PUBLIC PETITIONS COMMITTEE

5th Meeting, 2006 (Session 2)

Wednesday 8 March 2006

The Committee will consider the following current petitions—

**PE817** Petition by Elaine Black and Ewan Kennedy calling for the Scottish Parliament to reform the law of trust to ensure that where a trust has been set up for the benefit of any local community that local community is formally consulted by any party seeking to change the operation of the trust and the view of each member of that community is accountably considered before any change is made.

**PE805** Petition by Ian Watson and Peter Brucelow calling for the Scottish Parliament to urge the Scottish Executive to urgently review the National Parks (Scotland) Bill and in particular the performance of each national park authority in meeting the four aims of a national park as defined in the Bill.

**PE880** Petition by Iain D Skene, on behalf of Renfrewshire and Inverclyde Association of Burns Clubs, calling for the Scottish Parliament to consider and debate the issue of local authority democratic accountability and in particular the accessibility of local elected representatives.

**PE885** The Petitioner requests that the Scottish Parliament amend Scots criminal law relating to sex offences so that (a) there is a statutory offence of male rape in line with the rest of the United Kingdom and with Ireland; and (b) there are no offences that may be committed exclusively by gay men and all sex offences apply equally to everyone, whether man or woman, gay or straight. The criminal law (save some aspects, such as treason) is within the competence of the Scottish Parliament under Schedule 5 of the Scotland Act 1998 (c.46).

**PE887** Petition by Reverend Neil MacKinnon, calling for the Scottish Parliament to urge the Scottish Executive to review the long term planning, social, economic and transportation issues surrounding the creation of “new towns”, such as Cumbernauld.
**PE825** Petition by Alana Watson on behalf of Rosshall Academy Students’ Council and Higher Modern Studies Section calling for the Scottish Parliament to urge the Scottish Executive to ensure that every Scottish secondary school provides lockers for pupils’ use to stop pupils having to carry heavy bags throughout the school day, potentially causing back problems.

**PE876** Petition by Phil Flanders calling for the Scottish parliament to conduct an inquiry into the future prospects for the Scottish haulage industry and any knock-on impact for the Scottish economy.

**PE894** Petition by The Association of Caithness Community Councils calling for the Scottish Parliament to consider investment in infrastructure, rolling stock and timetabling as part of a strategic root and branch review of the provision of rail services between Inverness, Thurso and Wick, with unrestricted thinking on how best to shorten journey times and ensure the continuing future of the railway to these destinations. Thought should also be given to ensuring that the existing communities of the ‘Lairg loop’ are provided for.
PETITION TO THE SCOTTISH PARLIAMENT

The petitioners Elaine Black and Ewan Kennedy request that the Scottish Parliament:

"reform the law of trust to ensure that where a trust has been set up for the benefit of any local community that local community is formally consulted by any party seeking to change the operation of the trust and the views of each member of that community is accountably considered before any change is made."

Details of petitioners:

Elaine Black, on behalf of Save Dowanhill Tennis Club Action Group

Ewan Kennedy, on behalf of Glasgow Green Space Trust

This petition is further supported by, among others:

Pauline MacNeil MSP; Sandra White, MSP; Bill Aitken, MSP; Patrick Harvie, MSP; Robert Brown, MSP; Dennis Canavan, MSP; Ann McKechin, MP; Glasgow University Sports Association; National Playing Fields Association; Bruce Woodger, chairman of Dowanside Road Residents’ Association, Glasgow; Sheena Stark, Beaumont Gate Residents. Glasgow; Jane Skinner, Western Tennis and Fitness Club, Hyndland Road, Glasgow. Bill Mann, secretary of The Western Baths, Cranworth Street, Glasgow; Coun Niall Walker (Hillhead).
Dear Dr Johnston,

Thank-you for giving me the opportunity to respond to comments by Sportscotland, the Scottish Executive and the Scottish Law Commission on petition PE817.

I would like to draw your attention to comments from Ms Sheena Stark and Mr Ewan Kennedy regarding the legal position of sports clubs under threat of development. I will not repeat these comments here although I would like to strongly endorse them.

The Save Dowanhill Action Group welcomes the comments from Sports Scotland which indicate that currently sports clubs are protected from the scenario that is being played out at Dowanhill, in Glasgow. The fact remains, however, that this particular club’s committee does want to sell its land which is now worth many millions and that if it succeeds in doing so members will profit individually from that sale. Because the club closed its membership six years ago and has not attempted to market itself as a going concern since then, this has ensured its demise. There are, moreover, many more clubs whose dealings with funding bodies are earlier than 1995 or do not involve Lottery funding and which are also under threat from this type of aggressive developer-led profiteering. This is at the expense of communities which are losing facilities that can never be replaced.

Can we also point out that the suggested merger between Dowanhill and Partickhill Tennis Clubs is not in any way an attempt to “rejuvenate” tennis in the area. The Partickhill land consists of two derelict courts which are covered in grass while Dowanhill will be losing four all-weather courts with floodlights. Of course, if the committee of Dowanhill Tennis Club were to agree that no individual member would receive a penny from the subsequent development at Dowanhill then the proposed merger would be more honourable, if slightly misled.
Can I also re-iterate at this point that the Western Baths Club, Cranworth St, Glasgow, has offered on several occasions to buy and run Dowanhill Tennis Club as a going concern and that there is also support from the Western Tennis Club which is keen to use the courts to accommodate its over-flowing membership. Glasgow University students, moreover, continue to play club matches at Dowanhill on Wednesdays and Fridays throughout the winter and local schools would be interested in using one of the courts if it was converted to a five-aside football pitch.

As a community, we are now being told that if we wish to stop this sale our only course of action is through the courts. A recent consultation with a solicitor suggested that if we wished to prove that a public trust is being broken we would need to raise at a conservative estimate £50,000 and be prepared for this sum to escalate from there. How many communities can afford fundraising on this kind of scale? The law, therefore, is inaccessible to those who may have a right but not the money to pursue any action. It must, therefore, not be an effective law if the people it is supposed to protect have no access to it and indeed are being discriminated against because the opposition, ie developers, have infinitely greater resources.

Regards

Elaine Black
Dr Jim Johnston  
Clerk to the Petitions Committee  
The Scottish Parliament  
EDINBURGH  
ED99 1SP

Our Ref : KENNE01-08/EGK  
Your Ref : 

23 November 2005

Dear Dr Johnston

Public Petitions Committee  
Petition no 817

I thank you for your letter of 15 November and am grateful for the action taken.

I would like to respond to the observations received by the Committee, in particular those from the Civil Law Division of the Scottish Executive and the Scottish Law Commission.

Essentially both legal bodies have confirmed that in Scotland there is a distinction between private and public trusts. It seems that apart from those that are owned by private businesses and operated for profit sports clubs will usually be trusts of one or the other type. On the basis of the documentation available at this stage it seems that the Partickhill club is a private trust and that the Dowanhill club may well be a public trust. The difference in practice is that in the case of the private trust only a member with an interest in the assets can bring proceedings to stop the disposal of club property. Any one member can do so, even if a majority of the members have voted for the sell-off. Where the club is a public trust it will have typically been set up to provide benefits for a section of the public, e.g. residents of Dowanhill who are interested in tennis. There will be two consequences of this, first members of the public who qualify have the right to apply for membership and second, non-members as well as members will have title to sue for a breach of trust.

The petition lodged with you by Elaine Black and myself truly seeks to reform the law of trust in procedural rather than substantive aspects. In other words we do not ask that the Parliament should confer rights that people do not already have. We ask that it be made easier for persons who already have rights to enforce them. There is,

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understandably, widespread ignorance of trust law. The situation is compounded if those in charge of a "public trust" club refuse to supply information about documents such as the constitution. The effect of this is that potential beneficiaries of the public trust do not even get to find out about their rights.

While we are fully aware that the public petition procedure is not designed to deal with individual instances the case of Dowanhill is illustrative of what is almost certainly going on elsewhere. The local residents appear to have rights but they are being forced to take court action to get sight of the documents necessary to confirm this, as a preliminary to taking a second legal action to stop the sale. Any court action is an extremely stressful and expensive step, with the prospect of financial ruin if things go wrong.

There must be another way and it is suggested in the 1990 Act referred to by the legal bodies. Section 1 of the Act requires charities to disclose their constitutions, no doubt to prevent maladministration of charitable trusts. Sports clubs cannot be charities, but a similar provision could perhaps be made by designating them as bodies that must disclose information under the Freedom of Information (Scotland) Act. This would enable interested parties to discover what was happening within a club easily and cheaply. If disclosure showed the club to be a public trust and there appeared to be deception or fraud the matter could be brought to the attention of the Lord Advocate.

Ewan G Kennedy
Director

ewan@fauldsgibson.co.uk
0141 241 6292 (Direct Line)
Dr Jim Johnston  
Clerk to the Petitions Committee  
The Scottish Parliament  
EDINBURGH  
ED99 1SP

Our Ref : KENNE01-08/EGK  
Your Ref :

4 November 2005

Dear Dr Johnston

Petitions 817 and 821

You will recall that I attended the 4\textsuperscript{th} Meeting of your Committee on 2 March 2005 and spoke in support of the above Petitions.

I have recently had correspondence with Mr John McCracken of the Partickhill Bowling and Tennis Club, who has asked me to correct some inaccuracies in my evidence. I am happy to do so and enclose copies of the correspondence for reference, being his letter to me of 14 July 2005, reminder of 31 August, my letter to him of 15 September and his letters of 5 and 30 October. You will see that there are three complaints about what I said in the course of the question and answer session.

Firstly I appear to have used the singular “I” rather than the plural “we” in referring to the recruitment drive. You will see that I drew this to Mr McCracken’s attention in my letter of 15 September. There is no doubt the recruitment drive was supported by many local residents who contributed greatly of their time and energy. I am happy for this to be recorded.

Secondly I have been asked to correct the figure for the number recruited. The figure of 110 which I gave was based on the best information available to those involved in the campaign at the time and it appears that a number of persons who were thought to have applied for membership did not do so. The Club has not divulged its membership list to the new members and the letter of 14 July was the first indication of the numbers actually recruited. I am happy to accept that Mr McCracken’s figure is accurate.
Thirdly Mr McCracken states that the membership list has not been closed. As at 2 March I believed the Club had not granted any voting rights to the new members. You will see that Mr McCracken has not responded to my request for clarification of the names of those members or the dates they were given votes and a corresponding interest in the assets, nor has he disclosed the basis on which votes are granted, or the reason why my wife and I were refused votes. Thus I do not know what the situation was as at 2 March, but of course accept there are now five new voting members. If and when Mr McCracken supplies this further information I shall send it to you.

I shall be very happy of the foregoing corrections can be noted in your records.

I have to stress that the evidence which I gave to your Committee was prepared with great care and was submitted with the utmost good faith and belief in its accuracy. There was absolutely no intention to mislead or deceive. I hope that the members of your Committee will accept this.

Ewan G Kennedy
Director
Dear Ms. Martin,

Public Petition PE 817

I note the terms of the response which has been submitted by the Scottish Law Commission, the Scottish Executive and Sports Scotland to the above Petitioner. I am named supporter of the above Petition and I comment upon recent developments as follows:-

Scottish Law Commission response dated 19th April 2005

The Scottish Law Commission in the last paragraph of the above response indicates that a discussion paper on termination of public trusts and private trusts is to be published later this year. It seems that this may be an ideal vehicle for the discussion of what a public trust is and it is surprising that such an issue is not to be included in the discussion. It seems that a great opportunity is about to be lost to make clear an area of the law which is far from clear. The Petitioners would strongly dispute that the present law is adequate in this area.

The opinion of the Scottish Law Commission on the issue of public trust is not, of course, binding on any Court. However, the Law Commission in Paragraph three of its above response makes it very clear that there is within the Commission some doubt in the law as to what constitutes a public trust. That “----there could be a public trust element “ is not a very definite opinion on the matter. It leaves open whether “a public trust element “ is sufficient for there to be a public trust taking with it all the legal implications which follow a public trust or whether it would fall short. It also expresses the doubt about the whole matter which others who have considered the issue have already exposed. It would be helpful if the Law Commission would be prepared to be briefed in this case and provide a definitive answer to the question as to whether this club and other like it are public trusts.

The Petitioners view this letter as confirmation that there is some doubt about the law in this area and, this being so, the present law appears to
leave in the hands of individual members of the public the considerable costs and difficulties of placing before the Courts a very complex question and pursuing it to the end in the face of well-funded and determined opposition who have a considerable financial interest in establishing that a public trust does not exist.

The Petitioners ask the Scottish Executive to ask the Law Commission to consider a definition of a public trust alongside their considerations as to the termination of such a trust, in order to make the law as clear as it can be. The Scottish Law Commission is well able to look at this matter, equipped as it is with those in Scotland who know most about this area of the law and the drafting skills needed for the purpose.

**Scottish Executive response dated 19th April 2005**

Again there is legal opinion in the Executive that the Tennis Club at Dowanhill may be a public trust. This is useful to a point and confirms what is already known by the petitioners and that is that the law is not clear cut. The Executive makes the point that the Court can usually decide and this is the nub of the problem for the Petitioners in that the law is so unclear that ordinary members of the public who may have possible interest in such a trust have to take each case to the Court one by one for a decision.

When ordinary members of the public are involved in local issues of this kind it is disproportionately unfair for them to have to commit large sums of money to the issue in order for a decision to be reached. It would surely be far more satisfactory all round for the law to be clear. It ought to be clear to an ordinary individual who looks at the documents of title to any property and sees any expression amounting to a public interest in that property that that expression of public interest will make the ownership of that property by law a public trust. It ought to be clear also that such public trust status will remain with that property, notwithstanding the actions of any club committee who are temporarily the trustees of that club, until it is formally changed in consultation will the public for whose benefit the trust was set up.

**Sports Scotland response dated 6th April 2005**

Sports Scotland reply in general terms and it appears that whether funds
given to clubs to help with sporting facilities are to be repaid is a matter of the circumstances of individual clubs. This does not help in the matter of the Petition which is before the Committee.

Whether or not sums given to the club in the past are to be repaid, the sums which have already been offered to the club for purchase of these premises at Dowanhill, and sums which have been offered and sometimes paid to many other similar clubs in city centres, are so large that any sums repayable to Sports Scotland can be repaid by developers out of petty cash and the prospect of repayment thus has no influence on the fate of club premises.

Yours sincerely,

Sheena Stark.
Public Petitions Committee – a template for public petitions

Should you wish to submit a public petition for consideration by the Public Petitions Committee please complete the template below. Please refer to the Guidance on submission of public petitions for advice on issues of admissibility before completing the template. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:

*Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to, email address and phone number if available*

Ian Watson and Peter Brucelow

Text of petition:

*The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.*

The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament urge the Scottish Executive to urgently review the national Parks (Scotland) Bill and in particular the performance of each national park authority in meeting the four aims of a national park as defined in the Bill.
Additional information:
Any additional information in relation to your petition, including reasons why the action requested is necessary, should not be included here. However, it may be appended to the petition and will be made available to the Public Petitions Committee prior to its consideration of your petition. Please note that you should limit the amount of any additional information which you may wish to provide in support of your petition to no more than 4 sides of A4.

Action taken to resolve issues of concern before submitting the petition:
Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern by, for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MPs. Please enter details of those approached below and append copies of relevant correspondence, which will be made available to the Public Petitions Committee prior to its consideration of your petition.

We have written many letters to the Loch Lomond and Trossachs national park authority, to all MSPs and to Scottish Water concerning our fear that Loch Katrine could suffer the same disastrous fate as Loch Lomond unless steps are taken to preserve the unique semi wilderness around Loch Katrine. We believe that the best way to save Loch Katrine and to restore Loch Lomond to its former excellence and magnificence is to replace the national park committee of twenty five members to a Director with total power to make all decisions concerning the implementation of the four aims of a National Park. He/she and the deputy would be fully committed to protect and preserve the national park for future generations and be able to build an organisation to deal with relentless pressure from unacceptable business ventures and from selfish people who wish to use the lochs and surrounding land for activities which are not compatible with a unique and tranquil national park.

Request to speak:
All petitioners are given the opportunity to present their petition before the Public Petitions Committee. The Convener will then make a decision based on a number of factors including the content of the petition and the written information provided by the petitioner as to whether a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of a petition.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No* We will ask an MSP to speak in support of our Petition.
*Delete as appropriate

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature

Date ..................................................

20th December 2004

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:
Mr. Richard Hough  
Assistant Clerk to the Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
EDINBURGH  
EH99 1SP.  

Dear Mr. Hough,

CONSIDERATION OF PETITION PE805.  
SAVE LOCH LOMOND AND LOCH KATRINE.

Thank you for your letter of 21/11/2005 and the original letter dated 09/09/2005. We apologise for not replying sooner. We have been very busy with work commitments. We have also had a discussion with Mr. Dalrymple (CEO of the National Park Authority) and with Mr. Elliot (senior official of the NPA). Our attached letters to Mr. Dalrymple dated 28/10/2005, 06/11/2005 and 10/11/2005 are relevant to our response to the letter dated 06/05/2005 from Councillor Gillie Thomson, the convener of the NPA. Please consider them to be our reply to the letter from Councillor Gillie Thomson.

We have sent the attached questionnaire to the twenty five members of the board who are responsible for the National Park. The answers will help to establish whether the members of the board are the right balance to take the crucial decisions concerning a risk assessment of the dangers of speed boats and jet skis (play craft) to others who wish to use the loch for their recreations without endangering others or polluting the tranquil environment with excessive noise or destroying the habitat of the diminishing wild life.

It will be obvious to anyone who has even minimum knowledge of Health and Safety that you cannot have speed boats, water skiing and jet skis on a loch which is used by those who swim, fish by boat, canoe, wind surf, use yachts, normal cruising boats, etc. You cannot allocate a part of Loch Lomond to the rich and powerful for their play craft because that would breach the basic right of navigation for responsible and unselfish loch users. In item 4 on page 3 of his letter Councillor Thomson states that — "Enjoyment and Involvement for All — Our goal is that the Park is a place for people to enjoy the special qualities regardless of age, ability or background without impairing enjoyment by others". The only way that the NPA could comply with this statement is to immediately ban speed boats and jet skis by having a maximum speed limit of 20 mph over the entire loch except for up to 150m from all shores where the speed limit should be 7 mph. The danger and noise from speed boats and jet skis impairs the enjoyment of the vast majority of people and tourists who love and respect this wonderful and beautiful loch.

One of the writers of this letter (Ian Watson) has fished the fly for wild brown trout on lochs Katrine, Arklet and Finglas, every year for more than fifty years, until two years ago when Dr. Hargreaves began negotiating with others to sell or lease the fishing on these lochs. He has deprived us of being able to fish for wild brown trout on our favourite lochs for three years. Our lack of trust and confidence in his ability to ensure that the excellent wild brown trout fishing will be preserved and be available for all, has been verified by his sale by auction of the lochs in Shetland (refer to enclosed press cutting from the Herald of 03/09/2005). We hope that Sir William McAlpine is a different type of person. Mr. Thomson does not mention in his letter that there was a serious threat from Scottish Water that internal combustion engines would be allowed by anglers. That would be an environmental disaster and should not be allowed.

In your letter of 09/09/2005 you request that we limit our response to 4 sides of A4 paper even although the State of the Park Reports are 343 pages and Mr Thomson’s letter is five pages. If you insist on this unfair restriction please consider the pages of our letters dated 28/10/05, 06/11/05 and 10/11/05 as our reply to Mr. Thomson’s letter. The press cuttings and the questionnaire would make our submission much more interesting, useful and informative to those concerned. We have no objection to you circulating or publishing our correspondence.

Yours sincerely,

Ian Watson and Peter Brucelow.
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered online on the Public Petitions Committee e-petitioner web pages please complete the template below. Before submitting your e-petition please consult the Guidance on submission of public petitions for advice on what is and is not admissible. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

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<th>Details of principal petitioner:</th>
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<td>Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to.</td>
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<td>Mr Iain D. Skene</td>
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<td>The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS</td>
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<td>Petition by Iain D. Skene, on behalf of Renfrewshire and Inverclyde Association of Burns Clubs, calling for the Scottish Parliament to consider and debate the issue of local authority democratic accountability and in particular the accessibility of local elected representatives.</td>
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<th>Period for gathering signatures:</th>
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<td>Please enter the closing date for gathering signatures on your petition, which we would usually recommend is a period of between 4-6 weeks</td>
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<td>Closing date: 26 August 2005</td>
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Additional information:

Please enter any other information relating to the issues raised in your e-petition, including the reasons why the action requested is necessary. The text entered in this field should not exceed 2 pages. However, you may wish to provide further sources/links to background information.

Provided separately.

Action taken to resolve issues of concern before submitting an e-petition:

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern, by for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MSPs. Details of those approached should be entered.

We have attempted for two years to arrange a meeting with the ruling Labour group on Renfrewshire Council to discuss our proposals to move the Paisley Robert Burns statue from the Fountain Gardens to the town centre. As the Labour Group would not meet us to discuss the matter, we then wrote to every local Councillor to invite them to a presentation detailing our case. Members of every group on the Council except the Labour group attended. In addition to repeated letters to the Provost we have also written to MPs Douglas Alexander and Irene Adams, and to MSPs Hugh Henry, Cathy Peattie and Wendy Alexander to try to resolve the situation, without success. We are raising this petition on Wendy Alexander’s advice.

Comments to stimulate on-line discussion:

Please provide at least one comment to set the scene for an on-line discussion on the petition, not exceeding 10 lines of text.
Request to speak:
Petitioners may request to appear before the Public Petitions Committee in support of their petition, although it should be noted that requests to speak will only be granted if the Convener considers that a brief statement from the petitioner would be useful in facilitating the Committee’s consideration of the petition. Due to the large volume of petitions being considered the Committee will usually only hear presentations on up to 4 new petitions at each meeting.

Please indicate below whether you wish to request to make a brief statement before the Committee when it comes to consider your petition.

Yes / No

*Delete as appropriate

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature 

Date .................................................... 22/6/05

For advice on the content and wording of your e-petition please contact:

The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186  Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Clerk to the Public Petitions Committee,  
The Scottish Parliament,  
Edinburgh,  
EH99 1SP

20/5/05

Dear Sir,

Petition to the Scottish Parliament: Accessibility to ruling Administrations within local Councils: Additional Information

Our petition was inspired by the plight of the Paisley Burns Statue, which was purchased and presented to the people of the town in 1896 to mark the centenary of the Bard’s death. The cash for this undertaking was raised by the Tannahill Choir from the proceeds of open air Concerts given on the nearby Glennifer Braes, which amazingly were attended by audiences of up to 20,000 people.

It goes without saying that this was a massive and admirable undertaking involving many ratepayers but, despite democratic votes to the contrary, the site favoured by most of the townspeople at the town centre was denied to them by certain well documented actions of the Town Council and MP, and the statue was eventually relegated at the very last minute to the Fountain Gardens, described at the time as being “not such a popular resort as they might be”, amid tremendous controversy.

This site has never been fully accepted by the people of Paisley. Sadly, due to its isolation, most people in the town today are unaware of the statue’s existence, and those who are aware of it are constantly appalled by the vandalism and neglect to which it is subject. Obviously this is even more poignant when you consider the public-spirited motives of the original donors and the regard in which the statue is held in both art and Burns circles. The statue is widely regarded to be the finest memorial to the poet in existence, inspiring copies in Sydney, Australia and Auckland, New Zealand. The sculptor, F.W. Pomeroy, was one of the leading artists of his day, and is today world-famous for his statues of “Justice” at the Old Bailey, “Gladstone” in the Palace of Westminster and “Australia” on the fountain at Buckingham Palace etc., etc.

Over the years there have been many attempts and campaigns to have the statue moved; some have almost succeeded, but there always seemed to be some small difficulty that prevented its removal.

When, therefore, we at the Renfrewshire and Inverclyde Association of Burns Clubs decided that the isolation and abuse of the statue had reached intolerable levels and decided to begin a campaign of our own to have the statue moved, we expected that the ruling Labour Group on Renfrewshire Council would at least take the time to hear our case.
Accordingly we wrote to the Provost on May 14th 2003 asking him if he and the Council leader could spare some time to discuss the matter with us. Shortly thereafter we received a reply from his office telling us that he wanted to find out more about the problem before meeting us. More than two years later, despite continuing requests from our committee and from the Burns Federation, despite numerous articles on the subject in the local and national press, despite letters of support from all round the world and despite our written invitation to every Council member to attend presentations setting out our suggestions and plans, we still await this meeting.

Throughout we have been at pains not to politicise our campaign. It is worth noting, however, that when we gave these presentations, members of every political grouping on the Council, apart from the Labour group, found time to attend. Other political groups have actually contacted us to express their support, but when we discovered that one of these groups (the SNP) intended to raise a question on the subject in Council we took the trouble to phone the Provost to assure him that the question did not originate with our committee, and to ask him if any decision could be taken on the basis of a free vote. Significantly, with the possibility that the SNP would raise their question, he agreed, at last, to take our call. The Provost assured us, however, that if any rival group within the Council raised any question the Labour group would automatically vote it down. This short telephone conversation is still the only direct conversation he has allowed us. Unfortunately, his prediction came to pass: when the SNP raised a question asking for a feasibility study on the removal of the statue, the Labour group used the opportunity to raise and carry a counter motion that the statue should not be moved, and the subject therefore became “time barred” in Council.

We have tried numerous other ways to make contact, initially contacting Douglas Alexander MP, and MSPs Hugh Henry and Wendy Alexander. Douglas Alexander referred us to the MP for the area in which the statue stands, Irene Adams, who in turn wrote saying she was unable to support us, whilst at the same time rejecting our request for a meeting to enable us to put forward our case.

Wendy Alexander did provide some practical assistance by contacting the Director of Parks and Leisure, Bernard Forteath. Subsequently, we were able to arrange a meeting with a member of the Parks and Leisure department and were able to give him a short description of our campaign, while at the same time asking him to arrange a meeting with all of the Council members, so that we could put forward our proposals. He was enthusiastic about this suggestion, as he said that nothing could be done without having Labour Councillors on our side and that the time was right, as they were about to consider the whole future of the park.

When we contacted Wendy Alexander to inform her of this development we were dismayed to discover that Bernard Forteath had written to her several days before this meeting stating that it was most unlikely that the statue would be moved. When we checked with our contact in the Parks and Leisure department, he at first expressed amazement at the Forteath letter, and subsequently failed to reply to our messages.

In desperation, we contacted the local Abercorn Labour group in Paisley, who kindly agreed to hear a greatly abbreviated form of our presentation. Two Labour Councillors were members of this group, but the Councillor in whose ward the statue
stands, Tommy Williams, failed to attend and the other Councillor, Rayleen Kelly, was opposed to us being invited. Following this meeting, despite her opposition, the group members resolved to write to Councillor Roy Glen, Convenor for Lifelong Learning, asking that our case should be heard. This in turn led to him arranging a meeting with local tourism chiefs, who again enthusiastically listened to our presentation while making it perfectly clear that no progress could be made in the matter without local Labour Council members being on our side. Once again, no Labour Councillor, not even Councillor Glen, attended this meeting.

Since then, on Wendy Alexander’s advice, we contacted MSPs Rob Gibson and Cathy Peattie, on the basis that they were MSPs with a strong interest in Scottish culture. Despite constant reminders to their offices the only reply we have had so far is a suggestion from Cathy Peattie’s office to contact Wendy Alexander!

This approach having failed, we are now taking Wendy Alexander’s advice by presenting this petition to the Scottish Parliament, based on the premise that in a democratic society taxpayers should have a right to a forum to present matters of interest and concern to decision makers within their relevant ruling local Government administration. If this is not the case, many voters’ voices will go unheard, irrespective of their voting tendencies, in an administration where the views of the opposition parties are automatically voted down.

For instance, my local Councillor is a Liberal Democrat. The Liberal Democrats appear to support our cause, but if they raise the matter in Council it will be automatically voted down. For myself, until comparatively recently I was a lifelong Labour supporter, but no matter what political allegiance I have, I can be guaranteed that my views will never be able to be successfully presented in Council by my local Councillor under the current system. This cannot be right.

The “Catch 22” situation of our own campaign is absolutely intolerable. We feel we have an important case to make about the misuse of a valuable asset and work of art within the town, but it is impossible to do anything about it without the support of the Labour group. The Labour group are absolutely determined that they will not hear our case, and they will automatically vote down any proposals from anyone who has heard our case.

Without taking the trouble to discuss the matter with us, they recently began to undertake improvements to the park. Whilst we support any improvements, experience suggests they will do nothing to protect the statue or to increase its accessibility; indeed, on several recent visits to the park we have discovered renewed instances of vandalism and graffiti, whilst the park generally remains devoid of visitors, thereby ensuring that this important work of art continues to be unseen by the people of the town for whom it was purchased.

Knowing the Scottish Parliament’s commitment to openness and accessibility, we are confident that you will consider our petition, which is designed to defeat secrecy and insularity, very seriously.
Yours Faithfully,

Iain Skene – Burns Statue Sub-Committee,
Renfrewshire and Inverclyde Association of Burns Clubs.
Dear Dr Johnston

CONSIDERATION OF PETITION PE880

Thank you for your letter of 30 September inviting the Executive’s views on the petition by Mr Skene.

Local authorities are independent corporate bodies. As such they are responsible for taking decisions in the best interests of their community. I understand this issue was considered formally by Renfrewshire Council on 22 April 2004. Councillors voted on the matter and decided that the “council supports the view expressed by the local people that the Robert Burns statue should be retained within the Fountain Gardens.” The petitioner appears to have raised the matter with his own local councillor and a number of other councillors. It does appear that various councillors have heard Mr Skene’s case, even though their final decision was not in line with his wishes.

In respect of the ‘accountability of local government’ councillors are elected to take decisions in the best interests of their community. How they vote in the council chamber is for each individual councillor to decide, and the overall approach to how council business is conducted is a matter for the Council.

Yours sincerely

[signed]

RUSSELL BAIN
Local Democracy Team
Dr James Johnston  
Clerk to the Public Petitions Committee  
Scottish Parliament  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

Dear Dr Johnston

Scottish Parliament Public Petitions Committee  
Petition PE880

I refer to your letter dated 30 September 2005 in the above connection.

The petition states that the petitioner wishes the Parliament to debate "the issue of local authority democratic accountability and in particular the accessibility of local elected representatives". That is the stated purpose of the Petition. Nevertheless it is clear from the official report of the Public Petitions Committee of 21 September 2005 that the focus of the discussion was not restricted to democratic accountability and / or accessibility of local elected representatives, but dealt also with the concern of the petitioners, the Renfrewshire and Inverclyde Association of Burns Clubs, that a statue of Robert Burns, by the sculptor F W Pomeroj, erected in 1896 in Fountain Gardens, Paisley be relocated to a site in Paisley Town Centre. I shall therefore respond on both of these issues.

The Committee will be aware, having already been provided with a background note by the Council prior to the Committee meeting, that the history of the statue dates back to 1896, when, whilst the preferred site was Dunn Square in the centre of Paisley, it was decided that it be located in the Fountain Gardens. This is one of a number of parks within Renfrewshire, some of which date back to Victorian times, for which the Council has responsibility.

In early 2003 the Council undertook the first phase of its parks strategy and embarked on an extensive public consultation exercise which involved local residents, users groups, local members, businesses and other interested bodies, and which ended in November 2003. This consultation established that almost 38% of the respondents wished to see the Fountain Gardens retained and refurbished.
Whilst the Renfrewshire and Inverclyde Association of Burns Clubs [RIABC] wished to see the statue relocated, other respondents did not wish the statue to be moved from Fountain Gardens. Representatives of RIABC met with an officer of the Council and their views were taken into account in the preparation of subsequent reports on the matter.

Turning to the issue of democratic accountability and accessibility of local elected representatives, I should clarify that the subject of the relocation of the statue has been publicly debated by Renfrewshire Council at a meeting on 22 April 2004 following the submission of a notice of motion by Councillors Lorraine Cameron and Brian Lawson in the following terms: “Council instructs the Director of Environmental Services to prepare a report for the next meeting of the Council on the feasibility of relocating the statue of Robert Burns from its present location to a prominent position in Paisley Town Centre. The report to include probable costs and funding sources.” An extract of the minute of that meeting is attached. It will be noted that there were two amendments to the notice of motion which illustrates that the issue was taken seriously by members and fully debated. Following a vote on the matter the motion was defeated by one of the amendments.

Returning to the parks strategy referred to earlier, a report was submitted to a meeting of the Council’s Housing, Environment and Community Safety Policy Board on 8 February 2005. In relation to the Burns Statue in Fountain Gardens, the report indicated that not only would floodlighting be provided but there were also proposals to carry out improvements within the Gardens using lottery funding. The specific issue of the location of the statue was not raised at this meeting although as noted in the attached extract of the minute of the meeting there was an amendment that the report be rejected as being totally inadequate. The amendment was not successful.

The Council has therefore considered the issues regarding the Fountain Gardens and the Burns Statue not only as part of an overall review of its Parks Strategy but also in response to a specific notice of motion by two of its elected members.

Turning now to the specific issue of accessibility of elected representatives, I should point out that there is a statutory duty on local authorities to make publicly available contact details - address and telephone number - for all elected members. This information is available in a variety of formats, including the Council’s website and diary and is updated as required. Members also require to complete a register of interests, which is publicly available, and gives contact details either home or council HQ. All councillors hold regular surgeries where individuals are free to bring any issues of concern for their elected members to pursue on their behalf. Details of surgeries are published in the local press, the Council’s website, the quarterly publication (Renfrewshire News) which is circulated to all households, and members are also provided with individual posters which can be displayed within their own ward.
There is therefore no question at all that members are not accessible by their constituents or the population of the Council area in general. Members can also be contacted by e-mail, either direct or via their secretarial support staff.

In relation to the conduct of political groups one of the Committee Members observed that it is general practice for political groups to, in her words "operate block voting systems" including within the Scottish Parliament itself. This is recognised as a feature within local government and it is implicitly permitted by the councillors' code of conduct which provides that it is specifically in dealing with applications under regulatory powers, or issues of a quasi-judicial nature or individual staffing matters that a block voting system should not apply. It is important to recognise that it is the Council itself and its Policy Boards (and officers acting within their delegated powers) who make decisions, not the constituent political groups nor individual elected members as they do not have decision-making powers. Decisions of the Council or the relevant Policy Board are taken in a public forum with few exceptions, and there are clearly defined statutory provisions to regulate when the press and public may be excluded. As already mentioned, the debate in relation to the Burns Statue at the Council meeting in April 2004 was open to the press and public.

Ranfrewshire Council's procedural standing orders include provision for hearing deputations from members of the public:

"Any written request received by the proper officer that a deputation be received by the Council on a particular matter shall be referred in the first instance to the chairperson of the appropriate board. Should the chairperson consider that the matter raised by the deputation is one which is competent and relevant for the board to determine, the written request shall be placed on the agenda for the first appropriate meeting of the relevant board. Thereafter, where the board considers it appropriate to do so in a particular case, the board may make arrangements for hearing the deputation at a subsequent meeting of the board.

In the event of a board agreeing that arrangements be made to hear a deputation the following provisions shall apply:-

(e) the deputation shall not exceed three in number;
(b) representatives of the deputation may speak for a total of no more than ten minutes, unless the chairperson otherwise permits; and
(c) it shall be competent for members to put to the deputation only questions relevant to the subject of the deputation."

There was no request for a deputation to be heard in relation to the Burns Statue.
Renfrewshire Council's procedural standing orders do not however make specific reference to petitions nor does the Council have a petitions committee. There are occasions when petitions are submitted to the Council and the established practice is that the petition is passed to the relevant departmental Director for consideration. The organisers of the petition or the first named signatory will be advised of this. The departmental Director will determine what action is required having regard to the terms of the petition and whether or not the Council has reached a decision on the issue in question. There has been no petition in relation to the Burns Statue.

In addition to the provisions which have already been referred to for submission of notices of motion by elected members for consideration at meeting of the Council, the procedural standing orders include provisions for an individual member to raise a specific issue at a Board meeting.

"52. Subject to standing order 48(g) (which sets out the arrangements to be followed in the case of the scrutiny board), a member may submit an intimation requesting that a particular matter be considered by a board provided that the matter lies within the terms of reference of the board. An intimation shall be in writing and shall be signed by the member giving the intimation, and be delivered to the proper officer at least fourteen clear days prior to the date of the meeting of the relevant board at which the matter is to be considered. Upon receipt of such intimation the matter shall be printed in the agenda of the meeting of the appropriate board without prejudice to the right of the chairperson to rule as to its competency and relevancy.

53. Any member exercising the right referred to in standing order 52 in relation to consideration of a matter at a board of which he is not a member shall be entitled to attend the meeting of the relevant board for the purpose of speaking to the matter, but shall not otherwise participate in the business of the board or be entitled to vote."

Parliament has established the statutory framework within which all local authorities must operate. Agendas and minutes of meetings are available via the Council's website and, as already stated, meetings are open to the press and public. It is not accepted that members are not accessible to their constituents and indeed there are a number of avenues open to members of the public to raise issues of concern. Similarly, it is not accepted that the Council is not accountable for its decisions, which are made in a public forum where the press and public are able to attend. The Council encourages attendance at its meetings and produces a quarterly timetable which is widely available and has also produced a leaflet detailing the public's rights in attending meetings. Nevertheless it remains inevitable that not everyone will agree with all of the decisions which the Council takes.

Yours sincerely

Chief Executive
Extract of minute of Council meeting - 22 April 2004

17. NOTICE OF MOTION

There was submitted a Notice of Motion from Councillors B Lawson and Cameron in the following terms:

"Council instructs the Director of Environmental Services to prepare a report for the next meeting of the Council on the feasibility of relocating the statue of Robert Burns from its present location to a prominent position in Paisley Town Centre.

The report to include probable costs and possible funding sources."

Councillor B Lawson, seconded by Councillor Cameron, then moved the motion.

Councillor I McMillan, seconded by Councillor T Williams, moved as a first amendment that this Council supports the view expressed by the local people that the Robert Burns statue should be retained within the Fountain Gardens.

Councillor McCartin, seconded by Councillor Macgregor, moved as a second amendment that Council agrees that the issue of the Burns statue be included in its Tourism Strategy and that full consultation with all the people of Paisley be carried out to measure support for any relocation of the statute.

Council further agrees that a "Burns trail" be supported and encouraged to ensure that all aspects of Burns' connection with Paisley and Renfrewshire is fully exploited.

In terms of Standing Order 30, at least 3 of the members present requested a roll call vote.

On the roll being called, the following members voted for the first amendment: Councillors Williams, Green, T Kelly, Hall, Provost Burns, Councillors McDowell, Adams, M Macmillan, Glen, R Kelly, Manser, Kenny, Harkins, Hood, I McMillan, Goldie, Murrin, McGerty, Mullin, Harte and McNally.

The following members voted for the motion: Councillors Cameron, Vassie, Martin, C Lawson, B Lawson, Nimmo, Taylor, Noon, F Nicolson and F Nicolson.

The following members abstained: Councillors McCartin, McGurk, Macgregor and Langlands.

21 members having voted for the first amendment, 11 members having voted for the motion and 4 members having abstained, a vote was then taken between the first amendment and the second amendment.

The following members voted for the second amendment: Councillors, McCartin, McGurk, Macgregor and Langlands.

The following members voted for the first amendment: Councillors Williams, Green, T Kelly, Hall, Provost Burns, Councillors McDowell, Adams, M Macmillan, Glen, R Kelly, Manser, Kenny, Harkins, Hood, I McMillan, Goldie, Murrin, McGerty, Mullin, Harte and McNally.

The following members abstained: Councillors Cameron, Vassie, Martin, C Lawson, B Lawson, Nimmo, Taylor, Noon, F Nicolson and F Nicolson.

4 members having voted for the second amendment, 21 members having voted for the first amendment and 10 members having abstained, the first amendment was accordingly declared carried.

DECLOSED: That this Council supports the view expressed by the local people that the Robert Burns statue should be retained within the Fountain Gardens.
(b) That the Director of Environmental Services be authorised to follow-up the potential lease of Barshaw golf course to the private sector, together with other potential funding sources in liaison with the Director of Planning and Transport; and
Dr James Gilmour  
Clerk to the Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP  

24 October 2005  

Dear Dr Gilmour  

Public petitions committee consideration PE880  

Thank you for your letter of 29 September seeking comments from The Electoral Commission on a petition by Iain Skene.  

The issues raised in this petition do not fall within the remit of The Electoral Commission and I am accordingly unable to provide you with comment on this occasion.  

Yours sincerely  

Iain Kearton  
Principal Officer Scotland
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered online on the Public Petitions Committee e-petitioner web pages please complete the template below. Before submitting your e-petition please consult the Guidance on submission of public petitions for advice on what is and is not admissible. You may also seek advice from the Clerk to the Committee whose contact details can be found at the end of this form.

Details of principal petitioner:
Please enter the name of person and organisation raising the petition, including a contact address where correspondence should be sent to.

Mark McCabe

Text of petition:
The petition should clearly state what action the petitioner wishes the Parliament to take in no more than 5 lines of text, e.g.
The petitioner requests that the Scottish Parliament considers and debates the implications of the proposed Agenda for Change legislation for Speech and Language Therapy Services and service users within the NHS

The petitioner requests that the Scottish Parliament amend Scots criminal law relating to sex offences so that (a) there is a statutory offence of male rape in line with the rest of the United Kingdom and with Ireland; and (b) there are no offences that may be committed exclusively by gay men and all sex offences apply equally to everyone, whether man or woman, gay or straight. The criminal law (save some aspects, such as treason) is within the competence of the Scottish Parliament under Schedule 5 of the Scotland Act 1998 (c.46).

Period for gathering signatures:
Please enter the closing date for gathering signatures on your petition, which we would usually recommend is a period of between 4-6 weeks

Closing date: 30 September 2005
1. There is no offence of male rape in Scots law. Currently, a man who rapes another man would be charged with sodomy without consent or serious assault, neither of which carries sentences comparable to that of a man who has raped a woman. This seems unfair and unequal.

2. Although there is no crime of "shameless indecency" any longer in force in Scotland by virtue of a recent court case involving a teenaged boy, there do remain the crimes of "lewd and licentious behaviour" and "gross indecency". As it is understood, "gross indecency" is held to be the same in Scotland as it is in England and exists in Scotland by virtue of section 13 of the Criminal Law (Consolidation) [Scotland] Act 1995; according to one source, "the meaning of 'gross indecency' is not clear but the phrase clearly covers conduct such as mutual masturbation" [Asterley-Jones, P & Card, RIE. (1976). Introduction to the Criminal Law, 8th Ed. London: Butterworths. ISBN 0-406-57047-7]. The crime is defined by section 13 of the Sexual Offences Act 1956, where it says that, "It is an offence for a man to commit an act of gross indecency with another man, whether in public or in private, or to be a party to the commission by a man of an act of gross indecency with another man, or to procure the commission by a man of an act of gross indecency with another man". This is alarming because the crime clearly applies only to homosexual conduct; section 13(4) of the 1995 Act (mentioned above) makes what is commonly called "foreplay" legal. The fact that only men can commit this offence is discriminatory in itself. For example, if two men engage in sexual activity in a sheltered public place where they cannot be seen they can be charged with this crime, but a heterosexual couple who do the same are clearly not covered by the Act.

3. The offence of rape, even for women, relies solely on the common law, where it has been defined in clear and certain terms in English and Irish statute law for many years. This seems quite unacceptable and seems on the whole to suggest to some that sex offences are not regarded with the same seriousness or importance in Scotland as they are in England and Wales.

4. The measures announced on the Scottish Executive's website [http://www.scotland.gov.uk/News/Releases/2004/06/5605] [28th July 2005] on sex offences reform do not mention if the law relating to gay sex offences will be looked at or if offences will be neutralised.

5. Most of the offences in Scots law rely solely on common law, leaving them open to judicial amendment and not solidified by a written statute; they are also open to police interpretation as to what constitutes such a common law crime when a written statute could clearly mark-out the boundaries.

6. The number of men raped in Scotland cannot be counted because there is no distinction between "male rape" and "assault", so I cannot offer any figures to suggest the number of men raped in Scotland in recent years.

7. The following newspapers may also help shed light on the current state of the law: (a) The Scotsman, [http://news.scotsman.com/topics.cfm?tid=53&id=1105032003] [28th July 2005] and (b) The Sunday Herald, [http://www.sundayherald.com/37262] [28th July 2005].
**Action taken to resolve issues of concern before submitting an e-petition:**

Before submitting a petition to the Parliament, petitioners are expected to have made an attempt to resolve their issues of concern, by for example, making representations to the Scottish Executive or seeking the assistance of locally elected representatives, such as councillors, MSPs and MSPs. Details of those approached should be entered.

Mike Watson MSP was contacted by email and letter, and correspondence on the matter proceeded with the end result appearing to be that Mr Watson was satisfied that the Scottish Executive's reliance on common law seemed sufficient. Patrick Harvie MSP was contacted by email but no response was received. Cathie Jamieson MSP was contacted by email but again no response was received.

**Comments to stimulate on-line discussion:**

Please provide at least one comment to set the scene for an on-line discussion on the petition, not exceeding 10 lines of text.

Article 1 of the UN Universal Declaration on Human Rights [http://www.un.org/Overview/rights.html](http://www.un.org/Overview/rights.html) (28th July 2005) states clearly that, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood". With this in mind, that everyone is equal before the law, the law should be changed to reflect this so that (a) there is a crime of rape (applying to men and women) defined firmly in statute and not open to judicial amendment or police interpretation, and (b) crimes applying only to men should be abolished so that all sex offences apply to, and can be committed by, men and women equally regardless of sexual orientation.

**Petitioners appearing before the Committee**

The Convener of the Committee may invite petitioners to appear before the Public Petitions Committee to speak in support of their petition. Such an invitation will only be made if the Convener considers this would be useful in facilitating the Committee's consideration of the petition. It should be noted that due to the large volume of petitions it has to consider, the Committee is not able to invite all petitioners to appear before the Committee to speak in support of their petition.

*Please indicate below if you do NOT wish to make a brief statement before the Committee when a template for e-petitions, July 2004*
I do NOT wish to make a brief statement before the Committee

Signature of principal petitioner:
When satisfied that your petition meets all the criteria outlined in the Guidance on submission of public petitions, the principal petitioner should sign and date the form in the box below. Other signatures gathered should be appended to this form.

Signature.

Date 2005-09-07

For advice on the content and wording of your e-petition please contact:
The Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP
Tel: 0131 348 5186 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
Dear Dr Johnston,

Many thanks for your letter of the 27 October 2005 regarding petition PE885 by Mark McCabe requesting that the Scottish Parliament amend Scots criminal law relating to sex offences. I have been asked to respond.

As you are aware the Scottish Law Commission are undertaking a review of the criminal law in Scotland in relation to rape and other sexual offences. I understand from your letter that the Public Petitions Committee are also writing to the Scottish Law Commission for an update on the progress of this review.

We understand that the Scottish Law Commission have almost completed their review and are due to publish their discussion paper in January 2006. This will then be followed by a period of consultation with their final report being completed in 2007.

While we cannot pre-empt the contents of the discussion paper, the issues which are the subject of Mr McCabe’s petition, PE885 are certainly within the scope of the review.

In addition to the review by the Scottish Law Commission, the Crown Office have also been reviewing the investigation and prosecution of rape and other sex offences to ensure that it is effective, fair and robust.

I hope that this information is helpful to you.

Yours Sincerely

LESLEY WARD
15 November 2005

Dr James Johnston
Clerk to the Public Petitions Committee
The Scottish Parliament
TG.01
Parliamentary Headquarters
EDINBURGH
EH99 1SP

Scottish Law Commission
promoting law reform

Your ref: PE885
Our ref: L24/7

SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE – CONSIDERATION PE885
REVIEW OF THE LAW OF RAPE AND OTHER SEXUAL OFFENCES

Thank you for your letter of 27 October seeking comments on petition PE885 from Mr Mark McCabe and requesting an update on the Commission’s review of the criminal law in Scotland in relation to rape and other sexual offences.

With regard to progress of the review, the project team is currently working on a discussion paper which will cover the whole range of sexual offences. The paper will be published for public consultation early in the new year. Following the consultation period, our aim will be to publish a final report, including draft legislation, in 2007.

With regard to the points made in Mr McCabe’s petition, the Commission is reviewing sexual offences with certain guiding principles in mind. One of these is that the law on sexual offences should not involve distinctions based on sexual orientation, and a related principle is that, as far as possible, there should be no distinctions based on gender. It is also of course the aim of the Commission to ensure that the law on sexual offences complies with the European Convention on Human Rights.

I hope that this is helpful. When the discussion paper is published I will arrange for copies to be sent to you for the Committee members, drawing attention to the specific proposals and questions which relate to the issues raised by the petitioner. I will also arrange for a letter to be sent in similar terms direct to Mr McCabe.

MICHAEL LUGTON

Chief Executive: Michael Lugton