

Nobel House
17, Smith Square
London SW1P 3JR



Telephone: 08459 335577

Email: Jane.Barton@defra.gsi.gov.uk

Web: www.defra.gov.uk

Date: 24 November 2010

Ella Behlyarova
Secretary – Aarhus Convention
Economic Commission for Europe
Environment, Housing and Land Management
Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ella,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the Aberdeen Western Peripheral Route transport proposal (Ref ACCC/C/2009/38)

Thank you for your letter of 27 October 2010 which asked us to respond to nine questions posed by the Compliance Committee at its twenty-ninth meeting on 21-24 September 2010.

This letter sets out the UK Government's responses to those questions. In order not to overburden the Committee, the comments cross refer to previous submissions where possible. In addition this letter provides comments on the issues raised by the Communicant in their letter to the Committee dated 4 October 2010.

Responses to Specific Questions Raised by the Compliance Committee

1. What possibilities were there for members of the public to challenge the Minister's decision of 1 December 2005? When did the time limit for such a challenge expire?

As outlined in the UK Government's letter of 22 December 2009 and the written and oral evidence presented at the Committee hearing on 17 March 2010, numerous public consultations and exhibitions were held throughout the development of the proposed Aberdeen Western Peripheral Route (AWPR). Following the major public consultation exercise in spring 2005 and a review of all the information available, including environmental, engineering, economic and traffic assessments, for the options considered

a decision to adopt the Milltimber Brae and Fastlink corridor option was announced by the then Minister for Transport on 1 December 2005. This announcement outlined the aspiration of the Scottish Ministers to promote a preferred route within the Milltimber Brae and Fastlink corridor option, however, promotion of a preferred route is not formally progressed until draft Schemes and Orders are published in accordance with the Roads (Scotland) Act 1984.

The Roads (Scotland) Act 1984 is the current legislative framework for the construction, management, maintenance and use of the Scottish road network and the AWPR has been promoted in accordance with the procedures set out in that Act. Following the Ministers announcement on the preferred corridor on 1 December 2005 the project team carried out extensive landowner consultations, survey and development work to identify and refine the alignment of the preferred route within that corridor. Following development of the preferred route draft Schemes and Orders, and an Environmental Statement were published. The publication of draft Schemes and Orders marks the start of the formal statutory consultation period. This allows the public and interested parties to examine the proposed scheme and offer comment in the form of support, objection or other representation. Reference is made to previous UK submissions as to how that statutory process was taken forward, through to the public local inquiry into the proposed AWPR held between 9 September 2008 and 16 February 2009 and the announcement on 21 December 2009, that the Scottish Ministers had decided to make the AWPR Schemes and Orders subject to a number of detailed modifications to the published draft Schemes and Orders.

In accordance with previous commitments given, a Direction was issued under Section 143A of the Roads (Scotland) Act 1984 confirming the relevant AWPR Schemes and Trunk Road Orders would be subject to affirmative procedure in the Scottish Parliament. This meant that the relevant Schemes and Trunk Road Orders could not come into force unless approved by the resolution of the Scottish Parliament.

Separate from that statutory scheme, at any stage that an administrative decision is made by the Scottish Ministers, an aggrieved person with an interest could petition the Court of Session seeking a review of that decision by way of judicial review. Judicial review is not limited to "statutory" decisions by Ministers. The Ministerial decision made publicly on 1 December 2005 was a decision potentially judicially reviewable.

In answer to the second leg of the question from the Committee, it should be noted that no statutory time limit (such as the 3 month limit in England & Wales) applies to JR in Scotland. The concerns of the Committee therefore expressed in the case ACCC/2008/33 on judicial review in England and Wales (concerning lack of clarity of time limits and when time limits start) do not apply in Scotland.

That is not to say that cases can be taken any time after the decision, however long a petitioner takes to raise as challenge. Respondents may argue to the court that an undue length of time has elapsed and that, for the sake of legal certainty, the challenge should not be permitted. This is described in Scotland as "delay, mora and taciturnity", but does not apply rigidly under the constraint of a fixed period to take a challenge. The approach of a court will be influenced by the prejudice suffered by a challenge some time after the decision. Although inevitably speculative, the non-irreversible nature of the next steps

following that decision (as set out above) might suggest that a court would be relatively relaxed about a delayed challenge.

This would need to be decided on the basis of the facts in the case and therefore in the absence of a challenge being taken, it is impossible to state a precise date after 1 December 2005 when a court would reject a challenge.

2. What is the scope and powers of the statutory appeal to the Court of Session under the Road (Scotland) Act?

As outlined above the Roads (Scotland) Act 1984 is the current legislative framework for the construction, management, maintenance and use of the Scottish road network. The AWPR has been promoted in accordance with the procedure set out in the Roads (Scotland) Act 1984.

On 21 December 2009, the Scottish Ministers announced that they decided to make the AWPR Schemes and Orders subject to a number of detailed modifications to the published draft Schemes and Orders.

The relevant Schemes and Trunk Road Orders were made on 14 January 2010 and laid before Parliament on 15 January 2010 for final approval. The relevant Schemes and Trunk Road Orders were approved by the resolution of the Scottish Parliament on 3 March 2010.

Public notices were published on Friday 26 March 2010 to inform the public that the relevant Schemes and Trunk Road Orders had been approved by the Scottish Parliament and that associated Orders had also been made.

The publication of public notices on Friday 26 March 2010 marked the start of the six week challenge period whereby any person aggrieved by the Schemes or Orders, who desired to question the validity thereof, or of any provision contained therein, on the grounds that they were not within the powers of the Roads (Scotland) Act 1984 or that any requirement of the said Act or of any regulations made thereunder has not been complied with in relation to the Schemes or Orders, may make an application as regards that validity to the Court of Session.

In particular, any person wishing to question the validity of the Scottish Ministers decision to proceed with the scheme may, under the provisions of Schedule 2 to the Roads (Scotland) Act 1984 and Part 4 of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 do so by application to the Court of Session. Such an application must be made:

- in the case of the Schemes and Trunk Road Orders which were subject to approval in the Scottish Parliament, within 6 weeks of the date on which the notice that the Parliament has, or as the case may be has not, passed a resolution approving the instrument is first published; and

- otherwise within 6 weeks of the date on which the notice of the making of the Schemes and Orders are first published.

On any such application the Court:

- (a) may by interim order suspend the operation of the Scheme or Order or of any provision contained in it, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; and
- (b) if satisfied that the Scheme or Order or any provision contained in it is not within the powers of the Roads (Scotland) Act 1984 or that the interests of the applicant have been substantially prejudiced by failure to comply with any such requirement as aforesaid, may quash the Scheme or Order or any provision contained in it, either generally or in so far as it effects the property of the applicant.

The Rolls of the Court, which were published on the afternoon of 10 May 2010, indicated that Road Sense and Mr William Walton (Chairperson of Road Sense) had submitted an application to the Court of Session challenging the decision of the Scottish Ministers to proceed with the AWPR and the making of the Schemes and Orders.

3. Please provide us with a copy of the Modern Transport System (MTS) document containing the objective “Provide traffic relief (including the removal of long distance heavy goods vehicle traffic) on the existing congested A90 route through and to the south of Aberdeen”. What date was this objective introduced into the MTS? Does the United Kingdom accept that the MTS is a plan or programme subject to article 7?

Item 5 of our letter of 22 December 2009 included some discussion of the development of objectives for the Modern Transport System (MTS) and for the AWPR. Further comments on this issue are provided below.

The proposed AWPR has a long and detailed history as a project. It was initially promoted by the local roads authority in the 1970s. The project has evolved since the 1970s, becoming in 2003 a trunk road project identified as being of regional and national importance. The objectives of the scheme have changed throughout that period, to reflect the changing nature and status of the project.

The Modern Transport System (MTS), endorsed by the Scottish Executive (now Scottish Government) in January 2003, provided the integrated transport strategy for North East Scotland up to 2011. It drew on the Local Transport Strategies developed by Aberdeen City Council and Aberdeenshire Council in 2000 and the Scottish Executive’s Sustainable Transport Study for Aberdeen completed in 1998. It is an integrated package of measures contained within 14 strands to improve the economy, accessibility and environment of the North East of Scotland.

Scheme objectives for the proposed AWPR were first determined in the 1990s by Grampian Regional Council (predecessor to Aberdeen City Council and Aberdeenshire Council). In 2001, work began on an Integrated Transport Strategy (which later became

known as the Modern Transport Strategy - MTS) to allow assessment of the transportation strategies which were to be considered to help resolve the North East of Scotland's transportation problems.

The MTS was developed using the Scottish Transport Appraisal Guidance (STAG) appraisal methodology which establishes outcomes, objectives and problems to be solved and then assesses the ability of different transport proposals to address these. In accordance with the STAG appraisal methodology objectives were developed by NESTRANS, the then voluntary regional transport partnership, to allow assessment of the transportation strategies. The finalised Integrated Transport Strategy was named the "Modern Transport System".

The objectives developed for the MTS were grouped against the five criteria set by the Government as the benchmark against which proposals should be measured, namely environment, safety, economy, accessibility and integration. Two additional criteria of deliverability and acceptability were also added. These objectives relate to a wide range of transport interventions across a number of transport modes.

A copy of the MTS is available from Aberdeen City Council's website at http://www.aberdeencity.gov.uk/Roads/transport_projects/roa_WRP_stag_mts.asp. The objectives for the MTS are contained in Appendix 2 a copy of which is available from <http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=5467&sID=2989>.

During this stage of work consideration was also given to the development of objectives which related to the overall MTS but applied specifically to the Aberdeen Western Peripheral Route project (then referred to as the WPR) to facilitate consideration of which route corridor was to be preferred for the Northern Leg. These objectives were also applicable to the complete scheme which circumnavigated the city. The 13 AWPR project specific objectives which were established can be found at <http://www.aberdeencity.gov.uk/nmsruntime/saveasdialog.asp?IID=5533&sID=2989>

For ease of reference the objectives developed by NESTRANS for the Integrated Transport Strategy up to 2011, the MTS, and the project specific objectives developed for the AWPR (then known as WPR) are listed in the table below:

MTS and WPR Objectives

Criteria	MTS Objective	WPR Project Specific Objectives
Acceptability and Participation	<ul style="list-style-type: none"> The strategy will be developed through public participation and be endorsed by the Community. 	
Deliverability	<ul style="list-style-type: none"> The strategy will be achievable, both practically and financially, and demonstrate best value. 	
Environment	<ul style="list-style-type: none"> To develop a transport system which protects, enhances and promotes the natural, built and cultural heritage of the North East. To develop a transport system which protects non-renewable resources, and minimises the impact of transport on air quality, both locally and globally. 	<ul style="list-style-type: none"> To reduce the impact of traffic, including in particular HGV traffic, on Aberdeen and the surrounding area whilst incurring minimal damage to the natural environment. To contribute towards reducing air pollution problems, particularly in the city centre where the problems are greatest.

Criteria	MTS Objective	WPR Project Specific Objectives
Safety (Safety, Accidents)	<ul style="list-style-type: none"> To reduce the number and severity of casualties involved in transport related accidents. 	<ul style="list-style-type: none"> To provide a consistent, high quality, efficient and effective route with a minimal number of high quality, high capacity junctions to maximise user safety. To reduce the traffic levels on the existing road network thereby reducing the risk of accidents.
Safety (Safety, Security)	<ul style="list-style-type: none"> To provide a practical, healthy, safe and attractive transport system. To provide a secure travel environment which is safe from (and perceived to be safe from) intimidation and danger for all transport users and the wider community. 	
Economy (Economic Activity)	<ul style="list-style-type: none"> To deliver a transport system for the North East of Scotland which enhances the competitiveness of the area, its business sectors and constituent communities, and thereby supports the Scottish and UK economy. To reduce the impact of peripherality by improving external links to the North East by rail, road, sea and air. 	<ul style="list-style-type: none"> To provide access between proposed rail freight transfer depots, industrial estates and businesses, Park and Ride car parks, road and air links, to ensure journey times and costs are minimised. To reduce congestion and remove the bottleneck in the Trans European Network thereby increasing the reliability of journey times through and around the City, helping to limit the effects of peripherality nationally and internationally.
Economy (Economic Benefits)	<ul style="list-style-type: none"> To enhance the efficiency of the transport networks. To ensure whole-life, long-term value of transport networks, in capital and running costs. 	<ul style="list-style-type: none">
Integration (Transport Integration)	<ul style="list-style-type: none"> To enable efficient movements of people or goods, even when more than one mode is used, by integrating different modes of transport to provide seamless interchange and cross-modal synergies. To ensure integration of the North East into international transport systems. 	<ul style="list-style-type: none"> To produce a consistent standard of route that will bypass the city from A90 (North) to A90 (South) and attract nonessential traffic away from Aberdeen and inappropriate minor routes. To allow the reallocation of road space to more appropriate priority forms of transport. To provide access between proposed Park and Ride car parks.
Integration (Land Use Integration)	<ul style="list-style-type: none"> To integrate land use and transportation to ensure that transport networks serve development as efficiently as possible. To create a long-term sustainable framework of settlements in a hierarchy, by locating new homes, jobs and services in scale with each other and with the role and function of each settlement. 	<ul style="list-style-type: none"> To provide good accessibility to the land required for the sustainable development of Aberdeen. To provide an attractive link from residential areas on the periphery of Aberdeen and Aberdeenshire to the industrial estates and the main employment areas on the periphery of Aberdeen and Aberdeenshire, reducing the need to travel through the city centre.
Integration (Policy Integration)	<ul style="list-style-type: none"> To consider transport when developing other policy initiatives, such as social inclusion, health, education and social care objectives. 	<ul style="list-style-type: none"> To produce a route which will improve access to employment and generate job opportunities thereby contributing to the social inclusion policies of both Councils.
Accessibility (Base Accessibility)	<ul style="list-style-type: none"> To reduce the impact of peripherality and improve the perception of accessibility of the North East of Scotland nationally and internationally. To provide communities with a choice of means of travel. To improve peoples access to jobs and employment. 	<ul style="list-style-type: none"> To significantly reduce the level of traffic in Aberdeen without reducing accessibility to or within the city.
Accessibility (Change in Severance)	<ul style="list-style-type: none"> To minimise traffic-induced severance on communities. 	

The conclusion of the MTS was that an integrated package of measures performed better than the other options in addressing the objectives and problems and demonstrated the need for providing the AWPR project as well as other transportation projects. The MTS comprises a range of transport measures for the North East of Scotland and includes the following:

- Aberdeen Western Peripheral Route;
- Strategic Roads;
- Park & Ride;
- Bus Priorities;
- Crossrail;
- Strategic Rail;
- Rail Freight;
- Airport/Access to Airport;
- Ports/Maritime Transport;
- Urban Environment;
- Cycling, Walking and Safety;
- Travel Plans/Travel Awareness; and
- Maintenance of Existing Network.

The AWPR is one of many projects within the Integrated Transport Strategy, known as the MTS, and will improve access to National and European transport networks (which includes the A90 though and south of Aberdeen), reducing the peripherality of the area, and will also remove traffic from unsuitable roads in and around Aberdeen. The AWPR acts as a facilitating project which would allow other parts of the MTS to be implemented.

In March 2003 the Scottish Ministers, in recognition of the strategic importance of the AWPR project to the economy of the North East of Scotland, announced that it would be promoted as a trunk road in partnership with Aberdeen City Council and Aberdeenshire Council.

When the Scottish Government (then known as the Scottish Executive) became involved in the proposed AWPR project, in its capacity as trunk roads authority, the objectives for the AWPR project were reviewed in 2005 as part of the process of identifying a preferred corridor for the proposed scheme. This process is described in Section 2.8 of the AWPR Consolidation Assessment Report, which can be found at:

<http://www.awpr.co.uk/d/Documents%20and%20Reports/Project%20Development%202005%20-%202006%20Consolidation%20Report.pdf>

As part of this review process the Scottish Government consolidated the original 13 objectives into 6 revised objectives which were considered to better take account of the nature and strategic objectives of the trunk road. The six specific objectives set in respect of the scheme reflect the Government's five key headings of Environment, Safety, Economy, Integration and Accessibility. These consolidated objectives are detailed in the report noted above and listed below:

- Improve access to and around Aberdeen to improve transport efficiency and support the industrial areas in the City and the area to the north and west of Aberdeen (Economy and Employment);
- Provide traffic relief (including the removal of long distance heavy goods vehicle traffic) on the existing congested A90 route through and to the south of Aberdeen (Environment and Accessibility);
- Reduce traffic on urban radial routes reducing noise and air pollution and creating opportunities for pedestrianisation in the City Centre (Environment and Accessibility);
- Provide access to existing and planned park and ride and rail facilities around the outskirts of the City encouraging modal shift (Integration);
- Increase opportunities to maximise bus lanes and other public transport priority measures (Integration); and
- Improve road safety over a wide area through the reduction of traffic on local roads (Safety).

The objectives for the MTS, the Integrated Transport Strategy for North East Scotland up to 2011, have not changed since it was published in 2003.

The United Kingdom considers that the consolidated objectives reflect the objectives as originally established in respect of the AWPR, within the wider context of also reflecting the needs of the wider strategic road network. The consolidated AWPR objectives do not affect the MTS objectives, in that the MTS objectives remain unchanged. For this reason it is not possible to provide a strategic document for the MTS containing the referenced objective, as the quoted objective is not an MTS objective.

Status of MTS in Respect of Article 7

Article 7 obliges contracting parties to take appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, with a transparent and fair framework, having provided the necessary information to the public.

The AWPR is a project identified in the MTS and the more recent Regional Transport Strategy (RTS). The MTS, endorsed by the Scottish Government in January 2003, provided the transport strategy for North East Scotland up to 2011.

The 2003 Integrated Transport Strategy, the MTS, was not amended in 2005. As the objectives for the MTS were not changed nor was the strategy amended it is the view of the UK Government that there was no requirement for any further consultation on the MTS.

In 2006 Nestrans commenced preparation of a new long term Regional Transport Strategy for the north east of Scotland, in accordance with the requirements of the Transport (Scotland) Act 2005 and Scottish Government guidance.

It was influenced by the local transport strategies produced by the local authorities, Structure and Local Plans, the regional economic manifesto developed by Aberdeen City

and Shire Economic Forum (ACSEF), Community Plans and other major policy documents.

In developing the RTS to 2021, existing projects from the MTS strategy, such as the AWPR project, which had secured a certain degree of commitment or have advanced significantly have been taken as a given. The RTS assumed that these projects will be implemented and therefore looks beyond existing transport problems identifying those which will need to be tackled in the succeeding decade. These existing projects, including the AWPR, form a Reference Case against which proposed new projects are assessed.

The draft RTS was published for consultation in March 2007, alongside an Environmental Report of the Strategic Environmental Assessment for that strategy. The draft Regional Transport Strategy published in 2007 focused on policies and projects to enable Aberdeen City and Aberdeenshire Councils to develop over the following 15 years. The finalised plan was published in 2008.

It should be noted though that the MTS, which is the latest stage at which it could be said that the AWPR became embedded as part of the transport strategy for the north-east of Scotland (as the relevant plan/programme) was adopted prior to the application to Scotland either of the Aarhus Convention or the EU Directives following therefrom. It was endorsed by the then Scottish Executive in January 2003 and published by NESTRANS in March 2003. The Aarhus Convention was ratified by the UK on 23 February 2005 and the SEA Directive which applied from 21 July 2004.

The obligations to subject plans or programmes to Article 7 procedures was not retrospective and applied to new plans and programmes after the obligations thereunder became applicable to the appropriate authorities within Scotland.

Therefore, the MTS in 2003 was not subject to Strategic Environmental Assessment (SEA), as it was prepared prior to the date for application of the SEA Directive. The 2003 regional transport strategy was not amended in 2005. As the strategy was not amended in 2005 there was therefore no requirement for an SEA at that time. It should be noted that the new Regional Transport Strategy (RTS) was published in 2008 and was subject to SEA. The draft strategy was published for consultation in March 2007, alongside an Environmental Report of the SEA for that strategy.

The obligations regarding SEA's were ultimately imposed by virtue of the Environmental Assessment (Scotland) Act 2005, applying only to plans or programmes where the first preparatory act was after 20 February 2006. It is clear therefore that the obligations under that Act do not come into consideration.

Prior to the coming into force of the 2005 Act, the Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 applied. These became law on 21 July 2004, requiring environmental assessments in circumstances where the first preparatory act occurred after that date (see regulation 8). Due to the timings above, it is clear that the obligations under that regulation do not come into consideration in relation to the 2003 MTS.

In recognition however of the fact that development of plans and programmes through to ultimate adoption can take a long time, transitional provision was made at regulation 11.

That regulation covers pre-2004 plans or programmes, but only does so where adopted **after** 21 July 2006¹. This covers the eventuality of a pre-2004 plan/programme not being adopted until well after the Article 7 obligations ought to apply. However, in the current circumstances, it is clear that the 2003 MTS was adopted considerably before 21 July 2006.

Lastly, for the avoidance of doubt, it should be noted that the AWPR was properly taken forward as a project and met all the requirements in that respect.

4. If the MTS does not contain the above objective, please provide us with the strategic document that does.

As noted in the response to question 3 above, the objective referred to was developed in respect of the AWPR project, not the MTS, therefore it is not contained within the MTS documentation. In addition to this project specific objective appearing in the AWPR Consolidation Assessment Report noted above, it is also referenced within Section 3.8.7 of the published AWPR Environmental Statement 2007 (<http://www.awpr.co.uk/d/Environmental%20Statement/September%202007/Environmental%20Statement%20Report/Part%20A%20-%20The%20Scheme/3%20-%20Alternatives.pdf>) and within Section 2.2 of the AWPR Interim STAG (Scottish Transport Appraisal Guidance) Report published in advance of the Public Local Inquiry for the project (<http://awpr-pli.net/downloads/Documents/Transport%20Scotland%20Documents/TS047.pdf>).

The AWPR STAG report is a document detailing the development of the scheme under consideration. It should be noted that the documented noted above is termed “Interim” as the “Final” STAG report will not be prepared until formal submission is made to the Scottish Ministers for funding approval. The stage of seeking funding approval will not be reached until a competitive tender process has been completed, at which time definitive cost information will be available in respect of the proposed scheme.

5. When was the last date that the “zero option” of not building the AWPR was an option for the public?

The option of not building the AWPR has been an option for public participation on different subjects at different times including:

¹ “where a plan or programme is of a description set out in regulation 9 and—(a) is a plan or programme of which the first formal preparatory act is before 21st July 2004 and which has not been adopted or submitted to the legislative procedure for adoption before 21st July 2006; and ...the responsible authority shall carry out, or secure the carrying out of, an environmental assessment, ..., during the preparation of that plan or programme and before its adoption or submission to the legislative procedure”.

- The Local Transport Strategies, which were developed in 2000, and the Integrated Transport Strategy, the MTS, were the subject of comprehensive public consultation. During the course of these consultations the public had the opportunity to make submissions proposing that the AWPR should not be included within the Local Transport Strategies for Aberdeen and Aberdeenshire or in the Integrated Transport Strategy for the North East of Scotland up to 2011 which became known as the MTS;
- The need and support for the AWPR was reflected in the Aberdeen & Aberdeenshire Structure Plan 2001 – 2016 (NEST 2001), which was approved in December 2001. The public had the opportunity to make submissions proposing that the AWPR should not be included within the Structure Plan;
- Both Aberdeen City and Aberdeenshire Council developed updated local plans during the 2000s, which included policy statements relating to the proposed AWPR. In consultation on these local plans the public had the opportunity to make submissions proposing that the AWPR should not be included within the Local Plans. The Aberdeenshire Local Plan was adopted in 2006 with the Aberdeen Local Plan (Green Spaces New Places) adopted in 2008;
- The specific commitment to the objective of creating an AWPR in the National Planning Framework (NPF) and the National Planning Framework 2 (NPF2) confirmed the national level support for the principle of the project. Both NPF and NPF2 were published in consultative draft form, to provide information on the objective of providing an AWPR and to allow the public to participate in the preparation of policies in the framework. During the consultation periods the public had the opportunity to make submissions proposing that the AWPR should not be built. It should be noted that Mr William Walton, on behalf of Road Sense, provided comment on the draft NPF2 during the consultation period.
- In the consultations carried out in spring 2005 the public had the opportunity to make submissions that the AWPR should not be built. Such submissions were made and taken into account during consideration of the alternative corridors during 2005; and
- The publication of the statutory draft Schemes and Orders in December 2006 and autumn 2007 allowed the public and interested parties to examine the proposed scheme and offer comment in the form of support, objection or other representation. This included the opportunity to make submissions that the AWPR should not be built. This opportunity was for a six week period from the date of publication. It is important to note that while the remit of the Public Local Inquiry was set to focus consideration on issues relevant to testing the question whether the proposed AWPR scheme was appropriate in comparison to any other alternative available, the further considerations of the Scottish Ministers was not restricted in any way. In Paragraph 25 of their published decision letter dated 21 December 2009 the Scottish Ministers explicitly state that they have carefully considered all objections to the draft Schemes and Orders, and make no caveat in regard to any objections being excluded from consideration. By definition, therefore, the objections submitted at that time proposing that the AWPR not be built were taken into account by the Scottish Ministers when making their decision to proceed with the Scheme.

A copy of the Scottish Ministers decision letter is available from <http://www.scotland.gov.uk/Resource/Doc/935/0092586.pdf>.

A number of policy documents identifying a need and support for the AWPR at a national level have been published in recent years, including:

- Building Better Transport, published March 2003;
- A Partnership for a Better Scotland, the then incoming administration's partnership agreement, published in 2003;
- National Planning Framework for Scotland, published in 2004;
- Scotland's Transport Future, published in June 2004;
- Building a Better Scotland, published in 2005;
- Scotland's National Transport Strategy, published in 2006;
- Scottish Budget Spending Review 2007: Finance and Sustainable Growth; and
- National Planning Framework for Scotland 2, published in 2008.

In addition, regional and local policy documents published since 2003 continue to identify a need and support for the AWPR, including:

- Current approved Aberdeen Local Plan (Green Spaces New Places), published in 2008;
- Current approved Aberdeenshire Local Plan, published in 2006;
- Aberdeen City and Shire Structure Plan, approved in 2009;
- Aberdeen Local Development Plan Main Issues Report, published for consultation in 2009
- Aberdeenshire Local Development Plan Main Issues Report, published for consultation in 2009;
- Aberdeen City Council Local Transport Strategy, published in 2008;
- Aberdeenshire Council Local Transport Strategy, published in 2007;
- The approved North East Scotland Regional Transport Strategy, published in 2008; and
- Aberdeen City and Shire – Economic Review, published in 2009.

The Aberdeen Local Plan and the Aberdeen City and Shire Structure Plan are both 'development plans' for the purposes of the Town and Country Planning (Scotland) Act 1997. In term of section 238 an aggrieved person may challenge the development plan within a period of six weeks after the approved plan is published.

6. The final approved route for the Fastlink appears to be some distance to the east of the consulted routes. Was the exact line chosen subject to consultation, and if so, when, and who was invited to participate in that consultation?

In Item 6 of our letter of 22 December 2009 we provided comment on the manner in which public participation was ensured leading up to the announcement of 2 May 2006 and the preparation of draft Schemes and Orders for the AWPR. While this response largely addresses the issues raised in question 6 of your letter of 27 October 2010, a more detailed response is also provided below.

The final approved route for the Fastlink was developed making use of a range of consultation methods. These are described below, as is the process which led to the definition of the final route which was published in December 2006 and autumn 2007.

The development of a road scheme follows a process as set out in the relevant standard within the Design Manual for Roads and Bridges (DMRB), which is TD 37/93: Scheme Assessment Reporting. The DMRB provides a comprehensive manual system which accommodates current Standards, Advice Notes and other published documents relating to the development of trunk roads in the United Kingdom. The main aims of the assessment reporting process are:

- to permit consideration of the likely environmental, engineering, economic and traffic effects of alternative proposals; and
- to allow the public and statutory bodies to comment on proposals taking account of their environmental, engineering, economic and traffic implications.

The decision announced on 1 December 2005 represented confirmation of the outcome of a Stage 1 assessment of the "broadly defined improvement strategy". Following on from that decision it was necessary to undertake Stage 2 assessment work, involving a choice between alternative routes and options within the corridor, before Stage 3 assessment work was undertaken, during which the selected route/option is refined and formally appraised prior to commencement of the statutory process.

During the Stage 2 work undertaken in respect of the Fastlink consideration was given to the best route or option to address a range of environmental and engineering constraints, including the Red Moss of Netherley Special Area of Conservation, which is situated immediately to the east of the indicative route presented at the consultations in spring 2005. Further assessment during Stage 2 indicated that a potential route existed to the east of the catchment area of the Special Area of Conservation, and investigation showed that such a route was feasible. This route offered the significant benefit of avoiding direct or indirect impact on an important environmental receptor, and this was one of the key reasons why the route of the Fastlink moved east during Stage 2 scheme development. During the Stage 2 assessment work, written consultation was undertaken with a wide range of statutory and non-statutory groups. A list of the groups written to is contained in **Appendix 1** to this letter. A large number of community councils were included in this consultation, and contact with these groups was the main route by which public participation was sought during this stage of the project. However, in addition to the consultation process described above, during this stage the project website was updated identifying key findings from the work being undertaken, and the public were able to comment either directly via the project website, or by making arrangements to meet with the AWPR Managing Agent team based in Aberdeen, both of which opportunities were made use of by members of the public. In addition, during this period a number of parties, including individual members of Road Sense, wrote to local and central government elected representatives who sought information on their behalf.

During subsequent Stage 3 scheme development the route was further refined to reflect the level of detail at which the route was now defined. A key aspect of this refinement was the responses from individual landowners affected by the proposed scheme, and during Stage 3 assessment work all affected landowners were met with and had the opportunity to comment on the proposed Scheme. In addition, general arrangements for public

comment continued during this stage as at previous stages, and a number of parties continued to make use of these avenues to comment on the proposed scheme.

In addition the public were given the opportunity to comment on the preferred route for the Fastlink following publication of the draft Schemes and Orders in December 2006 and autumn 2007. The publication of the statutory documentation in accordance with the Roads (Scotland) Act 1984 allowed the public and interested parties the opportunity to examine the proposed alignment for the Fastlink and offer comment in the form of support, objection or other representation. Formal public exhibitions were also held at specific locations along the route to coincide with the publication of draft Schemes and Orders.

7. At any time was the option of both a “Southern Leg” and “Fastlink” as one combined option presented to the public for their comment? If so, please describe the timeframes and modalities of the public’s opportunity to comment.

As clearly demonstrated to the Committee at the hearing on 17 March 2010 the Milltimber Brae and Fastlink corridor option was a combination of two options presented during the spring 2005 public consultation (i.e. a combination of the Milltimber Brae and Peterculter/Stonehaven options presented at the exhibitions in spring 2005). Following the announcement to adopt the Milltimber Brae and Fastlink corridor option on 1 December 2005 the letters referred to in the response to question 6 above, which were issued to statutory and non statutory consultees (including community councils), was the first occasion when the combined option comprising both a Southern Leg and Fastlink were issued for consultation purposes.

Following that the public and interested parties were given the opportunity to comment on the entire Scheme including the Southern Leg and Fastlink following publication of the draft Schemes and Orders in December 2006 and autumn 2007. The publication of the statutory documentation in accordance with the Roads (Scotland) Act 1984 allowed the public and interested parties the opportunity to examine the proposed alignment for the Scheme (including the Southern Leg and Fastlink) and offer comment in the form of support, objection or other representation. Formal public exhibitions were also held at specific locations along the route to coincide with the publication of draft Schemes and Orders.

8. When was the decision taken to change the “Fastlink” from a single carriageway to a dual carriageway? Was the public consulted on the single carriageway “Fastlink”, and if so, when and how? Was the public consulted on the decision to change the single carriageway to dual carriageway, and if so, when and how?

The decision to adopt a dual carriageway level of provision for the proposed Fastlink was taken in principle during the period of Stage 2 development of the scheme in 2006. This decision was taken by the project team, based on consideration of factors such as predicted level of future traffic volumes, safety benefits associated with a dual carriageway level of provision, environmental issues associated with a dual carriageway level of provision, cost implications of a dual carriageway level of provision, and route hierarchy and consistency considerations across the trunk road network. The background to this

decision is summarised in Section 3 of the Consolidation Assessment Report referred to the response to question 3 above.

The particular issue of the principle of whether a dual carriageway should be adopted as opposed to a single carriageway was not the subject of specific public consultation, in the same manner as the design of individual junctions was not the subject of specific public consultation. The development of such proposals are viewed fundamentally as technical matters on which the project team arrives at a conclusion based on an assessment of environmental, engineering, operational and economic factors. The ultimate conclusion of this work, i.e. the road defined by the draft Schemes and Orders, is thereafter subject to public consultation as part of the statutory authorisation process, which is the point at which the public can raise concerns relating to whether a proposal is or is not appropriate. Those concerns may well include issues such as the appropriate level of provision for the scheme. In respect of the AWPR this process was initiated with the publication of draft Schemes and Orders in December 2006 and autumn 2007, following which the public were able to, and indeed a number of parties did, make representations in respect of the level of provision for the Fastlink. This issue was addressed in evidence during the course of the Public Local Inquiry, when the public had the opportunity to cross-examine witnesses appearing on behalf of Transport Scotland on that and other issues relating to the development of the scheme proposals.

9. Please respond to the communicant's allegations in page 4 and 5 of its letter of 26 October 2010, regarding (a) the expenses/cost of an appeal; (b) the scope of an appeal; and (c) the right to bring a challenge.

For the purposes of this response it is assumed that the Committee is referring to Road Sense's letter sent by the Secretariat and received by the UK on 4 October and not 26 October 2010. The UK Government has not received a copy of a Road Sense letter dated 26 October 2010.

The Communicant in their letter raise a number of issues related to the adequacy of the process for review by a Court of the decision of the Scottish Ministers.

By way of general response to these points, the Committee are reminded that, at the Committee meeting on 17 March, the Communicant and the UK (with the agreement of the Committee) agreed not to make representations on that part of the complaint relating to questions about the costs of redress to the courts, scope of an appeal and rights to bring a challenge.

It was accepted and agreed that to do otherwise was premature because no decision had been made by the Communicant to submit an appeal and therefore no definitive judgement from the appropriate court obtained, in order to let the assertions of the Communicant be tested with reference to the factual circumstances in play.

As indicated by the Communicant since the date of the Committee meeting, public notices have been published (Friday 26 March 2010) informing the public that the relevant Schemes and Trunk Road Orders had been approved by the Scottish Parliament and that associated Orders had also been made, and that the decision of the Scottish Ministers and

the making of the Schemes and Orders has been appealed by the Communicant. However, the Communicant is now in the process of challenging this decision under the Roads (Scotland) Act 1984. The UK wishes to advise the Committee (a) that a hearing on a Protected Expenses Order (PEO) has been ordered by the court for 16 December and (b) that a full hearing on the merits of the legal arguments is set for 22 February (& 8 subsequent days).

Furthermore, the Communicant has in its recent letter raised an issue which was not touched upon in its original communication and that is the right to bring a challenge (see paragraph 3(c) of their letter of 4th October).

In light of the circumstances the UK therefore requests the Committee to adopt one of two approaches to the Communicant's allegations at pages 4 and 5 of their recent letter:

(1) given access to justice has not yet been the subject of any substantive discussion either in writing or orally under case 38, that the Committee treat these submissions as a new communication, giving the UK the usual 5 months to respond and to present full oral argument before the Committee at one of its future meetings on these matters;

or, if the Committee is not minded to treat this as a new communication;

(2) defer the deadline for the UK's written response to these recent submissions so as to allow the procedures before the national court to run their course, and following this response to convene a further meeting under the heading of case 38 whereby parties can attend and present full and considered oral representations to the Committee.

To follow the first approach would mean that the Committee's decision on the other elements of the Communicant's complaint would not need to be delayed by these more recent events, but the UK seeks the view of the Committee on the most appropriate way forward in this respect. Under either scenario, the UK is of the view that the Committee cannot reach a considered view on these particular allegations until the Court of Session has opined and it has heard full oral argument on the Scottish system.

United Kingdom Comments on Road Sense submission to the Compliance Committee dated 4 October 2010

The UK Government does not want to overburden the Committee by replying in detail to the points raised by Road Sense in terms of freshwater pearl mussels as this issue has been dealt with extensively in our written and oral submissions to the Committee and also in the UK Government letters of 19 May 2010 and 12 July 2010. It is not accepted by the UK Government that the absence of information from SNH as a matter of fact prevented Road Sense from presenting evidence at the Public Local Inquiry on the risk that the Scheme may create for freshwater pearl mussels. Furthermore, the UK Government considers that it is important that the decision of the Scottish Information Commissioner is read in its full and proper context. The Scottish Information Commissioner upheld that SNH had properly applied the use of the Environmental Information (Scotland) Regulations 2004 in withholding sensitive information regarding the location of freshwater pearl mussels. We would refer the Committee to the UK Government's letter of 12 July 2010 for

our comments on the Scottish Information Commissioner's decision. SNH have since released all other information required to be released within the Commissioner's decision.

I hope this additional information provides assistance to the Committee.

Yours sincerely ,

PP. Richards

on behalf of
Jane Barton
UK National Focal Point

cc. Frances McCartney

Appendix 1

The table below lists the various organisations included in written consultation during Stage 2 scheme development work undertaken in early 2006:

Statutory Organisations and Non Statutory Special Interest Groups

Aberdeen Bat Group	NES Biological Records Centre
Aberdeen and District Angling Association	NESTRANS
Aberdeen City Council	North East Scotland Biodiversity
Aberdeen Countryside Project	Ramblers Association
Aberdeenshire Council	Road Haulage Association
Aberdeen Cycle Forum	Royal Deeside Preservation Trust
British Geological Survey	Royal Society for the Protection of Birds
British Horse Society	Scot Ways (Scottish Rights of Way & Access Society)
British Waterways Scotland	Scottish Executive – Development
Centre for Ecology and Hydrology	Department & Environment and Rural
Chamber of Commerce	Affairs Department (SEERAD)
Council for Scottish Archaeology	Scottish Landowners Federation
Cycle Touring Club	Scottish Ornithologists Club
Dee District Salmon Fisheries Board	Scottish Water
Forestry Commission	Scottish Wildlife Trust
Grampian Badger Survey Group	SEPA Aberdeen North
Grampian Fungus Group	SNH Area Officer Aberdeen
Grampian Police	Sustrans Scotland
Grampian Red Squirrel Group	The Garden History Society in Scotland
Health and Safety Executive	University of Aberdeen Zoology Department
Historic Scotland	Vipre Transport Consultants
National Farmers Union of Scotland	

Aberdeen City Council Area Community Councils

Bucksburn & Newhills CC	Garthdee CC
Cults, Bieldside & Milltimber CC	George Street CC
Kingswells CC	Kincorth/Leggart CC
Nigg CC	Mastrick & Sheddocksley CC
West Don CC	Old Aberdeen CC
Bridge of Don CC	Queens Cross/Harlaw CC
Cove & Altens CC	Rosemount & Mile End CC
Ashley & Broomhill CC	Seaton/Linksfield/Pittodrie CC
Braeside & Mannofield CC	Tillydrone CC
Culter CC	Torry CC
Ferryhill CC	

Aberdeenshire Council Area Community Councils

Aberchirder & Marnoch CC	Turriff & District CC
Aberdour & Tyrie CC	Udny CC
Alvah & Forglen CC	Ythan CC
Banff & Macduff CC	Cluny, Midmar & Monymusk CC
Cornhill & Ordiquhill CC	East Garioch CC
Fordyce & Sandend CC	Echt & Skene CC
Fraserburgh CC	Fintray & Kinellar CC
Invercairn CC	Inverurie CC
King Edward & Gamrie CC	Kemnay CC
Portsoy & District	Kintore CC
Rathen & District	Newmachar CC
Rosehearty CC	West Garioch CC
Sandhaven & Pitullie CC	Westhill & District Residents Assoc.
Whitehills & District CC	Arbuthnott CC
Boddam & District CC	Benholm & Johnshaven CC
Buchan East CC	Catterline, Kineff & Dunottar CC
Cruden CC	Crathes, Drumoak & Durris CC
Deer CC	Gourdon CC
Longside and District CC	Mearns CC
Mintlaw & District CC	Newtonhill, Muchalls &
New Pitsligo CC	Cammachmore CC
Peterhead CC	North Kincardine CC
Strichen & District CC	Porlethen & District CC
Auchterless & Inverkeithny CC	Inverbervie CC
Belhelvie CC	St Cyrus CC
Collieston Amenities Committee	Stonehaven CC
Ellon CC	Torphins CC
Foveran CC	Ballater & Crathie CC
Fyvie, Rothie, Monquhitter CC	Banchory CC
Meldrum & Bourtrie	Birse & Ballogie CC
Methlick CC	Braemar CC
Tarves Community Council Postbox	Cluny, Midmar & Monymusk CC
Feughdee West CC	Cromar CC
Finzean CC	Donside CC
Huntly CC	Feughdee West CC
Lumphanan CC	Finzean CC
Mid Deeside CC	Huntly CC
Strathbogie CC	Lumphanan CC
Tap O Noth CC	Turriff & District CC

