

## Proposed Guided Transport Systems etc (Scotland) Bill

### Proposals for a New Approach to Delivering Public Transport Infrastructure Developments

#### Summary of responses to the consultation exercise:

#### Proposals for a New Approach to Delivering Public Transport Infrastructure Developments.

1. The Scottish Executive's Transport Strategy Division carried out a consultation exercise on a proposal to replace the existing Private bill process for transport-related developments by putting the Scottish Ministers at the centre of an order-making procedure.
2. A consultation paper<sup>1</sup> was issued on the 24 February 2006 and invited views by the 19 May 2006. A wide range of organisations (see Annex A) with an interest in the Private Bill process were issued with a copy of the consultation paper. These included all Local Authorities, National Park Authorities, regional transport partnerships, relevant Government agencies, business and community interests as well as legal firms and representative bodies that have provided support to promoters under the Private Bill process.
3. A total of 40 responses were received to the consultation. **Respondents were supportive of the proposal to place the Scottish Ministers at the centre of an order making process.** A number of matters of procedural detail were raised by respondents for consideration.
4. The Scottish Executive is grateful to all those who responded to the proposals within the consultation paper. The intention is to analyse the comments and then to bring forward specific proposals within a forthcoming Bill.
5. In line with the Scottish Executive's policy of openness, copies of the responses received are made publicly available on the Scottish Executive consultation website and at the Scottish Executive Library, K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD.

#### Summary

6. A summary of the main comments to the consultation is set out below, this follows the sequence in which comments were invited in the consultation paper.

#### Comments

#### ***Q1) Are there any other transport works beyond rail, tram, guided busways and inland waterway developments that should be within scope and if so why?***

Whilst there was agreement that rail, tram, guided busways and inland waterway developments should fall within scope there was a range of views in respect of the inclusion of other transport modes.

For reasons of consistency some respondents argued that road and nationally significant harbour and port developments should be brought within scope. It was suggested that developments particularly connecting ports with the wider transport network should be within scope. Other respondents expressed a contrary view, stating that there were no compelling reasons for changing the existing road and harbour procedures and indeed that including roads within scope would not significantly improve the current road authorisation process. A third view, promoted by a single respondent,

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2006/02/23161534/0>



suggested the future inclusion of other transport modes within scope but only if the new procedures were found to be effective in their operation.

A few respondents requested that airport developments should fall within scope, particularly where flight paths have an effect on residential areas.

Mention was also made that the provisions should enable the authorisation of unmanned transport, multi-modal infrastructure, inter-change facilities, High Occupancy Vehicle lanes (if outwith the road boundary), pipelines to accommodate freight, monorails, maglev rail, cable cars, funicular and mountain railways and the extension and canalisation of sea-lochs.

***Q2) What reasons exist for lengthening or indeed shortening the 6 month minimum designated statutory pre-application period between the promoter publicising initial proposals and presenting an application for an Order to the Scottish Ministers?***

A number of differing views were expressed by respondents. Some suggested that there ought to be no statutory time period since this could potentially delay an application where a proposal receives no adverse reaction, others stated periods of 3, 4 or 6 months were adequate for consulting with affected parties and statutory bodies, whilst a few suggested that a longer period, depending on the size and scale of the project, would be more appropriate in order to conduct appropriate consultation.

A number of respondents stated that rather than a defined period the new process should allow sufficient time for certain positive steps to take place that show the promoter's reasonable efforts to accommodate and resolve concerns of stakeholders in advance of the introduction of the Order and that such an approach should provide a more fully consulted scheme and associated Order from the outset.

One respondent suggested that there should be defined period, of perhaps 2 years from the publication of initial proposals, within which a promoter must lay an Order before the Scottish Ministers. It was proposed that such an approach would ensure that promoters do not attempt to conceal controversial schemes by delaying an application for an Order, thus ensuring that the public is aware of the most up to date proposals.

***Q3) What process should apply to enable a promoter, without a statutory right, to enter land to conduct preliminary investigations?***

A few respondents noted that non-invasive technology (satellite imagery and remote sensing) allied to publicly available information in relation, for example, to soil and geographical data called into the question the need to access land.

Most respondents were concerned with the detailed process of providing access. Respondents suggested that the landowner and the promoter should seek to negotiate and only when agreement cannot be reached (or arbitration failed) should an approach be made to provide entry to land. A number of respondents thought that the provision of a statutory right could be seen as a draconian measure.

In terms of who should provide authorisation some thought that it should fall to local authorities, on the basis that local authorities were best placed to determine the relevance of the proposals and competence of the promoter and their agents, however the majority expressed the view that the Scottish Ministers should be responsible for any decisions relating to entry. It was also mentioned that there had to be clear and measurable criteria for the granting of any right of access (including for



instance, sufficient liability insurance as well as funding to cover reinstatement of land and consequential loss of earnings to the landowner). A respondent suggested that any determination by the Scottish Ministers should take place within a defined timeframe so that a tardy determination does not become a hindrance to the process.

Respondents suggested that the power of the Scottish Ministers to enable access should be confirmed by a summary application to a Sheriff, to whom the landowner would be entitled to make representations. It was suggested that a register of suitable organisations (who have demonstrated their suitability) should be maintained by the Scottish Ministers and that the organisation could apply to be on the register for a given period of time at the end of which they would have to re-apply. It was also mentioned that there could be one-off applications for certification where there is no need for holding certification for more than one specific project.

It was suggested that to ensure that a landowner does not refuse access simply to obstruct the process that an arbitration procedure could be used to deal with such situations. It was also suggested when a promoter enters land with the approval of the Scottish Ministers that this should occur in the presence of an officer of the local planning authority or the Police so that there is some independent oversight of those entering land.

It was also stated that the promoter should give adequate notification of when they are allowed access, what activities are proposed and how long they will take. It was also mentioned that the promoter should have to provide notification details of appropriate contacts at their own organisation in case there is a dispute during any preliminary investigations on the land. It was further suggested that the promoter should be responsible for recording conditions prior to commencement, during and after completing work so that any requests for compensation can be dealt with appropriately.

***Q4) What documentation should be supplied by the promoter in support of the application? Is there sufficient information contained within the proposals?***

Respondents advised that the proposed documentation seemed comprehensive. A number of additional information products were suggested for consideration:

- statements relating to safety, reliability, integration and sustainability of the proposed development;
- information on who would be responsible for the operation and maintenance of the infrastructure and the funding and the likelihood of any public subsidy towards running costs;
- a copy of the projected or potential profit to be gained from the development;
- a declaration of any foreign interest or involved contractors;
- a maintenance and works guarantee;
- a statement of all dealings with government representatives made prior to the application made public;
- an appraisal of the project conforming to Scottish Transport Appraisal Guidance (STAG);
- a statement of intended environmental mitigation measures;
- a statement of the relevance of the developments to the Scottish Executive, Regional Transport Partnerships and Local Authorities;
- a provisional scheme design (including implementation timings and associated costings);
- a statement of the level of consultation undertaken;
- details of how the proposal impacts on the National Transport Strategy, Regional Transport Strategy, and relevant Structure Plan and Local Plan Policies; and
- evidence of support from appropriate organisations (e.g. Network Rail, local authorities etc).



It was also mentioned that the application papers should be made public, so as to enable consultees to comment on whether the promoter has materially misrepresented any matter.

***Q5) What are the implications of reducing the time period for objections from 60 to 42 days?***

The majority of respondents who expressed a view were in favour of reducing the time period to 42 days. It was noted by some respondents that 42 days for the raising of representations and objections would ensure consistency of approach with road scheme proposals.

Other respondents noted that shortening the time period will have a greater impact on the objector providing less time to obtain and consider appropriate advice and information. Others stated that since large scale public transport projects were likely to affect more people, both regionally and locally, that there ought to be sufficient time to permit interested groups to hold meetings and obtain information in order to agree a formal response.

It was also mentioned that any objection period must comprise meaningful days and therefore the Scottish Ministers must have the discretion to dis-apply bank holidays and seasonal holidays within an objection time period.

A view was also proposed to extend the time period for objections for all transport developments to 56 days on the basis that it appeared to be a reasonable time period for parties to consult on objections.

***Q6) Are there any reasons why, once the Scottish Ministers have determined that the application meets the procedural conditions and the specified criteria conditions, that the application should be considered by the Scottish Parliament prior to a public examination of the objections?***

The overwhelming majority of respondents that expressed a view advised that there was no requirement for involvement by the Scottish Parliament at this stage. Respondents argued that there might be problems with a decision by the Scottish Parliament to allow a project to proceed in principle without any detailed evidence taking or providing objectors with a right to be heard. It was stated that an independent public examination provides a more transparent, expert and appropriate forum for the scrutiny of proposed developments.

There was a view expressed that there should be independent third party scrutiny, where the Scottish Executive, Transport Scotland or Local Authorities are promoters of transport developments.

***Q7) Are there any reasons for extending Parliamentary consideration and approval of projects beyond those contained within the National Planning Framework(NPF)? Do you agree that it should also be possible for the Scottish Ministers to designate other transport related projects not in the NPF for Parliamentary consideration should they see fit?***

A respondent expressed concern that, although some developments will have been subject to Parliamentary scrutiny within context of the NPF, the level of scrutiny was not considered to be an adequate substitute for the requirement for formal Parliamentary approval. The respondent also raised concerns that the Scottish Executive does not support the additional safeguards in the model proposed by the Procedures Committee (Scottish Parliament) where the Scottish Ministers are acting as a promoter.

Another respondent stated that any transport related developments not designated “national developments” in the NPF but are of a cost or otherwise of sufficient regional or strategic importance should be subject to parliamentary scrutiny. It was also suggested that the Scottish Ministers should

have the ability to refer matters to the Scottish Parliament and that the Scottish Parliament should be entitled to require scrutiny of a proposed scheme.

Most respondents suggested that all nationally strategic transport projects should be contained within the NPF, but there should be provision to enable projects that arise in the interim (between the production of the NPFs) to be subject to Parliamentary scrutiny. It was further proposed that, to avoid any confusion, a procedure should be established to determine at what stage a scheme requires consideration by the Scottish Parliament, for example, by advising the promoter when the application for an Order is made.

It was noted that whilst there needed to be some flexibility to address developments which arise outwith the timescale of the NPF the new process with Parliamentary approval should not be over-used so that a large number of minor and/or local projects are also subject to Parliamentary approval.

There was mention that the National Transport Strategy (NTS), with explicit budget guidance, rather than the NPF should be able to provide a base for identifying major projects requiring scrutiny at the stage of order approval, variation or rejection and that revision of the NTS every 4 years would permit agreed changes for programmes requiring Parliamentary scrutiny.

### *General Comments*

A number of unrelated comments were made by individual respondents:

- There is the potential for conflict of interests, where Scottish Ministers are acting as a promoter and as a regulatory body through the Scottish Parliament. The proposals to maintain the affirmative Order process in these instances does little to alleviate this problem. Where the Scottish Ministers are acting as a promoter, it is suggested that the Order be subject to a more rigorous appraisal and that the Scottish Parliament should be involved at 2 distinct stages, firstly to consider initially the principles of the Order and secondly providing final approval for the Order. Such a process demonstrates openness and commitment to impartiality.
- That the financial viability of the proposed development should be tested in the public domain and scrutinised independently.
- That a reporter should be able, as part of an inquiry, to recommend not proceeding with a proposed development.
- That independence or transparency is called into account when the Scottish Ministers appoints a reporter to consider evidence in respect of a project promoted by the Scottish Ministers or Transport Scotland.
- That there should be a clear understanding and a precise definition of what is in the public interest and that there should be a specific reference to the use of public funds both for the construction and operation of projects.
- That whilst welcoming the streamlining of the proposals to bring Scotland into line with the existing system of England and Wales by putting the Scottish Ministers at the centre of the decision making process and removing at least one layer of Parliamentary debate, the new process may not deliver, as envisaged, an expedited procedure.



- That an investigation should be held into the prospect of financial aid to bona-fide objectors because promoter's witnesses are schooled and often led by Queen's Council which places objectors at a disadvantage and if objectors were able to employ the services of qualified people they would be in a better position to present their case. Furthermore, the Scottish Executive should consider the means of creating a level playing field by making free advice and counsel available to objectors.
- That there is a need to consider a definition of national developments and how this relates to designations such as National Parks. There could be a case for developments within a National Park to be considered of national significance as these could potentially affect a national asset.

Organisation	Number of Responses
Local Authorities	13
Statutory Agencies	7
Representative Bodies	13
Others	5
Individuals	2

## Annexes

Annex A contains details of those that were issued with a copy of the consultation paper and Annex B contains those that responded.

## ANNEX A

### List of all consultees (in alphabetical order)

Anderson Strathern  
British Ports Association  
British Waterways Board  
Bus User Complaints Tribunal  
Cairngorms National Park Authority  
Chamber of Shipping  
Chartered Institute of Logistics and Transport  
Commission for Racial Equality (Scotland)  
Confederation of Business and Industry (Scotland)  
Convenors to Private Bill Committees  
Convention of Scottish Local Authorities  
Disability Rights Commission  
Dundas and Wilson  
Equal Opportunities Commission  
Faculty of Advocates  
First Scotrail  
Health and Safety Executive  
Highlands and Islands Enterprise  
Highlands and Islands Transport Partnership  
Historic Scotland  
Institution of Civil Engineers  
Law Society of Scotland  
Local Authorities (Scotland)  
Local Government and Transport Committee, Scottish Parliament  
Loch Lomond and the Trossachs National Park Authority  
MEPs (Scotland)  
Mobile and Access Committee for Scotland  
National Union of Rail Maritime and Transport Workers  
Network Rail Limited  
Non-executive Bill Unit, Scottish Parliament  
North East Scotland Transport Partnership  
Office of Rail Regulation  
Procedures Committee, Scottish Parliament  
Railways Development Society  
Royal Institution of Chartered Surveyors (Scotland)  
Scottish Association for Public Transport  
Scottish Council for Development and Industry  
Scottish Enterprise  
Scottish Environment Link  
Scottish Environment Protection Agency  
Scottish Natural Heritage  
Scottish Trades Union Congress  
South East Scotland Transport Partnership  
Shepherd and Wedderburn  
Society of Parliamentary Agents  
Strathclyde Partnership for Transport  
Transport Initiatives Edinburgh (tie Ltd)

## ANNEX B

### List of respondents (in alphabetical order)

Mr N. Amner  
Angus Council  
Arthur D Little Global Management Consulting  
Blackhall Community Association  
British Railways Board (Residuary) Ltd  
British Ports Association  
British Transport Police Authority  
Chartered Institute of Logistics and Transport (UK)  
City of Edinburgh Council  
Chamber of Shipping  
Dundas and Wilson CS LLP and Transport Initiatives Edinburgh (joint submission)  
East Ayrshire Council  
East Renfrewshire Council  
Faculty of Advocates  
Fife Council  
First Scotrail  
Glasgow Chamber of Commerce  
Glasgow City Council  
Health and Safety Executive  
Highland Council  
Historic Scotland  
Loch Lomond and The Trossachs National Park  
Network Rail  
North Ayrshire Council  
North Lanarkshire Council  
Office of Rail Regulation  
Passenger Focus  
Private individual  
Procedures Committee, Scottish Parliament  
Renfrewshire Council  
Royal Institution of Chartered Surveyors  
Scottish Association for Public Transport  
Scottish Badgers  
Scottish Environment Protection Agency  
Scottish Natural Heritage  
Shepherd and Wedderburn  
South Ayrshire Council  
South East Scotland Transport Partnership  
South Lanarkshire Council  
TRANSform Scotland