Petition by James A Mackie calling for the Scottish Parliament to urge the Scottish Executive to conduct an inquiry into the influence of supermarkets in the food chain, and to examine in particular safety issues arising from the use of chemicals to extend the shelf life of products and from central purchase and distribution and the impact of supermarket trading on local economies and small producers.
PETITION TO SCOTTISH PARLIAMENT

Influence of the Supermarkets in the Food Chain

I, the undersigned, declare that the Scottish food chain is controlled by supermarkets. In the past decade supermarket developments both within and on the outskirts of towns have altered the commercial distribution of food and other goods to the consumer. In a combined fashion, rather on an individual basis, supermarkets now have a monopoly hold on the supply of foodstuffs in particular and many other goods. With the growth of and control over the market by such operations, small retail companies, commercial and agricultural suppliers have faced closure. That has had a major effect on employment and sustainability, especially in rural communities.

Supermarkets practice central buying and distribution. Such practices remove the opportunities for local purchase and supply. Particularly with food products this increases the time from harvest to display, thus requires an increase in the use of preservation products to improve shelf life. Controls put on suppliers have forced many small companies to close as they are unable to produce at the cost demanded by the supermarkets and meet the over-diligent production requirements.

The Petitioner requests that the Scottish Executive:

Examine the dominance of supermarkets in the food chain;

Examine the safety to food and the consumer by the use of central purchase and distribution;

Ascertain how much and what type of chemicals are used to extend shelf life of produce;

Ascertain the impact of current supermarket trading on local economies, unemployment and income;

Ascertain why Continental and North American supermarkets operate on a profit margin of less that 5% while UK supermarkets operate on 17%.

Ascertain if the control of the supply industries is to the detriment of small producers and retail businesses;

Ascertain if supermarket supply contracts are detrimental to local companies and beneficial to overseas competitors.

Petitioner: James A Mackie,

Thank you for your letter of 3 November seeking further comments from the Scottish Executive on the petition by James Mackie relating to the power of the supermarkets. In particular you are interested in an update on any contribution which the Executive made to the recent OFT review of the Supermarket Code of Practice. The official report of the Committee’s meeting on 26 October also requests comments on the Scottish Executive’s contribution to the UK Government’s response to the report of that review.

In response to the OFT invitation to comment on operation of the Code, the Executive informed them that it was very difficult for us to comment on the Code’s effectiveness as we do not systematically collect evidence from those whom the Code was designed to help. We had heard reports of actions by supermarkets which contravened the Code. However, the Executive had no evidence that it could provide to the OFT as all these reports were anecdotal. We also informed them that we reminded companies of the avenues of possible redress open to them should they have complaints about the actions of supermarkets but many companies were reluctant to do anything about it.

Following the publication of the OFT’s Report on the audit of the operation of the Code the Scottish Executive convened a meeting with representatives from the OFT and DEFRA to discuss how to maximise the effectiveness of the OFT recommendations. While the OFT did not consider that the Code needed to be revised, they did say that they would continue to monitor its operation and would seek better recording in writing of supermarket/supplier dealings.
Since that meeting we have learned that, following an appeal by the Association of Convenience Stores, the Competition Appeal Tribunal asked the OFT to reconsider their decision not to refer the grocery market to the Competition Commission for investigation. We understand that the OFT hopes to reach a decision in a few months on whether to make such a reference.

When meeting the main multiples the Minister for Environment and Rural Development continues to stress the importance of maintaining sustainable food chains and good trading relationships with their suppliers. We will also look at ways in which we can encourage Scottish suppliers to keep written records of all their dealings with the supermarkets.

DAVID BROWN
Private Secretary
Dear Dr Johnston

Scottish Parliament Public Petitions Committee – Consideration PE807

Thank you for your letter of 3 November in which you sought an update on our March 2005 report on the Supermarkets Code of Practice (the Code).

We published our conclusions on the Code review in ‘Supermarkets: the code of practice and other competition issues’, on 3 August 2005. This confirmed our conclusion that the Code should remain unchanged, but said that it should be used more effectively. We announced our intention to work with supermarkets and suppliers to improve the practical usefulness of the Code by:

- working with supermarkets to ensure written records of supermarket-supplier dealings are kept, allowing for greater transparency in the terms of business;
- regularly monitoring supermarkets’ Code compliance procedures; and
- confirming that trade associations can take group actions on behalf of their members under the Code with sufficient evidence.

A press release together with a link to the August report can be found on the OFT’s website at http://www.of.t.gov.uk/News/Press+releases/2005/146-05.htm.

I would like to reiterate what Penny Boys said in her letter of 13 May. If suppliers believe they have evidence of a breach of the Code they should bring their concerns to the supermarkets in question, either individually or with the backing of their trade association. We remain keen to encourage dialogue between supermarkets and suppliers to ensure fair and effective resolutions to disputes. Suppliers are encouraged to approach us at any time to discuss any concerns they may have in confidence.

In the August report we also announced a decision not to make a market investigation reference of the grocery market to the Competition Commission. This decision was withdrawn on 1 November, following an appeal by the Association of Convenience Stores to the Competition Appeal Tribunal. We have now undertaken to consider our decision afresh.
in this light I enclose a copy of a press release issued on 15 November, further to our appearing before the All Party Parliamentary Small Shops Group’s inquiry into the future of local shopping and the High Street. This explains our current thinking and position in more detail.

Yours sincerely

John Fingleton
Chief Executive
Statement by OFT Chief Executive to All Party Small Shops Group inquiry

215/05  15 November 2005

John Fingleton, OFT Chief Executive, today appeared before the All Party Small Shops Group inquiry into small shops at which he made the following opening statement:

'On behalf of the OFT, I am pleased to be here today to give evidence to this inquiry. The timing of your original invitation was difficult, given the concurrent proceedings at the Competition Appeal Tribunal. The Tribunal's ruling of 1 November has made it possible for me to be here today but means that I am still constrained in what I can say on some of the issues I am sure you would like to question me on, which is a frustration for all of us. Please be assured that the OFT welcomes this opportunity to put its views on the application of competition law to the grocery sector on the record, and in doing so I intend to be as transparent as I possibly can.

The grocery sector plays a vital role in the UK economy. With total annual sales of £120 billion, it accounts for almost half the total retail sector. Food and non-alcoholic drinks alone account for more than 10 per cent of the typical family's expenditure and an even higher percentage for those on lower income. The market affects a wide range of businesses in the food supply chain and everyone in the country – we're all consumers. As part of the OFT's mission to make markets work well, competition policy helps to deliver the benefits of efficient competitive markets to consumers. ONS statistics show retail food prices falling by 4.1 per cent in real terms between December 1999 and May 2005.

Information provided to the OFT shows the range of grocery product lines in supermarkets increasing by nearly 40 per cent in the five years to 2005.

'We do not and will not hesitate to take action under competition legislation when it is warranted. Let me stress that this legislation is to protect competition, not competitors. Difficulty for individuals or groups of competitors does not necessarily equal damage to competition or mean consumers are worse off. In many scenarios consumers benefit from increased productivity and efficiency in terms of choice, wider availability, greater innovation and lower prices. The reality is that in competitive markets there are winners and losers, as a result of consumers voting with their feet and their wallets and exercising their freedom of choice. It is not the role of the competition authorities to protect businesses that do not respond effectively to the demands of consumers, or more generally to protect less efficient or less competitive business from the rigours of the market.

'The remit of this committee extends beyond areas in which OFT, as the UK competition authority, has jurisdiction. The complex underlying issues subject to your scrutiny here relate to cultural and social attitudes towards, and aspects of developments in, grocery and other multiple retailing. The debate about this market encompasses both matters on which the OFT has a key role to play, and wider concerns which have been raised about the future of the High Street, for example on social and environmental issues. There are issues that competition and consumer policy are not able to resolve. Having said that, in our work we are very conscious of, and take account of, the wider landscape associated with the grocery retail sector, and supermarkets in particular, and the very real concerns that many different interests hold.

'It may be helpful if I explain what kind of issues we can and do look at.

'First, we have powers under the Competition Act to take action against anti-competitive agreements and abuse of a dominant position. I'm happy to answer questions about our approach to the use of these powers but I ask you to understand that I cannot talk about any current investigations in the grocery sector.

'Secondly, we must refer mergers which we believe may result in a substantial lessening of competition to the Competition Commission for further investigation. As you know, we have considered a number of acquisitions of convenience stores under the mergers legislation.

'Finally, and most topically, we have discretion to refer markets to the Competition Commission where we have reasonable grounds for suspecting that there are market features which are preventing, restricting or distorting competition.

'As you know, in August this year we decided not to make such a reference to the Commission, in response to a request from the Association of Convenience Stores and others. We asked to withdraw that decision following the appeal by the ACS. It has now been quashed, and we are considering the decision afresh. At this very early stage in our work, I do not prejudge any of the issues which are relevant to the decision we have to make. We want to be open and transparent in our decision-making, and we welcome the opportunity to reconsider our view and set out clearly the reasons for the fresh decision we will take.

'In the same spirit of transparency, I would welcome the opportunity to come and speak to you again in the future about this market, which I am sure will continue to occupy both your Group and the OFT.'
Public Petitions Committee – a template for e-petitions

Should you wish to submit an e-petition allowing signatures to be gathered on-line 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.

Miss Mary E Mackenzie

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.

Petition by Mary E Mackenzie calling for the Scottish Parliament to urge the Scottish Executive to ensure that all moveable and all heritable common good assets throughout Scotland are properly recorded, audited and insured and to introduce legislation to ensure such assets are properly safeguarded.

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: 2 September 2005
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.

See attached documents
<table>
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<th>Additional Information (continued...)</th>
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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.

Provided separately

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.

Common Good Assets are gifts through centuries from e.g. – the Scottish Crown, nobles, commoners, and include land, fishing rights, farms, buildings, museums, galleries, monuments, money, all of which may bring in annual rents and income; these are HERITABLE ASSETS. In addition items like furnishings, books, paintings, provosts' regalia, artefacts, weaponry are MOVEABLE ASSETS. Scottish burghs (including royal burghs) enjoy many rights and privileges for all time coming. Duly listed, maintained, audited, publicly accessible records of all Common Good Assets, within each Scottish Council, should statutorily exist.

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 it comes to consider your petition.

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 11 July 2005

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 5196 Fax: 0131 348 5088
e-mail: petitions@scottish.parliament.uk

Note
Completed e-petition forms should also be sent to petitions@scottish.parliament.uk
PETITION TO THE SCOTTISH PARLIAMENT

COMMON GOOD ASSETS, HERITABLE AND MOVEABLE

PREAMBLE

For some eleven centuries within Scotland there have been gifts of land, property, artefacts, along with stated privileges, to Royal Burghs, Burghs of Barony and to communities. In addition, there have been gifts of moveables, including books, jewellery, paintings and other valuables, such as monuments and weaponry. Many of these gifts are listed in Royal and other charters, as well as in individual wills. All these records are now in the keeping of National Records or Council Records within Scotland, presently in the care of designated archivists of these Councils.
STATEMENT

Over a period of years, particularly since living in Peebles, I have become aware that there has been laxness in maintaining records of Common Good assets, particularly in the case of moveables, where Audit Scotland has recently confirmed this in its report of November 2004.

Submitted in evidence.

It is therefore safe to assume that, throughout Scotland, there will be little, or no record extant of moveable assets in their entirety, no insurance cover to compensate for their disappearance and loss to the community. In fact this is almost the equivalent of a Thieves' Charter, by omission.

Recently the individual Scottish Borders Councillor, Alasdair Hutton, stated he wished a chain or office to indicate his representative capacity, when ‘on duty’ with other similar Scottish representatives, and, to this end suggested the possible use of existing Provosts’ chains, which should be available from formerly independent Royal Burghs, now all part of the Scottish Borders Council. (i.e. moveable assets of Common Good “property”). It has transpired that, to date, there appears to be no clear record of these items i.e. where they are kept and if they are insured. Collectively the chains of office, together with other valuable assets of former burghs, must have a considerable monetary value. Their existence, on record, should have been maintained, together with their place of safety, and updated insurance values, all available for annual audit, and for public inspection.

I am now certain that much of Scotland's communities' heritage has been allowed to disappear through indifference, carelessness and possible veriality. However, I believe that it is now time to legislate unambiguously to safeguard all the existing moveable assets of Common Good property throughout Scotland.
In addition it is abundantly clear that heritable assets, namely land and property which should exist in proper records, regularly checked and insured and audited, are not being accurately maintained. Land measurements must be carefully recorded on O.S. maps along with the owners' details and names, also all properties must be clearly delineated on O.S. maps together with their names and addresses and extent; known Common Good heritable properties are frequently let on either long-term leases e.g. 99 years for a golf course, or short term leases for the use of property, or farmland and buildings. These leases bring in annual revenues to each council, and are subject to annual audit.

It seems, however, that when a Council chooses to occupy heritable assets, the Council is ambiguous about paying annual rent to the “Common Good Funds”, probably because of the “troublesome work” (as the Council sees it); so not all assets are credited to the Funds in annual rents.

It is also evident that there is no distinct and clear Common Good heritable assets rent fund, as accounts are all over the place, and become hidden within existing revenue accounts, with no clear statement of the source as a Common Good heritable asset. By “moving” an asset e.g. a park designated in its original gift charter to be “for behoof of the community in all time coming as a Public Park and Recreation Ground” into a different “Account” the park then slips away from being listed as a Common Good (heritable) asset, with all the potential for legal mistakes, including change of use or even sale.

Many Councils dispose of their housing stock to some new set up which involves not only the Regional Council losing houses, garages, sheds and gardens, but may well include Common Good heritable assets (i.e. land) on which these properties sit.
Because of poor record-keeping, there may be no clear immediate evidence of this mistake, so no court proceedings are likely to test the matter.

In addition, Councils are prone to dispose of heritable properties like leisure centres, swimming pools, which may well include the land on which they rest; yet again, because of poor record keeping, the land could well be Common Good (heritable) assets, not properly recorded, which disappear into the charitable trust responsible for running the various activity centres. The legal documents may not make absolutely clear as to who is the former (or the new) owner of the land and if the land was part of the Common Good heritable assets and continues to be so or not, and why not.

There are also, in the Scottish Borders, small areas of community woodlands, sometimes administered through the community councils, and which are potentially part of the Common Good heritable assets with devolved management responsibilities.

It is possible that any Common Good asset may be investigated through Court(s) to ascertain if it is legal or communally approved to “dispose” of the asset in any way; but the essential difficulty for those wishing to legally test this matter is the prevailing problem of continuous good, accurate and up-to-date Council Records, publicly available for scrutiny. By the time assets have gone, the public may not have been alerted to their potential “disposal” in time to legally investigate.

There have been several notable press reports of large properties, with land or grounds left to communities by benevolent benefactors in the fond belief that the community will have forever benefits from this generosity. Due to a mixture of disjointed attitudes of various bodies such as Historic Scotland (with an interest in listed properties), Regional authorities (anxious to make a quick buck by selling land to developers), Council officials (who do not want the work involved in maintaining the
property and organising its community uses), Councillors (totally ignorant of Common Good assets), and the public (unclear of their ownership rights), valuable heritable and moveable assets are both mismanaged and eventually disposed of to the long-term financial disadvantage of communities.

For these and many other less obvious reasons, I request this Committee to consider the need for clear, unambiguous legislation to ensure the following:
LEGISLATION

A complete record of Common Good assets, heritable and moveable, to be held by each Council.

Assets to include all gifts to communities by Royal Charter, historically as well as recently; by feu charters; by means of wills or lifetime gifts; by acquisitions of heritable or moveable assets including artefacts; other.

The record must include a full description of each asset; an address where applicable or place of safe keeping; the date(s) of acquisition and acceptance; an acquisition number applicable solely to each item for identification; a current insurance valuation; a statement of annual rental where applicable (duly updated); the name and address of each/any lessee, together with a time agreement for each lease, and any agreed conditions, including maintenance.

The appointment of a qualified archivist and provision of appropriate premises to maintain all records within each Council, together with provision for reasonable public access to check the Records are essential.

To protect all heritable assets from inadvertent omission in discussions of planning or development proposals there must be recording on O.S maps in the following categories 1) land maps 2) property maps; and in the case of moveables, on written records only.

All proposed disposals, including sales of both heritable and moveable assets must be duly notified/advertised, including in the Press, to allow objectors to test the disposal or sale publicly in the Courts.

It is possible that local museums, galleries or other properties may be housing what should be recorded as Common Good moveable property or artefacts.
It is obvious that the total value, throughout Scotland, of existing (but possibly unrecognised) Common Good assets amounts of many millions of £s, which is part of the nation's valuable inheritance, and which must be legally protected.

To this end I respectfully invite the consideration and support of the Petitions Committee to recommend legislation, within the Scottish Parliament, on these matters.

Adequate central funding will have to be available to ensure all Councils will comply with new regulations in addition to their present duties, including under The Local Government (Scotland) Act 1973.

Mary E. MacKenzie (Miss)
Mr Michael McMahon
Convener of the Public Petitions Committee
Scottish Parliament
TG.01
Parliamentary Headquarters
EDINBURGH
EH99 1SP

CONSIDERATION OF PETITION PE875

I refer to your letter of 27 October 2005 about the Petition by Mary E Mackenzie calling for the introduction of legislation to ensure that all moveable and heritable common good assets are recorded, audited and insured to ensure such assets are properly safeguarded.

Local Authorities are bound by the Duty of Best Value which came into force with the introduction of the Local Government in Scotland Act 2003. Best Value basically requires local authorities to undertake continuous improvement. The Best Value Task Force (as was) produced a number of Advisory Notes to complement the Act and the Statutory Guidance, one of which is on asset management.

Five provisions in the 2003 Act are directly relevant to the issue of asset management by local authorities. They are:

1. the duty to make arrangements which secure Best Value
2. guidance on the characteristics of an authority which secures Best Value
3. the function of determining and keeping under review the amount to allocate to capital expenditure, also known as the prudent capital regime
4. the power to enter into agreements for the construction or maintenance by the authority of buildings and works
5. changes to the power to dispose of land for less than full value

The Best Value duty also has more direct implications for asset management:

• management arrangements must secure continuous improvement

Dear Michael
the authority must look to find a balance between quality and cost in decisions relating to the procurement and use of assets
the authority will be expected to ensure that the decisions taken contribute to the achievement of sustainable development, as well as meet purely economic criteria. This includes sustainable long-term programme management of assets.

Local authorities are further required to have regard to the Prudential Code for Finance in Local Authorities in determining their capital expenditure under s35 of the 2003 Act. This Code emphasises the importance of asset management planning in making such determinations.

Finally, local authorities are bound by a duty of public accountability under s13 of the 2003 Act. They should consider how best to discharge this obligation in relation to asset management, after having had regard to the statutory guidance published under that section.

The Advisory Note states that efficient asset management will enable an authority to:
- assess the make-up of the best portfolio required to deliver the given services
- minimise occupation costs, and maximise property efficiency
- maximise efficiency of service delivery
- facilitate long-term planning in the context of corporate objectives
- develop corporate thinking
- develop valuable long-term partnerships
- free up resources for reinvestment, should the financial policy of the authority allow it, and subject to the Prudential Code
- allocate resources effectively to areas of greatest need
- account to the public for its use of public assets

Asset management is commonly defined as the full life cycle management of such assets in order to maximise their advantage. It covers site acquisition and disposal, the replacement and remodelling of buildings, roads and bridges to include extensions and improvements, plus the management and maintenance of such capital infrastructure assets. From a financial standpoint, regard must also be made to the opportunity cost of such assets, i.e. the costs of having capital tied up in the asset rather than available for investment.

The Advisory Note goes on to state that responsibility for asset management within each local authority should be shared by senior managers, and supported by appropriately skilled officers who can work across service departments to deliver a coherent and co-ordinated overall strategy. Asset management often involves making choices between options, such as refurbishment or new build. Such decisions should be informed by a formal option appraisal process. At intervals, local authorities should consult on and review the assumptions and practices which underpin their corporate planning, and this may have implications for the way assets are managed. After review, an authority may decide that certain tangible assets no longer support corporate objectives, are surplus to requirements or have surplus capacity. There should be an automatic assumption of disposal, if the assets would otherwise be held indefinitely with no purpose in mind. But, if the property in question can be put to alternative use, this should be examined, and the issue of redeployment or partnering with another organisation to share the property should be considered. One means of doing so will be via local Community Planning arrangements or discussions with neighbouring local authorities.
Where disposal would be the option most likely to achieve Best Value, the asset should normally be disposed of for its full current market value. Normally disposals are a matter for the authority; but if an authority wishes to dispose of assets held in the Housing Revenue Account, it will need to seek the consent of Scottish Ministers (under s12 of the Housing (Scotland) Act 1987).

Sometimes a property asset is worth less than the land upon which it sits, or the cost of demolition prevents a good market receipt. Formal options appraisal may do little more than identify the least costly option, and the temptation will be to leave the asset sitting vacant or derelict. Authorities need to consider three things here: the ongoing cost of making such sites safe and secure; the indirect impact of a refusal to make any more fundamental investment in the site; or whether the asset could be put to better use by other public sector providers in the area.

If the authority wishes to dispose of any land and property assets at less than the current market value the disposal will need to meet criteria set under the auspices of s74 of the Local Government (Scotland) Act 1973 (as amended by s11 of the Local Government in Scotland Act 2003).

Audit Scotland currently assess asset management as part of their annual audits of local authorities. As local authorities are bound by the Duty of Best Value, and there are procedures in place should an authority be found to have acted illegally, I consider that adequate safeguards are in place to ensure that moveable and heritable common good assets are properly safeguarded. There are currently no proposals to introduce legislation.

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

Our ref:  
Your ref:  

21 December 2005  

Alex James Johnston,  
SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE -  
CONSIDERATION PE875  
COMMON GOOD ASSETS  

Thank you for your letter of 27 October. I am very sorry about the delay in replying. I hope the comments below will be helpful to your Committee. I should explain at the outset that the comments in this response relate to heritable common good assets and are made in the context of the Keeper of the Registers of Scotland's functions in maintaining the national land and property registers.  

Background to the property registers  
By way of background, it may be helpful to explain that information on heritable property in Scotland is held in two public registers. These are the General Register of Sasines and the Land Register of Scotland.  

The General Register of Sasines has been in operation since 1617 and is a chronological record of land deeds. It is not map based and attracts no guarantee of title. The General Register of Sasines is now being progressively superseded by the Land Register, though the General Register of Sasines continues to remain relevant to investigation of title to land. Since 1963 there has been a single General Register of Sasines. Prior to that there were also Burgh Registers (discontinued between 1927 and 1963) and Particular Registers for the various districts and shires (discontinued between 1869 and 1871).  

As Keeper of the Registers of Scotland I am responsible for the process of recording deeds in the General Register of Sasines, during which copies of deeds are made and indicas created. These are then transmitted to National Archives of Scotland, who hold the historic records. Although use of plans became more common through the course of last century, Sasine deeds usually have a text description of the land concerned.  

The/
The Land Register was commenced in 1981. It is a map-based register of title. The title sheet for each property includes a plan at the largest scale Ordnance Survey mapping available for the area (either 1:1250 or 1:2500 in built-up areas; some mountain and moorland areas are mapped at 1:10,000), states the current proprietor and gives full details of any real burdens or conditions affecting the title. Upon first registration of an area of land, the Keeper carries out a detailed examination of title and, where satisfied that the title is good, then guarantees the validity of the registered title. Land registration was introduced on a county by county basis and since 1 April 2003 has applied throughout Scotland. In general terms, title to a given property now enters the Land Register on its sale.

**Identification of common good titles in the property registers**

I note that the petition seeks the establishment of a more thorough record of common good assets. I do not consider that the property registers can themselves alone act as this, though clearly they can be of assistance. A title to land acquired since 1617 by a local authority should be recorded in the General Register of Sasines or, in recent acquisitions, in the Land Register. The majority of common good titles will be held in the Register of Sasines and are likely to remain there. The Register does not operate in such a way that the location and extent of holdings, the titles to which are recorded in the Register, are readily available by category, as the Petitioner wishes. Local authorities, however, generally have asset registers that detail the titles that they hold to land. Local authorities will be the most complete source of such information. Moreover, the property registers may not necessarily hold titles to all common good land, particularly because some charters that confer such titles in relation to burghs predate 1617, and therefore would not be recorded in the General Register of Sasines. In addition, I understand that land may become a common good asset by reason of the use to which the local authority puts it or public uses of it which the local authority tolerates. The public good character of the land may therefore arise after the title to it has been established and in these cases that land is held for the common good will not be apparent from the title.

**Sales by councils of common good property**

Where a local authority sells land, the purchaser will apply for registration in the Land Register. The Keeper then carries an examination of the disposition (transfer deed) and prior titles and, on the basis of this and certifications given by the applicant for registration, decides whether the title should be registered and, if so, whether to give the purchaser the benefit of a state-guaranteed title to the land.

In some circumstances, it may not be possible to transfer the title to a common good asset if the title is what is called in legal terms 'alienable' because of its genesis. Thus I as Keeper could in principle find it necessary to refuse registration, or if there were doubt, to exclude indemnity (i.e. to withhold guarantee from the title). In practice, however, if there is a possibility that a title may be alienable, this will normally have been addressed between the disposing local authority and the purchaser's solicitor during the negotiation of the sale. In such cases evidence that the land is alienable - such as a Court decree under section 75 of the Local Government (Scotland) Act 1973, or an expert legal opinion - will normally have been obtained before settlement of the sale, and thus before any registration application is made.
The Keeper has on one occasion been involved in litigation over a title said to have been held in inalienable trust. Although the case was decided on its own particular facts, the decision of the Court of Session in this case - Wilson and others v Keeper of the Registers of Scotland, reported at 1999 SCLR 872 - may be of interest to the Committee. Inverclyde Council had sold land at Greenock harbour and the purchasers had been registered as proprietors in the Land Register. Certain citizens sought rectification of the register, arguing that the local authority had held the land in inalienable trust for the citizens of Greenock. The Court held, upholding the decision of Lands Tribunal for Scotland, that citizens claiming to be beneficiaries of the trust did not have title to seek rectification of the Land Register. The Court decided that any such right would lie with the trustees and not the beneficiaries.

I hope these comments are helpful.

JAMES MELDRUM
Keeper of the Registers of Scotland
and Chief Executive
Dr James Johnston
Clerk to the Public Petitions Committee
The Scottish Parliament
TG.01
Parliamentary Headquarters
Edinburgh
EH99 1SP

John S Graham
Chief Executive

30 November 2005

Jack Johnston,

Scottish Parliament Public Petitions Committee – Consideration PE875

Thank you for your letter of 27 October inviting comments from Historic Scotland on Petition PE875 by Mary E Mackenzie.

I enclose a briefing note that sets out or comments. If you need anything further please do not hesitate to get in touch.

JOHN GRAHAM

www.historic-scotland.gov.uk
HISTORIC SCOTLAND COMMENTS

1. The Agency's comments on the above Petition are as follows:

   Section A  Background note on Historic Scotland
   Section B  Background note on Historic Scotland's role in the listing and
               Listed Building Consent processes
   Section C  Specific comments on issues raised in the petition
   Section E  Additional Information

Section A – Background Note on Historic Scotland

2. Historic Scotland is an executive agency within the Scottish Executive Education Department and was established in 1991. Its mission is to safeguard the nation's historic environment and to promote its understanding and enjoyment. It carries out on behalf of Scottish Ministers the full range of their responsibilities for the historic environment in Scotland (principally the listing of historic buildings and scheduling of ancient monuments); the associated consent procedures; rescue archaeology; the operation of grants schemes; the promotion of craft skills and traditional building materials; and the conservation, management and presentation of over 300 properties in the direct care of Scottish Ministers. Historic Scotland works in close partnership with other public, voluntary and private organisations in the fields of conservation, tourism, the arts, the environment, housing and economic regeneration.

Section B Historic Scotland and the Listing and Listed Building Consent Procedures

Listing

3. Scottish Ministers have responsibility for compiling and updating lists of buildings of special architectural or historic interest. Such buildings are afforded statutory protection, which is exercised through the Listed Building Consent process outlined below. The listing process is carried out on behalf of Scottish Ministers by Historic Scotland.

4. There are 46,558 listed buildings in Scotland:

   Category A (national or international importance) = 3,654
   Category B (regional importance) = 26,178
   Category C(S) (local importance) = 17,076

5. The listing process aims to identify all buildings of special historic or architectural interest across Scotland that meet the criteria for listing. Owners, local authorities and other interested parties are consulted as part of the process, but the key determinant is importance of building rather than condition, economic value etc.
Listed Building Consent

6. Under section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 listed building consent (LBC) is required for the demolition of a listed building or its alteration or extension in any manner that would affect its character as a building of special architectural or historic interest. LBC allows proper consideration to be given to proposals affecting our historic environment, a finite resource that requires to be managed in a sustainable way. LBC applications are dealt with by planning authorities. If they are minded to grant consent to applications relating to category A and B listed buildings or the demolition of category C(S) listed buildings they must notify Historic Scotland (acting on behalf of the Scottish Ministers) to afford Ministers the opportunity to call in the applications for their own determination.

7. Around 2,500 LBC cases are notified to Historic Scotland for consideration every year. 97% are cleared within 28 days thanks to pre-application and pre-notification discussion. The remaining 3% might be “extended” for further consideration or to obtain more information or to secure improvements to the proposals. Only a handful of cases are generally called in by Scottish Ministers in any year.

Section C – Specific comments on the issues raised in the petition

‘Disjointed attitudes’

8. We note the specific reference to Historic Scotland in the Petition’s Formal Statement (pages 4-5) as follows:

"Due to a mixture of disjointed attitudes of various bodies such as Historic Scotland (with an interest in listed properties), Regional Authorities (anxious to make a quick buck by selling land to developers), Council officials (who do not want the work involved in maintaining the property and organising its community uses), Councillors (totally ignorant of Common Good assets), and the public (unclear of their ownership rights), valuable heritable and moveable assets are both mismanaged and eventually disposed of to the long-term financial disadvantage of communities”. (Extract from petition pp.4-5)."

9. We are unaware of any specific example that Miss MacKenzie may have had in mind when framing the petition. However, we can assure the Committee that Historic Scotland is committed to ensuring that the historic environment is used and managed in a sustainable way. Our aim, both through our statutory role and through research and advice, is to ensure that the characteristics of the historic environment are understood and taken account of so that its overall quality is enhanced rather than diminished.

Insurance

10. An owner is not required by statute to take out heavier or more extensive insurance cover for a listed building. As with other buildings, it is for each owner to decide what is appropriate or prudent to cover possible risks and to protect the value of an asset.
11. Repairs to the fabric of a listed building, and consequently insurance of buildings, by virtue of the building’s age and character, may be more expensive than repairs to an equivalent modern building. However, the owner is not however obliged to insure against more risks than would be covered for any building of similar use or value.

**Duty to consult public on proposals to sell moveable and heritable assets**

12. Historic Scotland supports and welcomes greater community involvement in the decision making process at a local level. However, we would have reservations about putting in place a statutory mechanism that could result in the owners of historic properties being compelled to retain ownership when they do not have the financial resources to ensure due care and maintenance of the property in question and when the care and maintenance and suitable viable use of a historic property might best be secured by selling or transferring ownership of the building to a new owner.

**Record Keeping**

13. Historic Scotland fully recognises the value of retaining and maintaining records relating to historic properties. A sound knowledge base allows us to gain a greater understanding of the buildings themselves and helps to ensure that an appropriate care and maintenance regime is put in place. Proper information and understanding can also inform our consideration of any regeneration/conservation proposals.

14. We recommend that the Committee considers seeking comments from the National Archives of Scotland, who will be in a better position to comment on issues affecting local authority archives.

**Section E - Additional Information**

15. Members of the Petitions Committee may be interested to note the following information.

**The Historic Environment Advisory Council (HEACS)**

16. The Historic Environment Advisory Council (HEACS) (which was set up in 2003 to provide independent advice to Scottish Minister on any issues affecting the historic environment) is currently considering:

- whether there is a need to review heritage protection legislation in Scotland and,
- the role of local authorities in conserving the historic environment.

17. In 2003 the Council set up two working groups to examine these issues. Membership of the working groups includes co-opted specialists. Both groups have taken a wide range of evidence from interested parties and bodies in the public and voluntary sector which have direct working experience in local authority heritage environment management and the historic environment sector.

18. It is anticipated that HEACS will report to Scottish Ministers on each of these issues by the end of May 2006.
Heritage Audit

19. On its establishment HEACS was also charged by Scottish Ministers with investigating the need for a heritage audit in Scotland. The Council reported to the Minister in September 2004. The report concluded that:

- a heritage audit was needed;
- Historic Scotland should co-ordinate the work;
- a dedicated website be developed; and
- a regular report on the "state of the Scottish Historic Environment" be produced.

20. The Minister accepted the report's recommendations and earlier this year commissioned Historic Scotland to lead this initiative, which will provide an ongoing audit of Scotland's historic environment, including statistics on our heritage assets (such as listed buildings, scheduled monuments, buildings at risk), their condition, and how well they are being used and looked after.

21. It is envisaged that, over time, the audit will contain new research and analysis, carried out by a range of heritage organisations, to illustrate particular themes (such as social attitudes to the historic environment and the economic and educational benefits of heritage).

HISTORIC SCOTLAND
November 2005
Dr James Johnston  
Clerk to the Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

Dear Dr. Johnston

Scottish Parliament Public Petitions Committee – Consideration PE875

Thank you for inviting COSLA to comment on the petition by Ms. Mary Mackenzie, calling for the Scottish Parliament to urge the Scottish Executive to ensure that all moveable and all heritable common good assets throughout Scotland are properly recorded, audited and insured and to introduce legislation to ensure such assets are properly safeguarded.

COSLA does not consider that there is any need for legislative change. Common good property of all kinds is already recorded and audited as part of the legislative audit regime and there is a requirement to keep a separate common good account.

Yours sincerely,

Lindsay Macgregor  
Policy Manager
Dr James Johnston
Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

24 January 2006

Dear Dr Johnston

I refer to your letters of 27 October to the Chairman of the Accounts Commission and the Auditor General concerning Petition 875 relating to common good assets and to your subsequent reminders and our recent telephone conversation. I now attach a note of comments prepared by Audit Scotland on behalf of the Accounts Commission and the Auditor General and repeat my apologies for the delay in submitting these.

Yours sincerely

W F Magee
Secretary
1. At its meeting on 5 October 2005 the Public Petitions Committee considered Petition PE875 concerning common good assets and agreed to seek views from, amongst others, the Accounts Commission and the Auditor General. This note has been prepared by Audit Scotland and is submitted to the Committee on behalf of the Accounts Commission and the Auditor General.

2. The legislation makes it clear that councils are the stewards of common good assets and they are therefore under an obligation to ensure that those assets are properly recorded and insured. The standards of stewardship expected in relation to common good assets are equal to those for council owned assets and systems of internal control within councils generally extend to such assets in all councils, although there are always opportunities for improvement.

3. The Accounts Commission is responsible for securing the audit of councils and the common good is subject to that audit and is covered in the audit opinions given on the annual financial statements of councils. The Code of Practice on Local Authority Accounting in the United Kingdom does not require councils to report full common good accounts, but many continue to do so. Where full accounts are not provided, councils are required to report the nature and amount of common good funds.

4. The extent of detailed audit work on the common good is determined in each council in accordance with a number of factors. The work is conducted in compliance with the Audit Code of Practice and Auditing Standards and covers all areas to a minimum level. Detailed work is targeted to areas which

   - Are material to the accounts. Common good assets are generally minor in comparison to the value of assets held directly by a council, although this varies significantly from area to area.
   - Are judged to have a potentially significant impact with a reasonable likelihood of occurrence. Audit work is targeted to such areas of risk.

5. A variety of issues relating to the stewardship of common good funds have been reported to councils across Scotland over a number of years. A number of detailed audit reviews have been undertaken in individual councils, responding to identified risk areas. Such reviews are sometimes undertaken in response to concerns raised by individuals or groups in the community, as common good issues often have a high local profile. Findings from these reviews have been reported to councils and corrective actions agreed where necessary. Issues raised in individual councils over the last 5–10 years have included

   - Competence of common good asset registers
   - Ownership and title of common good assets
   - The valuation of common good assets
   - Securing best value from the disposal of common good land
   - Allocation of overhead and interest to common good funds
   - Accounting for the repair costs of common good assets
• Funding common good activities by loans from general funds, which is prohibited
• Implementing a strategy and performance measures for common good fund investments
• Reviewing the operation of minor dormant common good funds inherited from predecessor authorities.

6. Where detailed audit work identifies concerns in the stewardship of common good funds by an individual council, detailed recommendations are made and a corrective action plan agreed. The audit process subsequently reviews the implementation of agreed actions.

7. Councils face practical difficulties in maintaining records of common good assets. Those assets tend to have been held over a significant period of time, having been inherited from predecessor authorities through a number of periods of local government re-organisation and this undoubtedly presents significant challenges for record keeping. Questions about the origin and nature of common good asset holdings may require research of documentation going back many years to establish the position.

8. While acknowledging the concerns expressed in the petition, there has to be a question whether the extent of identified problems with common good assets in proportion to the overall finances of councils would merit the additional burden of regulation by statute. If there are areas where further clarity is required it may be possible for this to be addressed through guidance by the Scottish Executive to councils as to what is expected of them.

9. These comments will hopefully be of assistance to the Committee in its consideration of the petition. We will be happy to respond to specific questions or offer any further assistance which the Committee may wish.
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.

Ms Florence Boyle

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

Petition by Ms Florence Boyle, on behalf of West Dunbartonshire Heritage Ltd, calling for the Scottish Parliament to urge the Scottish Executive to require Local Authorities to conduct structured and meaningful public consultation and appeals procedures with the local community before any disposal of listed buildings, common land or related endowments held in public ownership or trusteeship.

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: 30th October 2005
In recent months West Dunbartonshire Heritage Ltd has become aware that there is no statutory requirement for local authorities to consult with the local community on the disposals of listed buildings.

Listed buildings form an important part of the built heritage of the community and have often been donated to ensure an ongoing benefit to the community. Given this importance we regard the current process as inadequate.

The purpose of this petition is to urge the Scottish Executive to require local authorities to consult on any disposal of heritage properties. We ask that there should be recommendations on the form of consultation, the process of consultation and that the results of the consultation should be made public, and that an appeals process should be devised.

Legislation, which protects Scotland’s historic buildings, is principally contained in the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997. It is generally administered by Historic Scotland on behalf of the Scottish Ministers and by the planning authorities. The aim is to protect the character of the heritage and to guard against unnecessary loss or damage. The positive role of planning authorities and the Scottish Ministers in intervening to secure the repair or preservation of listed buildings is covered in legislation ............................................ Local Authorities (who are custodians of local heritage) can, and do declare, listed properties surplus to requirement, and consequentially put them up for public sale. They do so to avoid the costs of repair and maintenance. In effect they relinquish responsibilities for preservation of heritage within the local area.

Not only is public access to places and properties of common heritage more limited once Local Authorities have washed their hands of community responsibility, protection of listed buildings becomes more complex than if they remained in public hands. An owner is not required by statute to take out heavier or more extensive insurance cover for a listed building. As with other buildings, it is for each owner to decide what is appropriate or prudent to cover possible risks and to protect the value of an asset. Repairs to the fabric of a listed building, and consequently insurance premiums, by virtue of the building’s age and character, may be more expensive than repairs to an equivalent modern building.

............................................ The owner is not however obliged to insure against more risks than would be covered for any building of similar use or value

When an application is notified to them, the Scottish Ministers will consider whether the decision should be left to the planning authority or whether any special circumstances - such as the particular importance of the building or the degree of national interest or local concern about the proposals - warrant the calling in of the application for their own decision. Where the Scottish Ministers call an application in, they may arrange a public local inquiry ......................................... On the issue of a Local Authority disposing of listed buildings on “the marketplace” there is no such mechanism for inquiry into the reasons for disposal.
Additional information (continued...)

Because the care of historic buildings is a specialised task calling for considerable expertise, the Scottish Ministers are empowered to take a close interest in the way in which planning authorities deal with applications for listed building consent. The authority must advertise details of an application nationally in the Edinburgh Gazette and locally in a newspaper, so that members of the public and local and national amenity societies have an opportunity to comment. The planning authority must also forward to the Scottish Ministers any comments made to them following advertisement

.................................Local Authorities do not have to justify why they are declaring commonly held heritage buildings or sites surplus to requirements and the requirements for public consultation are far less rigorous than those imposed on planning authorities

The owners of listed buildings are responsible for the repair and maintenance of their buildings, as are the owners of any other buildings. If an owner fails to keep a listed building in a reasonable state of repair, the planning authority (with the Scottish Ministers' consent) or the Scottish Ministers themselves may be entitled to buy it by compulsory purchase if the owner does not repair it in accordance with a previously served repairs..................................Legislation in the above context is clearly geared towards protection. Local Authorities are the owners as far as commonly held heritage is concerned and have the same obligations. Selling the heritage relieves the Authority of this burden. The question is should they be allowed to relinquish responsibility in this way? Should the general public not have a greater say?

If the owner of a listed building deliberately neglects the building in order to justify its demolition and redevelopment of the site, the planning authority or the Scottish Ministers may not only acquire the building but may do so at a price which excludes the value of the land for redevelopment. This power is likely to be used where the owner is thought to be intentionally allowing the building to deteriorate to the point where it can be designated as a dangerous building requiring demolition in the interests of public safety

.................................If, after putting a building up for sale it proves to be unsuccessful, is the Local Authority going to repair and maintain an empty building on which they are trying to reduce costs?

It is a fact of life that all buildings age as the natural result of weathering. Buildings of traditional construction, which may be sensitive to the elements, can be costly to repair if minor defects are allowed to develop into major problems. Regular inspection and maintenance, helps to avoid deterioration and consequent higher repair costs. External defects left unattended can put at risk the building's internal fabric and finishes. Regular inspection and monitoring, attendance to defects at an early stage and regular maintenance thereafter will prolong the life of the building at a lower cost.

.................................Buildings should, where possible be kept in use. Local Authorities should be required to consider how best to utilize heritage sites and properties in such a way as the public can access them. Selling heritage because the Local Authority does not wish to maintain the financial burden is a slippery slope to extinction of many fine properties.
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.

West Dunbartonshire Heritage has made representations to West Dunbartonshire Council on numerous occasions, seeking public consultation on Heritage issues and strategy. It does not appear that there is any attempt at genuine dialogue designed to find alternatives to disposal of commonly held heritage assets.

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.

Should Local Authorities have the right to sell properties or sites, or redeploy endowments which they hold in trust as part of their Local Community Heritage?

Should they have the right to dispose of land, properties and endowments bequeathed to them as elected custodians of local communities? Are such properties not Common Property rather than Council Property?

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 it comes to consider your petition.

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 Florence Boyle.....
Date 4th October 2005 .................................................................
14/10/2005

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

Note
Completed e-petition forms should also be sent to
CONSIDERATION OF PETITION PE896

I refer to your letter of 21 November 2005 to Linda Craik of the Scottish Executive Development Department. I apologise for the delay in replying, but it took some time for the request to reach this Department.

Local Authorities are bound by the Duty of Best Value which came into force with the introduction of the Local Government in Scotland Act 2003. Best Value basically requires local authorities to undertake continuous improvement. The Best Value Task Force (as was) produced a number of Advisory Notes to complement the Act and the Statutory Guidance, one of which is on asset management.

Five provisions in the 2003 Act are directly relevant to the issue of asset management by local authorities. They are:

1. the duty to make arrangements which secure Best Value
2. guidance on the characteristics of an authority which secures Best Value
3. the function of determining and keeping under review the amount to allocate to capital expenditure, also known as the prudential capital regime
4. the power to enter into agreements for the construction or maintenance by the authority of buildings and works
5. changes to the power to dispose of land for less than full value

The Best Value duty also has more direct implications for asset management:

- management arrangements must secure continuous improvement
- the authority must look to find a balance between quality and cost in decisions relating to the procurement and use of assets
- the authority will be expected to ensure that the decisions taken contribute to the achievement of sustainable development, as well as meet purely economic criteria. This includes sustainable long-term programme management of assets.
Local authorities are further required to have regard to the Prudential Code for Finance in Local Authorities in determining their capital expenditure under s35 of the 2003 Act. This Code emphasises the importance of asset management planning in making such determinations.

Finally, local authorities are bound by a duty of public accountability under s13 of the 2003 Act. They should consider how best to discharge this obligation in relation to asset management, after having had regard to the statutory guidance published under that section.

The Advisory Note states that efficient asset management will enable an authority to:
- assess the make-up of the best portfolio required to deliver the given services
- minimise occupation costs, and maximise property efficiency
- maximise efficiency of service delivery
- facilitate long-term planning in the context of corporate objectives
- develop corporate thinking
- develop valuable long-term partnerships
- free up resources for reinvestment, should the financial policy of the authority allow it, and subject to the Prudential Code
- allocate resources effectively to areas of greatest need
- account to the public for its use of public assets

Asset management is commonly defined as the full life cycle management of such assets in order to maximise their advantage. It covers site acquisition and disposal, the replacement and remodelling of buildings, roads and bridges to include extensions and improvements, plus the management and maintenance of such capital infrastructure assets. From a financial standpoint, regard must also be made to the opportunity cost of such assets, ie the costs of having capital tied up in the asset rather than available for investment.

The Advisory Note goes on to state that responsibility for asset management within each local authority should be shared by senior managers, and supported by appropriately skilled officers who can work across service departments to deliver a coherent and co-ordinated overall strategy. Asset management often involves making choices between options, such as refurbishment or new build. Such decisions should be informed by a formal option appraisal process. At intervals, local authorities should consult on and review the assumptions and practices which underpin their corporate planning, and this may have implications for the way assets are managed. After review, an authority may decide that certain tangible assets no longer support corporate objectives, are surplus to requirements or have surplus capacity. There should be an automatic assumption of disposal, if the assets would otherwise be held indefinitely without purpose in mind. But, if the property in question can be put to alternative use, this should be examined, and the issue of redeployment or partnering with another organisation to share the property should be considered. One means of doing so will be via local Community Planning arrangements or discussions with neighbouring local authorities.

Where disposal would be the option most likely to achieve Best Value, the asset should normally be disposed of for its full current market value. Normally disposals are a matter for the authority: but if an authority wishes to dispose of assets held in the Housing Revenue Account, it will need to seek the consent of Scottish Ministers (under s12 of the Housing (Scotland) Act 1987).

Sometimes a property asset is worth less than the land upon which it sits, or the cost of demolition prevents a good market receipt. Formal options appraisal may do little more than identify the least costly option, and the temptation will be to leave the asset sitting vacant or derelict. Authorities need
to consider three things here: the ongoing cost of making such sites safe and secure; the indirect impact of a refusal to make any more fundamental investment in the site; or whether the asset could be put to better use by other public sector providers in the area.

If the authority wishes to dispose of any land and property assets at less than the current market value the disposal will need to meet criteria set under the auspices of s74 of the Local Government (Scotland) Act 1973 (as amended by s11 of the Local Government in Scotland Act 2003).

Audit Scotland currently assess asset management as part of their annual audits of local authorities. As local authorities are bound by the Duty of Best Value, and there are procedures in place should an authority be found to have acted illegally, Ministers consider that adequate procedures are in place to ensure that local authorities take account of the public good before disposing of listed buildings, common land or related endowments held in public ownership or trusteeship. There are currently no proposals to introduce legislation to require local authorities to consult the public before disposal.

SCOTT SUTHERLAND
FCSD Secretariat
Dr James Johnston  
Clerk to the Public Petitions Committee  
The Scottish Parliament  
TG.01  
Parliamentary Headquarters  
Edinburgh  
EH99 1SP

22 December 2005

Dear Dr Johnston,

Scottish Parliament Public Petitions Committee – Consideration of PE896

Thank you for your letter of 21 November inviting comments from Historic Scotland on Petition PE896 by Ms Florence Boyle.

I enclose a briefing note that sets out our comments. If you need anything further please do not hesitate to get in touch.

JOHN S GRAHAM
SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE
CONSIDERATION OF PE896 - MS FLORENCE BOYLE

HISTORIC SCOTLAND COMMENTS

1. The Agency’s comments on the above Petition are as follows:

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Section A – Background Note on Historic Scotland

2. Historic Scotland is an executive agency within the Scottish Executive Education Department and was established in 1991. Its mission is to safeguard the nation’s historic environment and to promote its understanding and enjoyment. It carries out on behalf of Scottish Ministers the full range of their responsibilities for the historic environment in Scotland (principally the listing of historic buildings and scheduling of ancient monuments); the associated consent procedures; rescue archaeology; the operation of grants schemes; the promotion of craft skills and traditional building materials; and the conservation, management and presentation of over 300 properties in the direct care of Scottish Ministers. Historic Scotland works in close partnership with other public, voluntary and private organisations in the fields of conservation, tourism, the arts, the environment, housing and economic regeneration.

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Listing

3. Scottish Ministers have responsibility for compiling and updating lists of buildings of special architectural or historic interest. Such buildings are afforded statutory protection, which is exercised through the Listed Building Consent process outlined below. The listing process is carried out on behalf of Scottish Ministers by Historic Scotland.

4. There are 46,558 listed buildings in Scotland:

- Category A (national or international importance) = 3,654
- Category B (regional importance) = 26,178
- Category C(S) (local importance) = 17,076

5. The listing process aims to identify all buildings of special historic or architectural interest across Scotland that meet the criteria for listing. Owners, local authorities and other interested parties are consulted as part of the process, but the key determinant is importance of building rather than condition, economic value etc.
Listed Building Consent

6. Under section 6 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 listed building consent (LBC) is required for the demolition of a listed building or its alteration or extension in any manner that would affect its character as a building of special architectural or historic interest. LBC allows proper consideration to be given to proposals affecting our historic environment, a finite resource that requires to be managed in a sustainable way. LBC applications are dealt with by planning authorities. If they are minded to grant consent to applications relating to category A and B listed buildings or the demolition of category C(S) listed buildings they must notify Historic Scotland (acting on behalf of the Scottish Ministers) to afford Ministers the opportunity to call in the applications for their own determination.

7. Around 2,500 LBC cases are notified to Historic Scotland for consideration every year. 97% are cleared within 28 days thanks to pre-application and pre-notification discussion. The remaining 3% might be “extended” for further consideration or to obtain more information or to secure improvements to the proposals. Only a handful of cases are generally called in by Scottish Ministers in any year.

Section C – Specific comments on the issues raised in the petition

The purpose of this petition is to urge the Scottish Executive to require local authorities to consult on any disposal of heritage properties

8. Historic Scotland supports and welcomes greater community involvement in the decision making process at a local level. However, we would have reservations about putting in place a statutory mechanism that could result in the owners of historic properties being compelled to retain ownership when they do not have the financial resources to ensure due care and maintenance of the property in question and when the care and maintenance and suitable viable use of a historic property might best be secured by selling or transferring ownership of the building to a new owner.

Section D - Additional Information

9. Members of the Petitions Committee may be interested to note the following information.

The Historic Environment Advisory Council (HEACS)

10. The Historic Environment Advisory Council (HEACS) (which was set up in 2003 to provide independent advice to Scottish Minister on any issues affecting the historic environment) is currently considering:

   • whether there is a need to review heritage protection legislation in Scotland and,
   • the role of local authorities in conserving the historic environment
11. In 2003 the Council set up 2 Working Groups to examine each of these issues. The membership of the Working Groups includes co-opted specialists. Both Groups have taken a wide range of evidence from interested parties and bodies in the public and voluntary sector, who have direct working experience in local authority heritage environment management and the historic environment sector.

12. It is anticipated that HEACS will report to Scottish Ministers on each of these issues by the end of May 2006.

Heritage Audit

13. On its establishment HEACS was also charged by Scottish Ministers with investigating the need for a heritage audit in Scotland. The Council reported to the Minister in September 2004. The report concluded that:

- a heritage audit was needed
- Historic Scotland co-ordinate the work
- a dedicated web site be developed
- a regular report on the “state of the Scottish Historic Environment” be produced.

14. The Minister accepted the report’s recommendations and earlier this year commissioned Historic Scotland to lead this initiative which will provide a regular audit of Scotland’s heritage – including statistics on our heritage assets (such as listed buildings, scheduled monuments, buildings at risk), their condition, and how well they are being used and looked after.

15. It is envisaged that, over time, the audit will contain new research and analysis, carried out by a range of heritage organisations, to illustrate particular themes (such as social attitudes to the historic environment and the economic and educational benefits of heritage).

HISTORIC SCOTLAND
December 2005
Dr James Johnston  
Clerk to the Public Petitions Committee  
TG.01  
Parliamentary Headquarters  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

9 January 2006

Dear Sir

Petition PE896 - Disposal of Listed Buildings, Common Land or related endowments

Thank you very much indeed for your letter dated 21 November and various enclosed papers. The Trust has studied this Petition and offers the following comments for consideration.

There are a number of key issues. These include the purpose of the Common Good Fund; clarity of what is held in the Common Good; how the public participate in decisions relating to the Common Good; legal obligations of owners and the position of endowments; public access to buildings transferred from public ownership; and the protection of Common Good assets on behalf of the community.

**Background**

Common Good Funds have existed in Scotland since the Middle Ages. Over the centuries the position has been reached where there are incomplete records of the assets held for the Common Good and the process for their disposal excludes the common people in whose name they are held.

In 1973, Common Goods were transferred to the control of Local Authorities under the Local Government (Scotland) Act. Section 75(2) of the Act deals with the subsequent disposal of such land. A local authority must make application to the Court of Session or the Sheriff Court to dispose of Common Goods Assets. There is no provision for third party involvement unless there is a legal challenge to the disposal. Various modifications to this section have taken place in the Local Government etc. (Scotland) Act 1994 and the Local Government (Scotland) Act 2003. The 1994 Act specifically mentions Common Goods within section 15. Subsection 4 of s.15 places a restriction on the transfer of Common Good property. Local Authorities are required to “have regard to the interests of the inhabitants of the area to which the common good related prior to 16th May 1975” except in the cases of the four main cities, who were required to have regard to the interests of all inhabitants of their area. There is no definition as to what constitutes “having regard to”.

The Local Government (Scotland) 2003 Act makes no reference to Common Good.

It should be noted that in September 2005, Petition PE875 was presented to the Public Petitions Committee of the Scottish Parliament. The Trust has expressed its support for the call in that petition for the creation of “a complete record of Common Good assets, hirtable and moveable, to be held by each council.”

**Petition PE896**

The common theme in petitions PE875 and PE896 is that Local Authorities are felt not to properly exercise their custodial duties for assets held by them in the Common Good. Both seek to make Local Authorities more accountable and responsive to local opinion. Petition PE896 seeks to impose restraints on the ability of Local Authorities to dispose of listed buildings, common land or related endowments. It suggests and asks that:
• sale of such properties can be a way of avoiding responsibilities for the continued cost of repair and maintenance;
• properties become less accessible once they leave public ownership;
• it is easier to ensure the regular maintenance of buildings of traditional construction when they are in public ownership;
• should Local Authorities have the right to sell properties, or redeploy endowments which they hold in trust as part of their Local Community Heritage?
• should they have the right to dispose of land, properties and endowments bequeathed to them as elected custodians of local communities? Are such properties not Common Property rather than Council Property?

In responding to PE896, the Trust would like to make it clear that we take the widest view of the Common Good Fund and do not restrict our comments to fixed assets only.

**The purpose of the Common Good**

At the heart of this matter is the purpose of holding assets for the Common Good, in the Common Good Fund. Quite simply, the Common Good Fund exists to serve the people of the community. This is recognised in Section 15(4) of the 1994 Act. As the assets are held in “the interests of the inhabitants of the area” the Trust believes that the inhabitants have a right to involved in decisions relating to these assets. In addition, we believe it is important to understand the benefits they confer on the wider community.

"Public" Ownership

At the heart of this Petition is the question of what is the public interest. The Trust does not believe that the wider public interest and the interest of any given local authority are necessarily synonymous. The current legislative regime does not allow a local authority to transfer property to a residuary body (s. 15(4) of the 1994 Act).

However, since the transfer of Common Goods to local authorities in the 1973 Act, there has been considerable change in the concept of what could be considered "public ownership". Many local and national voluntary bodies and Non-government organizations own property. An important element in the repair of redundant listed buildings is the Building Preservation Trust movement, whereby charitable bodies restore and can hold important architectural monuments. A strong enhancement of local conservation bodies in recent years also points to a wider definition of publicly held goods. The Title Conditions (Scotland) Act 2003 created a new subclass of real burdens, one of which was conservation burden and specifically allows bodies other than local authorities to hold these burdens.

As such, the Trust feels that the legislation surrounding Common Goods needs to be reviewed to allow for the non-local authority ownership of Common Goods provided the conditions attached to the assets are met.

**Clarity of what is held in the Common Good**

Clearly, the legal requirements set out in Section 75(2) can only function effectively if it is known what assets are held in the Common Good. Where it is not clear, or not generally known, what assets are held in the Common Good, there is a serious risk that the assets will be alienated, quite possibly inadvertently. Without a full audit being carried out for each Local Authority it will not be possible to establish the scale of this problem, or to prevent further instances.

A survey of the websites of Scottish Local Authorities by the Scottish Civic Trust found that only 5 out of 32 had a section explaining about Common Good Funds. Of these only Aberdeen City Council went into the matter in more than a few lines. This demonstrates the low profile of Common Good Funds within Local Authorities and the difficulty faced by a member of the public in finding out information about them. None of the websites gave a list of the assets held under the Common Good Fund. Four Local Authorities were contacted by phone. None of them had a designated contact or spokesperson for the Common Good Fund. In each case after being transferred at least twice our researcher, Alex Adamson, found himself speaking to someone in the Finance Department; the Common Good Fund seems to be seen largely as a matter of accountancy.

**Public participation in decisions relating to the Common Good**
A full audit will increase the ability of the public to identify assets held in the Common Good. It will not, however, increase the transparency of the management and alienation of the assets. It does not give local groups or individuals any right of involvement in decisions made affecting assets held in their name.

The current process for disposal of assets held under the Common Goods Fund excludes the inhabitants of the area and other who might have an interest in these assets. We feel that the current judicial process should be replaced with one that has local participation at its heart.

Furthermore, we recommend that the public sale of assets held in the Common Good or listed buildings should be undertaken through a process including public announcement (in the local press and Edinburgh Gazette at the very least) followed by a public meeting. We also advise that any substantive change in the use of assets held in the common good should be subject to public consultation.

**Legal obligations of owners and the position of endowments**

Bequests to the Common Good are sometimes made with conditions and endowments to assist in the continued implementation of the bequestor's wishes. We are concerned that the Local Authorities may on occasion, and perhaps inadvertently, not fulfill the legal responsibilities that are linked to a bequest in terms of upkeep and usage and that endowments may be absorbed within a wider budget rather than being ring-fenced for the intended purpose, or may do so in a manner that is so indirect as to negate the positive impact of any such endowment.

The ability to specify future conservation responsibilities and restrictions on land and property is a key element of Common Good assets. The ability to set such conditions encourages people to make bequests. Each Local Authority needs to create a public register of assets and specify any conditions related to each item, including endowments related to an asset.

**Public access to buildings transferred from public ownership**

It is possible that public access may diminish when a property or other Common Good asset moves out of Local Authority or Common Good Fund ownership. However, it may also increase. Possession of a building by a Local Authority is no guarantee of public access. The nature of the usage may preclude such access. Where a building is known to attract visitors it would be thoughtful of a Local Authority to include future access in its discussions with potential buyers.

**Protection of Common Good assets**

Scotland has no legislation comparable to the Dealing with Cultural Object (Offenses) Act 2003. If this Act applied in Scotland, many assets held in the Common Good would be classed as cultural objects. When a Common Good Fund asset is also a listed building, scheduled ancient monument, part of our natural heritage or the history of a locality, it is doubly important that any substantive actions be properly scrutinised. The public should have a greater say in, and take greater responsibility for, what is done with and to these assets. It should be noted that the transfer of Common Goods to local authorities in 1975 pre-dates the main regulatory Historic Environment acts including the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 and the Ancient Monuments and Archaeological Areas Act 1979.

We do not wish to imply that we favour public ownership of these assets over private or vice-versa. There are a number of reasons why it may be beneficial to move a property from public to private, or other, ownership. What is important is proper public involvement in decision-making. It is entirely possible that a private individual, business or other body may be a more suitable and effective owner for an asset than a Local Authority. Transfer of a building to a Building Preservation Trust, or other charitable body, may facilitate its rehabilitation. An alternative owner may well be able to find a new use for an asset for which the Local Authority had none. A listed building or scheduled ancient monument would remain protected from inappropriate alteration through the relevant legislation after sale or transfer.
Local Authorities have responsibility for controlling many aspects of the health of listed buildings including:

- planning applications and listed building consent applications;
- enforcement of planning conditions, etc; and
- the imposition of repairs notices, etc.

The ownership of property by the body responsible for policing such matters is by no means an assurance that they will be dealt with more satisfactorily than if they were in private ownership. Indeed it can result in a conflict of interests within the Local Authority. Separation of ownership and regulation does not necessarily lessen the value of assets held in the Common Good Fund.

**Summary**

The underlying principle of the Common Good Fund is that they are held for the benefit of the community. The community should therefore have a right of involvement in its management.

As a precursor to any further action over Common Good assets it is essential that a full audit be carried out by each Local Authority. These audits should be known as Common Good Fund Audits, and must be publicly accessible. These must include all known conditions and all known and related endowments.

The plans of the Local Authority are not always synonymous with the good of the community or the well-being of the Common Good Fund. The legal process should be altered to require public involvement in decision-making and to increase the transparency and scrutiny of decisions. Councils must do more to publicise the existence of, and activities undertaken by, their Common Good Funds.

The principles of real burden, community burden and conservation burden are significant legal safeguards to the interests of benefactors and communities. They risk being undermined by misuse of Common Good assets and their associated funds. Each Local Authority should create a register of burdens and endowments on its assets.

The Scottish Executive should consider legislation to define and protect cultural objects. Assets which are both cultural objects and Common Good assets are in need of a high degree of public scrutiny and responsibility. In this regard, the Trust believes that a similar piece of legislation to the Dealing with Cultural Object (Offences) Act 2003 should be developed for Scotland. A review of the legislation covering Common Goods Funds also needs to be undertaken.

It should be acknowledged that the legal framework allows for the provision of access to property sold from public custody. However, this disposal does not necessarily mean that it should be released from the Common Good Fund. Other forms of ownership should be allowed. This should be considered on a case by case basis.

We would be happy to discuss the issues raised in our response. If the Petitions Committee would like to explore this further with the Trust, then please contact myself or Alex Adamson.

Yours sincerely

TERRENCE LEVINTHAL
Director
terry.levinthal@scottishcivictrust.org.uk
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.

Scottish Dementia Working Group (SDWG)

SDWG members all have a diagnosis of dementia. The group seeks to make its voice heard on issues important to its members, and to influence public attitudes to dementia.

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.

Petition by James McKillop, on behalf of the Scottish Dementia Working Group, calling on the Scottish Parliament to urge the Scottish Executive and NHS Quality Improvement Scotland to ensure the continued availability on prescription of medications such as donepezil, rivastigmine, galantamine and memantine for use in the treatment of Alzheimer’s Disease, and other forms of dementia.
Signature ....

Date 9/1/05

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

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
Dear Dr Johnston

Thank you for your letter of 15 December regarding the Scottish Dementia Working Group's petition calling on the Scottish Parliament to urge the Scottish Executive and NHS Quality Improvement Scotland to ensure the continued availability of drugs for the treatment of Alzheimer's disease.

It is important to note that NICE has not yet issued new guidance to the NHS on the use of donepezil, rivastigmine, galantamine and memantine for the treatment of Alzheimer's disease. Until new advice is issued, the existing NICE guidance, a copy of which is enclosed, which recommends the use of the first three of these medicines still applies.

The Institute’s Appraisal Committee met on 1 June 2005 to consider comments from stakeholder organisations representing healthcare professionals, patients, carers and pharmaceutical companies, together with observations from individual clinicians and the families, friends and carers of those with Alzheimer's disease, on the first draft consultation document. At this meeting the Committee agreed that, based on the evidence currently available, and having taken full account of the response to consultation, they could not change their earlier conclusion which was to recommend against the use of these medicines.

However, responses received from stakeholders during consultation on the first draft of the guidance suggested that the drugs may be particularly effective for certain groups of people. Therefore, before issuing new advice, the Institute asked the pharmaceutical companies involved in the appraisal to look for evidence to support this in the data from their clinical trials. The further data received from the companies was analysed by the Medical Research Council Biostatistics Unit.

This additional data was reviewed by the Appraisal Committee at a meeting on 20 December and the Committee's decision will be published later this month.

I would like to reassure the Committee that the Institute has worked hard to ensure that all the relevant evidence has been taken into account in this appraisal and that it has taken full account of the views on the use of these medicines which have been expressed by people with Alzheimer's disease and those who care for them.

I hope this information is helpful to the Committee. If you would like anything further from me, please do not hesitate to contact me again.

Yours sincerely

Andrew Dillon CBE
Chief Executive

Enc. NICE appraisal on Alzheimer’s disease – donepezil, rivastigmine and galantamine (No.19)
Dear Mr Hough

Public Petition PE886. Dementia treatment

The Scottish Dementia Working Group was pleased with the positive response it received when its petition was considered by the Public Petitions Committee on 5 October 2005.

We have been very disappointed that there has been no further consideration of the matter by the committee. The convener stated “We can discuss the petition further when we get a reply from NICE”. There is no indication on the Scottish Parliament website that any such reply has been received over 5 months on.

I enclose a copy of an e-mail sent to the Parliament on 16 December seeking information on the progress of our petition. To date we have received no acknowledgement of this message.

Meantime, NICE has made public a further appraisal consultation document on 23 January 2005, with a closing date of 13 February for comments. It intends to have a further meeting of the Appraisal Committee on 27 April, and no final decision is expected until June/July, at which point NHS Quality Improvement Scotland will make known its position on the matter in respect of Scotland.

We are pleased to note that NICE has modified the original position set out in its draft guidance of 28 February 2005. However we believe that
their latest position still represents a step backwards and as such is unacceptable to people with Alzheimer's disease.

In the light of the concerns expressed by members of the Public Petitions Committee on 5 October, may we request that - irrespective of whether a reply has been received from NICE - the Committee considers further action on PE886 at its next meeting following that of 22 February.

We hope you will appreciate that this is an urgent issue for all those people in Scotland affected by the deliberations of NICE.

Yours sincerely

James McKillop
Chairman
Scottish Dementia Working Group
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.

<table>
<thead>
<tr>
<th>Details of principal petitioner:</th>
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<tr>
<td>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</td>
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<tr>
<td>Margaret Ann Cummings</td>
</tr>
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</tr>
<tr>
<td>The petitioner requests that the Scottish Parliament urges the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders.</td>
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<th>Additional information:</th>
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<td>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.</td>
</tr>
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</table>
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 held a large successful march on 30 October 2004 at George Square. We have held residents' meetings, open meetings and have had meetings with Paul Martin MSP for Springburn, and with Divisional Commander Kevin Smith of Strathclyde Police 'E' division and his officers. They think we are doing a good job and wish us well.

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 27.5.2005 ..............................................................

Please note that any additional information, copies of relevant correspondence and additional signatures should be appended to this form and submitted to:

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
Michael McMahon MSP
Convenor of the Scottish Parliament
Edinburgh
EH99 1SP

Scottish Parliament Public Petitions Committee — Consideration PE862

Thank you for your letter outlining the Executive’s response to my petition calling for a review of the current system for dealing with and monitoring convicted child sex offenders. I have detailed my response to the issues raised below.

Firstly, I would like to consider the references to Professor Irving’s report by way of a response to my petition. I welcome many of the recommendations but feel there are still issues that must be addressed. While the movements of paedophiles are to be more closely monitored via passport details and DNA samples, there is still a need to create legislation preventing registered child sex offenders from assuming an alias. In the case of Stuart Leggate, the adoption of an alias enabled him to evade police and social workers trying to monitor his movements.

I feel there is still a need for proposals to tighten the legislation in this respect.

Regarding disclosure, I welcome Professor Irving’s recommendation of a system of Targeted Disclosure as a step in the right direction, which goes further than measures requested in my petition. My petition simply asks that parents and carers are afforded the right to know how many registered child sex offenders are living in their area. We have never asked for the disclosure of names and addresses despite repeated misunderstandings. Targeted Disclosure however could make families aware of a paedophile’s name and exact address details when the offender is viewed as a threat. The accusation levelled at the notion of giving parents, who wish to know, numbers of child sex offenders in their area is that this information could lead to witch-hunts.

However, if parents have no details of offenders’ names and addresses this is a very unlikely outcome. I would also like to point out that our Mark’s Law campaign, which as you are no doubt aware has been highly emotive, has seen no vigilante attacks or violent incidents.

I feel there needs to be further work in this respect to address the specific point on disclosure within my petition. Additionally, I feel there is an obvious need to examine and thoroughly research international examples such as Megan’s Law in America before coming to a conclusion on this issue.
In respect of work carried out by the Sentencing Commission there are also outstanding issues that require further consideration. Firstly, the length of sentences have yet to be tackled. At present, sentences given to child sex offenders are grossly inadequate and in need of a full-scale review. Stuart Leggate committed a string of sex offences against children but only served two years for further lewd and licentious acts against yet another child. Clearly if he had served an appropriate sentence he would not have been free to murder my son.

Following on from this, the question of Automatic Early Release needs to be further examined. I understand the Executive have put an end to Unconditional Automatic Early Release so that offenders are not released into the community without proper checks, monitoring and risk assessment. However, it seems more relevant to end the system of Automatic Early Release in its entirety for child sex attackers so that the full sentence handed down for the crime is actually served.

Having looked at the work done regarding the housing of sex offenders, I feel clarification is required as to exactly what new measures are to be implemented to end the practice of placing paedophiles in cheap, available housing next to vulnerable families. Training of staff on the issue and a better level of information sharing between authorities is clearly useful but the practicalities of housing offenders must be tackled. After my son’s murder it became apparent that several registered sex offenders were living in our area, an amount that seemed disproportionate with other areas of the city. Clearly the housing of offenders is a difficult issue but one that needs urgent attention so that the same mistakes surrounding my son’s death are not repeated.

I would also like to add two further points for your consideration.

Firstly, that there is a re-classification of child sex offenders to make the clear distinction between paedophiles and sex offenders. Often there is confusion between how we should handle those committing offences against adults and those who have harmed a child.

Secondly, that specific courts for handling such paedophiles be established with separate sentencing powers, which could translate to tougher sentences. This could also mean the time in which cases are dealt with could be much speedier, resulting in a reduction in cases waiting months to be heard.

I would like to add that I fully appreciate all efforts made so far to respond to my petition. As you can thankfully only imagine, losing my son in these circumstances has been a horrendous experience I struggle to cope with on a daily basis. I have tried to follow the correct and peaceful procedures to try and effect the change needed and get justice for Mark. My hope is that my response detailed here is given due consideration.
The outstanding issues I have raised are some of the most important in my petition and although difficult, must be tackled head on to try and make our communities a safer place for our children.

Yours sincerely

Margaret Ann Cummings