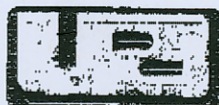


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**LERWICK PORT AUTHORITY**

Albert Building, Lerwick, Shetland ZE1 0LL

Tel 01595 692991 Fax 01595 693452

e-mail: info@lerwick-harbour.co.uk

24 April 2006

Our Ref: ASW/ST

Mr Tony Cruickshank  
TWA Consultation  
Transport Strategy & Legislation Division  
2D - Dockside  
Scottish Executive  
Victoria Quay  
Leith  
EH6 6QQ

Dear Mr Cruickshank

**TRANSPORT LEGISLATION – REVIEW OF SPECIAL PARLIAMENTARY PROCEDURE PROVISIONS**

As per our discussion earlier today, please find enclosed the correct correspondence dated 24 April 2006 as received from our solicitors Anderson & Goodlad, Lerwick.

The views expressed by Anderson & Goodlad reflects the views of Lerwick Port Authority and I ask that you accept their comments as our formal response.

Once again please accept our apologies.

Yours sincerely

Allan Wishart  
Chief Executive  
Enc

cc Mr David Bishop – Association Secretary – British Ports Association



HN12544

**ANDERSON & GOODLAD**

Solicitors &amp; Notaries Public

Street

Estate Agents

52 Commercial

LERWICK  
Shetland  
ZE1 0BD

Telephone: 01595 692297

Fax: 01595 692247

e-mail: anderson.goodlad@zetnet.co.uk

Allan S Wishart Esq.,  
Chief Executive  
Lerwick Port Authority  
Albert Building  
Lerwick  
ShetlandDATE: 24<sup>th</sup> April 2006

OUR REF: LPA1850/LAK/NJF

YOUR REF: ASW/EA

By e-mail

Dear Sir

**SCOTTISH EXECUTIVE - CONSULTATION  
TRANSPORT LEGISLATION - REVIEW OF SPECIAL PARLIAMENTARY  
PROCEDURE PROVISIONS**

We refer to your letter of 10<sup>th</sup> April with enclosures and to our subsequent telephone conversations when you requested that you let us have brief recommendations on a response to the Consultation letter of 6<sup>th</sup> March 2006 with attachments sent to you by the Scottish Executive for consideration at the Board Meeting today.

The relevant Acts under consideration by the Scottish Executive to which SPP in certain limited circumstances apply are as follows: -

- Harbours Act 1964.
- Roads (Scotland) Act 1984.
- Pilotage Act 1987.

In our view, the provisions relating to SPP should be retained.

To substitute a procedure whereby disputed claims of competing public bodies such as SIC and LPA would be determined by ministerial whim would be a retrograde step.

Such would be a dictat following on a recommendation by a Scottish Executive Reporter after a public local inquiry. There would be no obligation on the Minister concerned to follow the Reporter's decision and neither the Reporter's Decision nor that of the Minister would be subject to Parliamentary scrutiny. It might however, be open to Judicial Review.

Partner: J.M. GOODLAD B.L.

Partner: LINDA A. KNARSTON LL.B. W.S.

Associate: Kathryn G. Gordon, BSc.(Hons) LL.B DIP.LP.NP

Generally speaking it is fair to say that the operation of SPP is more costly in time and money than a PLI Procedure would be expected to be. This is partly because a very much higher standard of specification and detail is required for consideration by the Parliamentary Committees dealing with the matter and ultimately the whole Parliament.

This is certainly our experience in the past in relation to Provisional Orders procedures which set the same standards. In short the detail and specification which is required as part of the parliamentary process is not required in a PLI. Apart from any demands made by the Reporter the level of specification and detail provided is dependant on what the parties to the Inquiry decide to put before it.

SPP was introduced in the main to deal with matters regarding national and strategic importance and only operates in limited circumstances. For example in relation to the Bressay Bridge Application SPP only applies to the objections to the Roads Scheme because LPA as the Navigation Authority has objected on navigational grounds. In other words, if LPA had objected on different grounds SPP would not have applied.

As far as compulsory purchase of land is concerned again SPP applies unless the appropriate Minister certifies to the contrary which involves in effect certifying that the approval or confirmation of the CPO will not operate to the detriment of the undertaking whose land is sought to be acquired.

There remains the matter of unresolved objections in relation to the Pilotage Act 1987 which enables the Scottish Ministers in the interest of efficiency and safety of navigation to permit a Harbour Authority to extend the exercise of its Pilotage functions beyond its own Harbour area.

Again this involves such important issues which we believe strongly should be subject to parliamentary scrutiny.

It is perhaps a measure of the effectiveness of SPP that its very existence encourages Promoters of an Order to seek to reach agreement with Objectors. So successful has it been in this regard that as far as we can ascertain there have only been 2 opposed Orders under SPP before the Westminster Parliament since 1945.

In summary our view is that such matters should be dealt with by Parliament and not just by a Minister. Under SPP the Order sought is incorporated in a private Bill and can only come into effect if the Bill becomes law whether or not with amendments by an Act of the Scottish Parliament.

Yours faithfully

Anderson & Goodlad

Partner: J.M. GOODLAD B.L.

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