LETTER FROM SIR PETER HOUSDEN, PERMANENT SECRETARY, SCOTTISH GOVERNMENT, TO THE CONVENER OF THE PUBLIC AUDIT COMMITTEE, 30 JULY 2010.

AUDITOR GENERAL FOR SCOTLAND REPORT – THE GATHERING 2009

Thank you for your letter of 1 July seeking written evidence to assist the Committee in its scrutiny of the Auditor General for Scotland’s report, “The Gathering 2009”. Answers to your questions are set out below.

“The Committee would welcome the Scottish Government’s views on the legality of this loan given section 23 refers to “payments” (with the section heading referring to “grants”) rather than “loans” and to “the Secretary of State” rather than “Scottish Ministers”.”

We consider the provision of the loan to be legal. The power to make payments under section 23 of the National Heritage (Scotland) Act 1985 is a wide one, relying on a consideration of whether the activities are likely to promote the development or understanding of cultural or scientific matters. Cultural activities were central to The Gathering event so, the provision of financial assistance was clearly within the scope of section 23.

The heading to section 23 of the National Heritage (Scotland) Act 1985 refers to ‘grants’ whereas the text of the section itself is wider in scope and its underlying purpose is to enable the provision of financial assistance. The power in section 23 could have been exercised to provide a grant to The Gathering 2009 Ltd. In this case, the course of action taken was to provide a more restrictive form of financial assistance, a short term loan and we consider the payment to be entirely consistent with the powers in the legislation.

As for payment being made by ‘Scottish Ministers’ rather than ‘the Secretary of State’, section 53 (1) of the Scotland Act 1998 is clear that functions which are referred to in a pre-commencement enactment (which for this purpose includes the 1985 Act) which are exercisable on behalf of Her Majesty by a Minister of the Crown “shall, so far as they are exercisable within devolved competence, be exercisable by the Scottish Ministers instead of by a Minister of the Crown”.

“The Committee would also be grateful if you could confirm how often payments have been made under section 23 of the National Heritage (Scotland) Act 1985 in each of the last five years.”

The power provided in section 23 is used by Scottish Ministers to make payments to a wide range of bodies whose activities are judged likely to promote the ‘development or understanding of cultural or scientific matters’. There is a very high volume of payments made to organisations from both capital and revenue budgets under this power but information on the power used to make specific payments is not held centrally. As a result, identifying every payment in each of the last five years would be an extensive and expensive exercise.
I can however assist the Committee in providing an example of the extent to which Section 23 is used in making payments. The vast majority of the Scottish Government’s culture budget of £176m (in 2009/10) is allocated under this power, with a multitude of payments ranging from £50.4m (2009/10) for the Scottish Arts Council to £150,000 (2009/10) for the Scottish Council on Archives. Scotland’s cultural Non Departmental Public Bodies, including the three National Collections, and many other related bodies, including the five National Performing Companies, are also provided with annual funding under section 23. Section 23 is also used to provide financial assistance with the aim of promoting scientific matters: including funding the Royal Botanic Garden in Edinburgh, Scotland’s four science centres and the Royal Society of Edinburgh as well as a range of other smaller payments which aim to boost scientific research and education.

“More generally how often has the Scottish Government provided loans to private sector companies over the same period and how many of these have been written-off.”

There are arms of Scottish Government that regularly provide loans to private sector companies. For example, Scottish Enterprise has the powers, under the Enterprise and New Towns (Scotland) Act 1990, to offer loans and repayable grants and all three Scottish Enterprise investment funds – Seed, Co-investment and Venture – have the ability to provide private companies with loans. The Scottish Government’s Scottish Investment Fund, managed by Social Investment Scotland, provides a mix of strategic investment and loan funding to a range of organisations, including private sector companies.

The Scottish Government has contributed £1.5m, through Scottish Enterprise, for the new Royal Edinburgh Military Tattoo (REMT) grandstand. This funding forms part of a repayable grant being made by Scottish Enterprise that becomes repayable in certain conditions as set out in the legal agreement between Scottish Enterprise, the City of Edinburgh Council (CEC) and REMT.

Loans, in the form of a grant to be repaid at a later date, were made annually from the core Scottish Government during this period to Glasgow Housing Association.

There have been no write-offs of loans in this period beyond that to The Gathering Ltd.
“The Committee would welcome further information on the clearance procedure for this press release including when and who cleared the press release and in what order. It would be helpful if you could clarify whether the usual Scottish Government clearance procedures were followed in relation to the clearing of this press release.

The Committee would also welcome clarification of what risks were identified and considered in relation to the decision to issue this press release prior to the conclusion of the due diligence work on The Gathering 2009 Ltd.”

The press release was issued by CEC on behalf of the Destination Edinburgh Marketing Alliance. Clearance procedures and responsibilities were therefore a matter for CEC. Whilst Scottish Government officials contributed material to the draft news release, including a Ministerial quotation, CEC had the final say on its content.

It follows that any risks in relation to the decision to issue this news release were a matter for CEC to identify and assess.

I hope this information is of assistance to you and the members of your Committee.

With all good wishes,

PETER HOUSDEN
LETTER FROM THE CONVENER OF THE PUBLIC AUDIT COMMITTEE TO SIR PETER HOUSDEN, PERMANENT SECRETARY, SCOTTISH GOVERNMENT, 1 JULY 2010.

AUDITOR GENERAL FOR SCOTLAND REPORT – THE GATHERING 2009

At its meeting on 23 June 2010, the Public Audit Committee received a briefing from the Auditor General for Scotland (AGS) on his report entitled “The Gathering 2009”. An extract of the Official Report of the meeting is available at the following link:

The Scottish Parliament - Public Audit Committee Official Report

In considering its approach to the scrutiny of this report the Committee agreed that it would invite oral evidence from the Directors of The Gathering 2009 Ltd, Sir John Elvidge, former Permanent Secretary, Scottish Government and the Minister of Culture, External Affairs and the Constitution at future meetings.

The Committee also agreed to write to the Accountable Officer and the Chief Executive of the City of Edinburgh Council on a number of issues raised during discussion and it is in that context that I am writing to you.

The Committee agreed that it wished to seek further written evidence on the circumstances of the loan of £180,000 provided by the Scottish Government to The Gathering 2009 Ltd. The Committee noted that “the Scottish Government awarded the loan under section 23 of the National Heritage (Scotland) Act 1985 which relates to the power of the Secretary of State to make payments to any body whose activities appear likely to promote the development or understanding of cultural or scientific matters” (paragraph 33 of the AGS report).

The Committee would welcome the Scottish Government’s views on the legality of this loan given section 23 refers to “payments” (with the section heading referring to “grants”) rather than “loans” and to “the Secretary of State” rather than “Scottish Ministers”.

The Committee would also be grateful if you could confirm how often payments have been made under section 23 of the National Heritage (Scotland) Act 1985 in each of the last five years. More generally how often has the Scottish Government provided loans to private sector companies over the same period and how many of these have been written-off.

At paragraph 58 of the report, the AGS comments that Council officials and the Scottish Government worked jointly on the press release (indicating that DEMA would take on The Gathering 2009 Ltd’s remaining private sector obligations) prior to its release on 15 October 2009. The report then notes that the chair of DEMA did not see the whole press release prior to its release, only approving his quote expressing DEMA’s desire to be involved in delivering similar Gathering events.

The Committee would welcome further information on the clearance procedure for this press release including when and who cleared the press release and in what
order. It would be helpful if you could clarify whether the usual Scottish Government clearance procedures were followed in relation to the clearing of this press release.

The Committee would also welcome clarification of what risks were identified and considered in relation to the decision to issue this press release prior to the conclusion of the due diligence work on The Gathering 2009 Ltd.

I would be grateful for your response to the above questions by Friday 30 July. Please do let me know if this time frame presents you with any difficulties.

Should you require any further information please do not hesitate to contact the Clerk, Jane Williams on 0131 348 5236 or by email at pa.committee@scottish.parliament.uk.

Yours sincerely

Hugh Henry MSP
Convener
Public Audit Committee