety Bill and highlights the provisions which relate to devolved matters.

Procedure

6. As there are no formal procedures for the consideration of Sewel Motions set out in Standing Orders, there is no formal requirement for the Committee to report to the Parliament.

Alastair Macfie
Senior Assistant Clerk
March 2003

ANNEX B: SCOTTISH EXECUTIVE MEMORANDUM

RAILWAYS AND TRANSPORT SAFETY BILL: SEWEL CONVENTION MEMORANDUM

Purpose

1. This Memorandum outlines the terms of the UK Parliament Railways and Transport Safety Bill. It highlights the provisions in Part 4 of the Bill which deal with Alcohol and Drugs Testing in Shipping, and considers certain specific issues in Part 4 which fall within the competence of the Scottish Parliament. The Parliament is invited to agree that the specific devolved issues identified in relation to recreational mariners should be considered by the UK Parliament.

Railways and Transport Safety Bill: Background and Contents

2. The Railways and Transport Safety Bill was introduced in the House of Commons on 14 January 2003. The legislation covers a range of Railways and Transport Safety issues. It aims to improve public confidence in the railways and give Police greater powers to tackle alcohol and drug abuse amongst maritime and aviation personnel. The Bill would create an independent body tasked with establishing the causes of accidents on the railways as a Rail Accident Investigation Branch. It also deals with related issues dealing with the British Transport Police, the Office of Rail Regulation and related road and rail safety matters.

3. The Bill contains a package of reforms designed to improve safety across a range of transport areas. The Bill is in 7 parts, with 7 schedules structured as follows:-

- Part 1: (Investigation of Railway Accidents)
- Part 2: (Office of Rail Regulation)
- Part 3: (British Transport Police)
- Part 4: (Shipping: Alcohol and Drugs)
- Part 5: (Aviation: Alcohol and Drugs)
- Part 6: (Miscellaneous)
- Part 7: (General)

4. This Memorandum addresses Part 4 of the Bill which deals with alcohol and drug testing in relation to shipping. It extends to any professional mariner and (subject to any exceptions made by regulations), to any non-professional mariner sailing in United Kingdom waters, as well as to mariners in United Kingdom - registered ships elsewhere. It introduces new provisions to regulate alcohol consumption in the maritime sector beyond existing powers.

5. The Memorandum deals principally with the effects of Part 4 of the Bill in relation to Shipping: Alcohol and Drugs testing as it effects certain devolved matters. It also touches on Part 6 in so far as clause 104 is discussed. The devolved issues arising relate only to part of the scope of these provisions.

Shipping: Alcohol and Drugs: Policy

6. Maritime safety is a reserved matter by virtue of Section E3 of Schedule 5 to the Scotland Act (Marine Transport). The policy lead falls to the UK Department for Transport (DfT). The structure of the maritime safety organisation also reflects these UK responsibilities, principally through the Maritime and Coastguard Agency (MCA), an Executive Agency of the DfT.

7. On 20 August 1989 51 people died in the Marchioness disaster on the River Thames. Following the Marine Accident Investigation Branch's (MAIB) inquiry into the disaster, the UK Government commissioned an inquiry under John Hayes into river safety. The Hayes Report, published in 1992, included 22 recommendations. Recommendation 18 stated:-

"The Department [for Transport], after appropriate consultation, should promote legislation to introduce a breath test similar to that applying to motor vehicle drivers which would apply to the skippers and crew of all vessels."

8. A further inquiry under Lord Justice Clarke was announced by the Deputy Prime Minister on 18 August 1999 to review all the arrangements to ensure safety on the River Thames. Lord Justice Clarke's report included the following recommendations:-

"Alcohol legislation for vessels should be in the form of primary legislation and an offence similar to that of being in charge of a vehicle while under the influence of drugs should also be introduced for vessels.

Subject to consultation:

Alcohol legislation should extend to all persons on duty whose duties extend to the navigation of the ship, the operation of her engines or navigational equipment and any member of the crew (including bar and catering staff) who might be called on to assist in the event of an emergency.

It should extend to private pleasure craft.

It should apply to all vessels in UK waters, irrespective of flag.

Breath testing should be carried out after an accident or if there is reason to suspect a breach of the law but there should not be random testing"

9. Lord Justice Clarke published his report on the Formal Investigation into the collision between the Marchioness and the Bowbelle on 23 March 2001. His first recommendation referred to proposals put forward by the Department for Transport that reflected the position included in his earlier inquiry:-

"We endorse the proposed legislation and recommend that it be enacted as soon as possible."

10. The UK Government has accepted this recommendation, and the Railways and Transport Safety Bill Part 4 implements these policies.

Railways and Transport Safety Bill: Part 4

11. Part 4 of the Bill provides for alcohol and drug testing in the maritime sector. The existing legislation in Section 58 of the Merchant Shipping Act 1995 makes it an offence for the master or a seaman employed in a UK-registered ship, or in a foreign ship in a UK port or in UK waters, to endanger his ship or other ships by reason of being under the influence of drink (or drugs). Under existing legislation there is no maximum blood/alcohol limit specified.

12. Part 4 of the Bill provides for the creation of statutory alcohol limits for mariners, and the creation of an alcohol testing regime. These provisions largely mirror provisions for road users and safety-critical staff on railways and related transport systems. The Bill also provides powers to extend this regime to include other intoxicating drugs. The Bill seeks to ensure that an alcohol-testing regime is put in place in a similar manner to that already existing in other transport modes (the proposed limit would be set at 80mg of alcohol per 100ml of blood, as for roads).

13. The Bill's provisions, therefore, would apply to professional mariners on all commercial shipping, cargo vessels and fishing vessels throughout the United Kingdom. All of this would fall within the scope of the relevant reservation in respect of Marine transport (Section E3 of Schedule 5 to the Scotland Act).

14. In relation to Scotland, however, there are two specific instances where there is concern that the proposals fall outwith the scope of the reservation. The first issue involves the recreational mariners sector.

Recreational Mariners on Internal Waters:

Clause 77 extends the drink and drugs provisions to "non professionals" and is intended to catch recreational mariners. Clause 88(2)(a), however, provides that Clause 77 shall have no effect in relation to anything done in internal waters in Scotland. Internal waters as used in this section would include inland waterways.

The Department for Transport included clause 88(2) following discussions with the Scottish Executive but is prepared to omit it on the basis that a Sewel motion will be passed. As presently drafted the Bill would not extend to any of the waters of Scotland including inland waters, and waters as contained in the definition of Scotland in the Scotland Act 1998 namely internal waters and the territorial sea adjacent to Scotland. The Scottish Executive's concern is that there is a devolved interest in so far as inland waters are concerned. (The Bill however refers to such inland waters as internal waters. For the purposes of this memorandum references to inland waters should be construed as referring to internal waters as contained at clause 88(2)(a) of the Bill).

15. So far as clause 77 is concerned there is no definition of “non professional” but the clause is drafted in such a way that it will catch all persons on board a ship exercising or purporting to exercise a function in connection with navigation. The definition of ship at clause 86 (1) (a) is the same as that used in the Merchant Shipping Act 1995 namely “every description of ship used in navigation”. “Navigation” has not previously been defined in shipping legislation but the Bill now includes a definition at clause 86 (1) (b). This states that “a reference to navigation of a vessel includes..... the control or direction.....of the course of a vessel.”.

16. This definition of navigation makes a distinction between “navigation” for the purposes of the Bill and “navigation” as defined by the courts. In case Law (Curtis v Wild [1991] 4 AER 172) it has been held that inland waterways could not be “navigated” for the purposes of the Merchant Shipping Act 1894 (as it then was). Part of the reason for the finding was because the court was of the view that “navigated” had to mean proceeding from one fixed point to another fixed point and not simply the use of pleasure boats or “messaging about in boats”. The definition of navigation in the Bill includes controlling or directing the course of the vessel with a view to encompassing “messaging about in boats”.

17. In so far as clause 77 covers recreational mariners in inland waterways in Scotland current case law would strongly suggest that it relates to a devolved matter. As such any provision that extended to inland waterways would be outside the scope of the reservation in the Scotland Act 1998 which relates to the Merchant Shipping Act 1995.

18. The second issue concerns:-

Coverage of all craft e.g. jet-skis.

The UK Government's policy intention is that the new testing arrangements should apply to all vessels, including personal water craft such as jet-skis. Here, in case law (Steedman v Scofield [1992]1LL163) it has been held that certain pleasure craft such as jet-skis would not be covered by the definition of "ship" in the Merchant Shipping Act. As a result certain pleasure craft [would] fall outwith the definition of “ship” and so not be caught by the Merchant Shipping Act reservation.

19. The Bill, includes an Order making power at Clause 104 for the Secretary of State (for Transport) to make an Order to apply any shipping provision to "specified things which are used, navigated or situated wholly or partly in or on water". This clause enables any shipping provisions in this Bill and other shipping legislation to apply to things used on water. Its potential application is very wide. One such application would be to enable an Order to be made to include within clause 77 certain types of pleasure craft operated by non-professionals. An order could therefore be made to extend clause 77 to craft such as jet-skis to remove any uncertainty as to whether clause 77 could at present extend to such craft.

20. Regulations under clause 77(4) would allow for certain recreational mariners to be excepted from the alcohol limits, but they would not be excepted from the wider requirement that their ability to navigate a vessel should not be impaired by alcohol or drugs. This will ensure that the offence created is a proportionate one. Any exceptions will be defined in relation to the power of the vessel, its size, or its location. There will be consultation later in the year.

21. The Bill, as presently drafted, applies clause 104 to Scotland. It is therefore capable of applying to both reserved and devolved matters, in so far as the Order making power is used to apply to craft that fall outwith the definition of “ship”.

Scottish Executive Position

22. The main issue for the Scottish Executive, and for the Parliament to consider, is whether the opportunity should be taken for the UK Bill to apply the new alcohol and drug testing provisions for shipping to all of the recreational sector in Scotland. At present, the Bill as drafted excludes Scotland from the provisions in relation to internal waters (inland waterways). The consent of the Scottish Parliament by means of a Sewel motion would therefore be required if the UK Government was to amend the existing Bill to ensure that it applies to Scotland.

23. The Bill also has provision in clause 104 which would allow the Secretary of State, by order, to apply a shipping provision (such as the drink and drugs provision in clause 77) to things which may not be “ships” for the purposes of the Merchant Shipping Act 1995. This order making power would apply to Scotland, as well as the rest of the United Kingdom. In so far as the order making power may be used to include craft that may fall outwith the definition of “ship” a Sewel motion would be required as such craft are probably not caught by the Merchant Shipping Act reservation for the reasons given in para graph 18.

24. The Scottish Executive's view is that these provisions should apply in Scotland at the earliest possible time. Maritime safety is a vital area. The Executive would support, as a general principle, the application of maritime safety rules on a consistent basis throughout the UK as happens in relation to maritime safety at present.

25. The Executive is aware that there have been cases identified by the Marine Accident Investigation Branch across a range of shipping sectors, including the recreational side, where alcohol has been an issue and where fatalities have been involved.

26. It is also clear that the existing policy lead across all other shipping issues is reserved. The Government's main safety bodies and advisers, and supporting agencies such as the MCA, are reserved matters as provided for in the Scotland Act 1998. The emergence of the two issues identified as applying to Scotland does not reflect any existing planned institutional or devolved policy activity in Scotland. Rather, it reflects the views taken by the courts in relation to specific cases about interpretation of definitions in one aspect of the existing reserved legislation. And nor does the Executive see any case for separate Scottish maritime safety rules in one part of one shipping sector affected by these provisions.

27. It would be possible for the Executive to legislate in relation to the specific areas which appear not to be caught by the Merchant Shipping Act 1995. This, however, could lead to a potentially anomalous situation between Scotland and England on a point where, on the grounds of safety, consistent policy and application would be beneficial. Introducing the legislation in the UK Bill across Scotland on the same basis as in England and Wales, would also avoid the risk of incidents occurring (or not being deterred) while the opportunity was taken for Scottish provisions to be made.

28. The purpose of clause 104 is to enable the Secretary of State to specify by order specific types of craft that may not otherwise be caught by the new provisions. This would allow specific types of craft such as personal watercraft, e.g. jet skis, to be treated for the purpose of Part 4 as “ships”.

29. The order making power in clause 104 would rest with the Secretary of State because it would ensure consistency of application of the rules across the UK, in an area where the principle of UK wide policy is well established. The regulation making power in clause 77(4) would allow for consistent application of any exception of certain recreational mariners from the limits, whether by reference to vessel size, engine power, or location. It would also help to avoid confusion amongst the enforcement agencies involved, which would include the UK Maritime and Coastguard Agency as well as the police.

30. The order making power could only be exercised following consultation. In addition, under clause 104(6) the Secretary of State's order making power may provide for the provision not to apply or to apply with modifications if it conflicts with legislation of the Scottish Parliament.

Enforcement

31. The police and maritime enforcement authorities have been consulted on the provisions. It is difficult to provide an assessment of the enforcement and resource consequences. The Association of Chief Police Officers (in England and Wales) has indicated that the slightly increased resource implications for the police would be largely offset by use of current resources such as harbour launches and search and rescue helicopters. The Department for Transport has indicated that they would fund on a UK wide basis any training necessary for police and marine officials to enforce the proposals. In particular the training would cover techniques on boarding ships at sea by means of helicopter or ship to ship transfer. In terms of testing apparatus, there would be minimal costs for implementation of the alcohol provisions, since the testing regime would use equipment already in use for alcohol testing on the roads. The number of tests required is expected to be low, as would the number of prosecution cases.

32. Police enforcement powers in Scotland will be similar to those provided in the Road Traffic Act 1988. Responsibility for the testing of relevant persons suspected of working whilst under the influence of drink or drugs will therefore fall on local police forces as they already do in respect of the above named legislation. When consulted the Association of Chief Police Officers in Scotland took the view, like its sister Association in England & Wales, that the proposed measures would have minimal resource implications...

Other Issues

33. The Bill creates the Rail Accident Investigation Branch (RAIB) to investigate accidents on the heavy rail network across GB and contains provisions for the RAIB to investigate accidents on tramways in England and Wales. Tramways in Scotland are a devolved matter, although there are unlikely to be any before 2008. It would be for the Executive to propose any legislation for extending these provisions to Scotland.

34. The aviation provisions of the Bill relate to issues which are reserved. However, they do have implications for the Executive through ownership of airports in the Highlands and Islands and our interest in developments in air transport in Scotland. As such, SEDD officials are liaising with Department for Transport officials on ongoing consideration and development of the proposals, but they involve no devolved matter.

Conclusion

35. The Executive concludes that in so far as the UK Railways and Transport Safety Bill would apply to recreational mariners in inland waters in Scotland, a devolved matter arises as set out in paras 15-17 above. The issue is therefore whether the proposed alcohol and drug testing regime in the Bill should be applied fully to such mariners in Scotland. These issues relate to applying the proposed alcohol and drug testing regime in the UK Railways and Transport Safety Bill fully to the recreational maritime sector in Scotland. The Executive's view is that a consistent approach should be adopted across the United Kingdom in respect of these matters, including those aspects which relate to devolved matters. This reflects the importance of maritime safety issues. The Executive proposes that where the UK Bill addresses issues of devolved competence they should be considered by the UK Parliament.

36. It is in the interests of maritime safety that there should be a consistent application of maritime safety rules throughout the United Kingdom. Similarly it is desirable that there should be consistency throughout the UK where shipping legislation is to be applied to things which may not otherwise be subject to such legislation. The Executive, therefore, invites the Parliament to give its consent by means of a Sewel motion to these issues being considered by the UK Parliament.

Scottish Executive
February 2003

<http://intranet/speir/services/spice/sourcesheets/ss16.pdf>

TRANSPORT AND THE ENVIRONMENT COMMITTEE

Subject: Subordinate Legislation

Meeting: 6th Meeting, 18 March 2003

Author: Assistant Clerk

The Committee has been designated as lead committee to consider the 8 negative instruments listed on the agenda. The first of those instruments, relating to Strathclyde Passenger Transport Authority, was considered by the SLC at its meeting on 11 March. The SLC agreed that no points arose on the instrument.

The 7 remaining instruments laid before the Parliament on 11 and 12 March. Due to the parliamentary timescale for considering these instruments, the Subordinate Legislation Committee will not have reported on the instrument in advance of the meeting on 18 March. The SLC will aim to consider the instruments at its meeting on the morning of 18 March.

It is hoped that the SLC will have concluded its consideration of the instruments by the time this Committee comes to consider them. Members of this Committee will be informed of the deliberations of the SLC before beginning their own considerations.

Should the SLC either agree to raise points with the Executive or defer consideration of any of the instruments, this Committee will have to schedule an additional short meeting to consider the outstanding instruments, provisionally on the afternoon of Tuesday 25 March.

13 March 2003

SSI Cover Note For Committee Meeting

SSI title and number: The Strathclyde Passenger Transport Authority (Constitution, Membership and Transitional and Consequential Provisions) Amendment Order 2003, (SSI 2003/128)

Type of Instrument: Negative

Meeting: 6th Meeting, 18 March 2003

Date circulated to members: 6 March 2003

Motion for annulment lodged: No

T and E deadline to consider SSI: 24 March 2003

SSI drawn to Parliament's attention by Sub Leg Committee: No.

