To quell public disquiet about the proper accounting for Common Good assets, heritable and moveable, the Scottish Executive in 2007 issued an instruction to all local authority Directors of Finance to maintain comprehensive and up-to-date registers. It is now obvious that councils in their role as trustees of the Common Good have for the most part defied the will of Parliament and have no intention of complying. Further measures are required to rectify this national problem. The forthcoming Public Records (Scotland) Bill (SP56) presents such an opportunity.

In 2007 the Scottish Executive instructed all local authorities “to hold a record of all common good assets and ... make this information available to the public if asked”. It was a condition of the additional capital grant provided to councils in 2007-08 “that a report on asset ... management be provided” and that “they must hold accurate records” (including) “those assets held for the Common Good”. This exercise was to be completed by March 2009.

A number of local authorities, including Glasgow City Council, failed to comply. Despite criticism from the Information Commissioner, Glasgow maintains its position that any common good implications will be examined at “exchange of missives”. This policy contributed to the abandonment of the proposed lease to Go Ape in Pollok Park. As a result, in March 2010 the Scottish Public Services Ombudsman found some degree of maladministration since the Common Good status of the Park could have been affirmed two years previously and prevented a waste of public money in pursuing a lease which did not meet common good objectives.

In June 2010, Audit Scotland’s gave evidence to the Public Petitions Committee (PE1050) that “Councils have generally taken reasonable steps to comply with the (2007) guidance”. Based on this assurance the Committee wrote “that the Scottish Government, in light of this assessment, is satisfied that common good sites are as protected as they can be and sees no need for new legislation in respect of common good assets”. In reply to further enquiries about proposed future monitoring, Audit Scotland wrote to campaigners that their future programme “will not include any proposals for a study of common good assets.” The Clerk to the Public Petitions Committee has confirmed there is no mechanism to reopen consideration of a petition if new evidence suggests Audit Scotland’s assurances are optimistic.

In conclusion, local authorities have chosen to ignore the instructions of the Scottish Parliament and the watchdog refuses to bark. The forthcoming Public Records (Scotland) Bill requires the introduction of an approved Records Management Plan but makes no specific mention of Common Good Asset Registers. Specifying an up-to-date Common Good Asset Register as part of the Model Plan and securing the right of public access may send the message to
recalcitrant local authorities that proper accounting for Common Good is an obligation to the community they must no longer ignore.

6. Without a comprehensive public record of Common Good Assets and Trusts administered by councils, communities cannot act to preserve their ancient rights and the government’s stated policy of community involvement will be frustrated.

Bill Fraser
26 December 2010