

British Ports Association

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Tony Cruickshank
TWA Consultation
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Scottish Executive
Victoria Quay
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Dear Mr. Cruickshank

REVIEW OF SPECIAL PARLIAMENTARY PROCEDURE PROVISIONS

Thank you for the opportunity to respond to the Scottish Executive's consultation on proposals for the review of special parliamentary procedure provisions.

The BPA represents the majority of ports in Scotland, covering a wide spectrum of the industry, from fishing ports to the port of Aberdeen, a major base for the offshore oil industry. As such, our response to this consultation represents the view of our members. It does not, however, supersede any individual responses that they may have made separately to the Executive.

This response has regard only to the specific proposals for revising the special Parliamentary procedures relating to the Harbours Act 1964, Roads (Scotland) Act 1984 and Pilotage Act 1987. The BPA will reply separately to the consultation on "Proposals for a new approach to delivering public transport infrastructure developments".

The BPA agrees with the Scottish Executive that, broadly, there is scope to improve the manner in which the powers regulated by those Acts are operated. It is important, however, that any change brings clear advantages in terms of speed and efficiency, and will not cause undue delay, opportunity for frivolous objections, or unnecessary and burdensome consultations or inquiries.

Aspects of the Harbours Act and Pilotage Act, particularly Harbour Revision Orders and Pilotage Orders are important in the effective day-to-day operation of ports. They alter to reflect the relatively fluid environment in which ports work. It is

imperative, therefore, that the machinery by which the Acts are operated is fit for purpose, providing a simple, transparent system, with an appropriate degree of oversight, that effectively facilitates Scotland's ports to make the adjustments needed to ensure future safety and success. This must inform any proposals to alter the current system.

In respect of questions posed in the consultation letter:

1. The BPA, and its members, are principally concerned that the replacement of special parliamentary procedures with a determination by Scottish Ministers could result in complication and delay, reducing the efficiency of arrangements and introducing undue delay. Whilst accepting that ministerial determination and an inquiry-based system brings certain advantages in terms of application of expertise when compared to the existing system of parliamentary system, the English experience of such a practice has not been an especially happy one.

The frustrations of the current system in England and Wales, where applications for HROs have been seriously delayed was a contributory factor to the formulation of a Harbours Bill, which entered Scottish law as part of the Transport (Scotland) Act 2005. Delay and complication caused by an inquiry-based system is, therefore, a major concern for the BPA.

2. It is hard to be categorical in terms of the potential consequences of the proposed changes, as HROs and Pilotage Orders are, in general, made reactively- there is no steady stream of them. With that caveat, I shall instead raise a number of possible complications that could arise from the suggested reforms.

Where major harbour developments are proposed it is not clear, from the consultation letter, whether proposed HROs, a prerequisite to any development, would be subject to a separate inquiry, or that it would be incorporated into wider inquiry examining a whole development proposal.

Further, the requirement for the Scottish Parliament to have an oversight function for any ministerial orders seems inconsistent with the aim of the proposed changes. Rather than replacing parliamentary scrutiny with a minister-directed inquiry it appears that both would exist side by side, with considerable potential for complication and delay to development.

Moreover, as regards Pilotage Orders, there seems to be no compelling argument to change the method by which interested parties are notified of proposed changes. The suggested alterations, together with an undertaking to investigate any objections by inquiry increase the potential to hold up Pilotage Orders which, as I noted earlier, are working instruments intended to ensure the safe operation of vessels in and around ports. Like any working instrument, Pilotage Orders need to be the product of a flexible and speedy process.

The Association is, however, broadly supportive of a reduction in the timescale in which objections can be made.

In general, the BPA and its members are particularly keen to avoid a situation whereby the introduction of a TWA style process leads to a scenario in which the port industry in Scotland is unable to change rapidly enough to keep pace with

developments elsewhere. The Harbours Act and Pilotage Act are key pieces of legislation in terms of defining and giving force to certain powers of a port authority.

The Association agrees that a revised procedure could well yield benefits in terms of the quality of scrutiny and, if done well, bring improvements in terms of ease and efficiency of application. The proposals, as they stand, involving both a decision by Scottish Ministers and a degree of Parliamentary oversight do not seem to offer those improvements.

If this response has focused heavily on the fear of delay that might be caused by the proposed changes then that is a reflection of the mood of the industry. The delays to decisions on port developments in England, together with ongoing debate regarding the issuing of HROs have emphasised the importance, to the industry, of having sufficiently effective mechanisms in place to permit changes to be promulgated in a simple, diligent and brisk manner. The Ports Policy Review by DfT, together with the Scottish Freight and Transport Policy Reviews, all forthcoming, promise to dynamise the industry further. It is important that the right structures are put in place to bring that dynamism to fruition.

Once again, I thank you for the opportunity to respond to this consultation on behalf of our members. Should you wish to discuss anything in this submission further, please do not hesitate to contact me.

Yours sincerely

David Bishop
Association Secretary

