

**LASAAC**  
**September 2007**

**ACCOUNTING FOR THE  
COMMON GOOD FUND: A  
GUIDANCE NOTE FOR  
PRACTITIONERS**

***CONSULTATION DRAFT***



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## **1. Introduction**

- 1.1 In local government in Scotland, the Common Good is a traditional and ongoing topic of interest and debate. That interest is evident amongst users of local authority services, stakeholders and a varied range of other commentators. The level of interest, in many cases, extends beyond, and is disproportionate to, the financial value of the funds themselves. This is reflective of both the wider interest and wider perspective generally that is applied by stakeholders to local authority finance. The interest itself extends beyond the narrow concept of materiality.
  
- 1.2 In the case of the Common Good, that wider interest almost certainly includes a need for transparent and consistent reporting on the use of fund monies. This is clearly consistent with the objective of the SORP. Despite this, the SORP is largely silent on this important area of Scottish public sector finance. More recently, interest in the Common Good has heightened with Parliamentary committee interest, exchanges of articles in the national press and the release of a major critique on the Common Good in Scotland.
  
- 1.3 In parallel with this evidence of heightened interest, LASAAC had recognised and determined that there was a requirement to modernise accounting for the Common Good and, as far as possible, to ensure consistency in the manner in which the Common Good is accounted for and reported by local authorities in Scotland. While accounting is the key consideration for LASAAC and is the main concern of this document, the Committee is aware of the possible wider interest in this publication given the profile of the Common Good. It is for that reason that the Committee, in compiling this guidance, has with care and diligence attempted to recognise modern accounting requirements while attempting to preserve the unique position of the Common Good in Scotland.
  
- 1.4 Given the sole applicability of the Common Good to Scotland and the role of LASAAC, it has been deemed appropriate that consistent and transparent financial reporting can be achieved by the release of this guidance. Given therefore the wider interest which this document may attract, it sets out not only guidance but also wider information to enable local authorities to achieve the stated objective of transparent and consistent reporting.

1.5 This document is distinct sections:

- section 2 does not provide specific guidance from LASAAC but, given the unique nature of the Common Good Fund, the section is intended to provide useful background and contextual information. The section also sets out the legislative background, as far as it is known and provides a summary of legislative and other regulatory developments although this summary may not be exhaustive. ;
- section 3 provides information on the financial management of the Common Good. It draws together source information based on statute, case law and general practice. Supporting case law is also provided where known and which indicates not only the authority for specific items of text but is also a further indicator of historic interest in the Common Good; and
- section 4 provides specific guidance on accounting for practitioners. It does not purport to address all of the wider and more local issues particular to the Common Good but is intended to be useful and helpful to all local authorities in Scotland in accounting and preparing financial statements for the Common Good.

### **Scope and Status of this Guidance**

1.6 LASAAC recognises that there are many expert commentators on the Common Good. Much of their commentary extends beyond the remit of accounting and addresses both political matters as well as stewardship issues. The principal focus of this guidance however is on accounting and it is further recognised that the complexities of the Common Good may mean that accounting guidance cannot readily address all issues or interests of stakeholders. Nevertheless this is an important first step to bring accounting for the Common Good into the modern era in which local authorities now operate.

1.7 This guidance builds upon, and is largely consistent with, proper accounting practice required by the Code of Practice on Local Authority Accounting – A Statement of Recommended Practice (The SORP). The guidance is applicable to all bodies in Scotland to which the SORP currently applies and should be considered against the background of the SORP under Section 12 of The Local Government in Scotland Act 2003.

- 1.8 LASAAC expects that, subject to the transitional arrangements set out at Appendix 2, this guidance should be implemented by local authorities in Scotland for the financial year commencing April 2008 and for all local authorities by April 2009. Earlier application is however encouraged.

## 2 The Common Good - Contextual Information

- 2.1 The following historical text is intended to add context for both practitioners and other interested users.

### **A Brief Historical Background**

- 2.2 The earliest legislation which enacted the Common Good can be traced back to The Common Good Act 1491, a copy of which is attached at appendix 1. Some three hundred years later, at the turn of the eighteenth century the Burghs of Scotland for the most part met expenses from the revenues of their properties. The cost of public lamps, of cleansing and repairing streets, of interest on loans, of the Minister's stipend, and the cost of entertaining the council on occasion of the King's birthday, were met from rents and feu-duties on the lands given to the Burgh by the Crown in medieval times.
- 2.3 The Common Good (as these revenues were, and still are termed) is therefore of great antiquity. The origin was either in a Crown grant of lands, or of petty customs of the Burgh. It denoted all property of a Burgh not acquired under statutory powers or held under special trusts
- 2.4 The Common Good, however, ultimately became only a useful adjunct to the principal revenues and was reserved for purposes which promoted the general good of the inhabitants or dignity of the Burgh. For similar purposes Counties and Burghs without a Common Good were empowered under the Local Government (Scotland) Act 1947 to set up fee funds from certain fees and commissions.

### **Local Government Reorganisation – Impact on The Common Good**

- 2.5 Section 15 of the Local Government etc. (Scotland) Act 1994 states that such property may not be transferred to a residuary body and, in administering such property, any authority to which it is transferred shall:
- except in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, have regard to the interests of the inhabitants of the area to which the Common Good related prior to 16 May 1975
  - in the case of the councils for Aberdeen, Dundee, Edinburgh and Glasgow, have regard to the interests of all the inhabitants of their areas

- 2.6 The intention of the statutory provisions was that, generally, all the Common Goods of the Burghs in any new council should be combined to benefit the population of the new authority as a whole. Certain properties, forming part of the Common Good in some areas by their nature were intended and could be used only for the benefit of the people in a restricted area and, as it was not intended to oblige these to be sold to provide funds to benefit the new authority as a whole, it was decided to include in statute a provision requiring the new authorities to have regard to the interests of the former Burgh in administering physical property.
- 2.7 Section 8 of The Local Government (Transitional Financial Provisions) (Scotland) Order 1996, SI No 682, provided that any credit balance on the accounts of the Common Good of a district council immediately before the transfer date shall be transferred on that date to the council within the area of which was situated the Burgh of whose Common Good those accounts formed at 15 May 1975.

### **The Local Government Scotland Act 2003**

- 2.8 More recently Section 20 of The 2003 Act introduced the power to advance well-being. The Act states that:
- (1) A local authority has power to do anything which it considers is likely to promote or improve the well-being of-*
- (a) its area and persons within that area;*
- (b) either of those*
- 2.9 The Act effectively empowers local authorities in Scotland to utilise funds for which there may previously have been only restricted statutory authority or only limited powers (Section 83 of the Local Government (Scotland) Act 1973 repealed by the 2003 act).

### 3 Financial Management

3.1 The Common Good is administered by local authorities in Scotland. It is vested in the local authority unless it can be shown that some particular body of trustees or sections of the community or other persons have a patrimonial right to the funds. There is no equivalent to the Common Good in any other part of the UK. The Common Good Fund is however distinct from and different to that of funds held by the local authority.

3.2 Common Good funds may be applied for any lawful purpose for the benefit of the inhabitants. The object fostered by the use of the funds should be within the scope of municipal administration, but need not be an object authorised by statute.

***e.g. use of the Common Good by Glasgow Corporation to pay telephone accounts of councillors incurred in the performance of their official duties was upheld by the Court of Session (Glasgow Corporation v Secretary of State for Scotland (1966) SLT 183.***

#### Common Good Revenues

3.3 The expenditure of the Common Good is a matter for the discretion of the local authority provided that it is an honest exercise of discretion and that the projected use is not contrary to policy

***(Graham v Glasgow Corporation (1936) SLT 145).***

3.4 Expenditure, therefore, which cannot be met from council taxation, must be defrayed out of Common Good and councils may apply part of the revenue from the Common Good in relief of rates.

- 3.5 Expenditure charged to the Common Good must be for purposes permitted by law. The use of Common Good to pay the expenses of those candidates for election to the council who favoured the extension of the city boundaries was held to be illegal and against public policy

***(Kemp v Glasgow Corporation (1920) SC(HL) 73.***

### **Disposal of Land**

- 3.6 Property forming part of the Common Good and set aside by the terms of the grant, by statute, or by usage, for the special use of the inhabitants, as in the case of town halls, market places and common greens, is generally regarded as 'inalienable'.

***(Murray v Magistrates of Forfar (1893) 20R 908).***

- 3.7 Under section 75(2) of the Local Government (Scotland) Act 1973, however, where a local authority desire to dispose of land forming part of the Common Good with respect to which land a question arises as to the rights of the authority to alienate, they may apply to the Court of Session or the Sheriff to authorise them to dispose of the land, and the Court of Session or the Sheriff may, if they think fit, authorise the authority to dispose of the land subject to such conditions, if any, as they may impose and the authority shall be entitled to dispose of the land accordingly.
- 3.8 Under section (3) the Court of Session or the Sheriff may impose a condition requiring that the local authority shall provide in substitution for the land proposed to be disposed of other land to be used for the same purpose for which the former land was used.

### **Powers to Borrow**

- 3.9 Loans may be raised by a council on the security of its Common Good and such loans are not subject to the statutory restrictions which apply to the normal borrowing by the council, provided the security for the loans is confined to the Common Good and no security is conferred over the council tax and general funds of the council. (In some cases, however, the council may have the power by private legislation to pledge council tax monies as security for borrowing for Common Good purposes. In such cases the statutory provisions as to the amounts and method of borrowing must be complied with).

- 3.10 It was previously possible for money to be borrowed for Common Good purposes under a statutory borrowing power to be secured upon the whole fund 'rates' and revenues of the authority but this no longer applies (section 8(3), schedule 3 to the Local Government (Scotland) Act 1975), apart from the power conferred under private legislation previously referred to and which can continue under section 225(6) of the Local Government (Scotland) Act 1973.
- 3.11 It would follow therefore, that money borrowed for Common Good purposes, other than under a statutory borrowing power (which can be conferred by private legislation only since 1975) can only be secured on the Common Good of the council concerned and not borrowed on the security of the whole funds rates and revenues of the local authority through the loans fund.

### **The Common Good and the Local Authority Loans Fund**

- 3.12 Section 16 of the Local Government (Scotland) Act 1975 applies Schedule 3 of the Act to the powers of local authorities, joint boards, water development boards and river purification boards to borrow and lend money.
- 3.13 In particular, paragraph 12(1) requires a local authority as from 16 May 1975 to establish a fund ('the loans fund') which shall be applicable to all money borrowed by the authority and the redemption or repayment thereof and the payment of interest or dividends thereon and shall be part of the general fund of the authority. The loans fund requires to be administered in accordance with paragraphs 13 to 21 of the schedule.
- 3.14 Paragraph 12(2) however provides that the loans fund shall not apply to money borrowed for the Common Good of the council. This however does not preclude the investment of common good monies in a council loans fund but, rather precludes the operation of a separate common good loans fund.

### **Asset Register**

- 3.15 For some local authorities the Common Good will include assets, which are, and have been, readily identifiable. Where identifiable, these assets will have been properly accounted for and managed over time. Some commentators however have drawn attention to perceived inadequacies in the recording of assets of the Common Good. The assessment of LASAAC, without empirical examination, is that this may have arisen over time and is likely to be the consequence of:

- the historic nature of the Common Good which may encompass assets which are more than one hundred years old;
- the compound effect of successive local government reorganisations: and somewhat crucially
- no requirement for local authorities in Scotland to maintain formal asset registers until 1994.

3.16 Asset registers are essentially records of all fixed assets used. LASAAC supports CIPFA's view which is that:

"the development and maintenance of comprehensive asset registers is best professional practice across the public service. It is a mechanism to support stewardship and control as well as a means of achieving the efficient and effective management of resources"

3.17 It would appear reasonable that the minimum, but proportionate, level of stewardship of the Common Good should be consistent with the local authority itself. Local authorities should therefore take such reasonable steps as necessary to ensure that Common Good assets registers support fixed assets recognised in the Common Good balance sheet. To ensure the integrity of items included within the asset register, the title of each item as belonging to the Common Good should be demonstrable.

### **The Common Good as a Registered Charity**

- 3.18 LASAAC is aware that some Common Good funds have been registered as charities and now formally appear on the charity register of the Office of the Scottish Charity Regulator (OSCR). It is LASAAC's understanding that the past rationale for charitable registration can be largely explained by the taxation benefits which accrue from charitable status. Benefits, such as the ability to recover advance corporation tax (ACT) have now been withdrawn. Common Good funds registered as charities with the HMRC (formerly HM Inland Revenue) would have transferred automatically to OSCR. It is understood that, over time, OSCR will review the charitable status of all bodies currently on the Scottish register. This brings at least two possibilities. That all Common Good funds should in fact be registered charities or, alternatively, that those Common Good funds presently registered will in fact ultimately be de-registered. It is further understood that in the case of de-registration, Section 19 of The Charities and Trustees Investment Act 2005 will apply. This section effectively ring fences the charitable assets at the point at which de-registration occurs. Charitable status is determined after a series of tests referred to generally as the charity test. This is followed by formal assessment and registration by OSCR.
- 3.19 It is clearly a matter for OSCR to determine on the applicability or otherwise of the Common Good for charitable status. It is not therefore the intention, nor indeed within the power, of LASAAC, to advise formally on charitable registration. It is also unlikely that this matter can or will be resolved in the short term. This guidance should therefore be applied by all Common Good funds in Scotland irrespective of status and does not in any way remove responsibility to adhere to the requirements under any other primary legislation or SORP.

## **4 Accounting Guidance**

### **Accounting**

- 4.1 Section 12 of The Local Government in Scotland Act 2003 introduced a requirement that local authorities adhere to 'proper accounting practices'. The Act effectively formalised the accounting framework within which local authorities now operate. The Code of Practice on Local Authority Accounting – A Statement of Recommended Practice (the SORP) is recognised as representing proper accounting practice. This document should be considered as useful guidance to enable achievement of the overall objectives of the SORP.
- 4.2 The SORP specifically precludes inclusion of the Common Good in Scotland in the Balance Sheet of a local authority. This position is further discussed at para 4.21 below.

### **Common Good in Relation to Other Accounts of the Local Authority**

- 4.3 Section 93(1) of the Local Government (Scotland) Act 1973 requires every local authority to have a General Fund and that:
- all sums received by or on behalf of the authority shall be paid into that fund
  - all fees, commissions, discounts allowed on payment of accounts and expenses payable to or recovered by any officer of a local authority in respect of any business relating to the authority whether by reason of his office or otherwise, should be accounted for and paid into that fund and all sums payable by the local authority shall be paid out of that fund.
- 4.4 Under section 93(2)(b) however it is provided that 93(1) does not apply to sums received or payable to the Common Good of the council as the case may be. This has over time been generally interpreted as the requirement to maintain separate accounts for the Common Good and to exclude common good intromissions from single entity statements in their entirety. The SORP has effectively embraced and has therefore traditionally reflected this interpretation of legislation.

## The Common Good as a Single Entity

- 4.5 Recent consideration of the Common Good includes debate on the extent to which it is a separate entity or otherwise. The legislative background which effectively ring-fences the Common Good is a reasonable indicator that the expectation of primary legislation is that it does in fact remain separate from the local authority. As set out at para 4.4 above, this legislation has been interpreted in accounting terms as the requirement to prepare and disclose a separate set of financial statements for the Common Good.
- 4.6 While the intrusions of the Common good and its interface with the general Fund of the local authority require to be kept separate, there is however no such prescriptive accounting requirement. The Committee considers that while there are a number of options for disclosure and reporting of the Common good Fund, there are in effect three realistic options:
- option 1 - identification of the Common good as a single entity with the requirement for separate signed financial statements; or
  - option 2 - recognising the legislative distinction of the Common Good while enabling the subsumption of the Common good into the local authority single entity financial statements but requiring specific disclosure notes; or
  - option 3 – recognition of the legislative distinction of the common good as a managed fund, the stewardship of which requires disclosure within the local authority financial statements.
- 4.7 The Committee does not consider the Common Good to be a single entity, despite the legislative distinction. It is in fact, as described at Section 1, a historic but important managed fund which is administered by the local authority. The modern era in which the Common Good now operates could not have been foreseen by the original legislative draftspersons or by developers of accounting standards for modern financial reporting.

- 4.8 It is the historic nature of the Common Good in Scotland and the requirements of accounting in the modern era which the Committee has carefully considered. The Committee acknowledges the apparent tensions which may have arisen albeit inadvertently over time. This guidance does not challenge the legislative position of separation based upon Section 93(2) of the Local Government (Scotland) Act 1973. It is however possible to enable local authorities to achieve an approach which enables a balance to be struck between the requirements of accounting and not only the legislative position but also the level of interest generated locally.
- 4.9 Consequently, the Committee's preliminary view is that it considers option 3 to be the preferred treatment. The Committee proposes therefore that the Common Good should be the subject of a disclosure note to the existing local authority financial statements. The disclosure note should take the form of limited financial statements namely; an income and expenditure account and balance sheet thereafter referred to as the Common Good Fund Financial Statements. The substance of this guidance is therefore in support of this option. Common Good funds registered as charities will require to adhere to the Charities SORP.

#### **Application of the SORP**

- 4.10 The Committee has carefully considered the role of the SORP in its application to the Common Good. In recognising that the Common Good is not a separate entity, the strict application of the SORP requires then to be considered. LASAAC has however previously determined in November 2001 that FRS 15 should be applied to the Common Good. The rationale for the Committee's 2001 decision was that all funds and monies of the Common Good should be capable of being distributed. This effectively eliminated the need for the application of local authority 'capital accounting' but required that assets should be depreciated and set against any surplus in the income and expenditure account.
- 4.11 Despite LASAAC's determination in November 2001, it is in this area where there has been considerable and continuing difference in approach by local authorities. Some local authorities apply FRS 15 whereas some apply 'capital accounting' as envisaged for local authorities with consequent adjustments and creation of balance sheet 'accounts'.

- 4.12 This guidance reiterates LASAAC's November 2001 decision and requires that FRS 15 should be applied to the Common Good. Clearly, this approach is consistent for those Common Good funds registered as charities but will represent a departure for those local authorities presently applying capital accounting under the terms of the SORP. In recognising that this may result in significant change for some Common Good funds, the impact of which may extend beyond a change in accounting treatment, the Committee proposes that a transitional arrangement can be undertaken to enable Common Good funds to fully apply this guidance. The proposed transitional arrangements are set out at Appendix 2.

### **Measurement**

- 4.13 Common Good assets should be measured initially at cost and, where included at current value, should be revalued regularly and in any event at intervals of no greater than 5 years. The valuation bases by category are:

Community assets – historical cost net of depreciation

Operational land and properties – lower of or net current replacement cost or net realisable value

Operational assets - lower of or net current replacement cost or net realisable value

Investment properties - lower of or net current replacement cost or net realisable value

Investments –Market Value

### **Presentation of the Common Good Fund Statements**

- 4.14 The Common Good statements should be presented as a disclosure note to the single entity accounts. The requirement for consistent reporting and transparency must however be balanced against proportionality. The financial statements required therefore are less prescriptive than that required by a local authority single entity but recognise and reflect the legislative distinction of the Common Good.
- 4.15 The following minimum statements should therefore be applied. The level and extent of disclosure beyond the guided minimum is a matter for each local authority. Further disclosure may be desirable where for example the Common Good has undertaken significant investment in the financial year.

## Disclosure Foreword

- 4.16 Disclosure narrative should briefly explain the purpose and background of the Common Good fund. The accounting policies, where different from that of the local authority should be highlighted.

## Income & Expenditure Account

- 4.17 The Income & Expenditure Account (the I&E a/c) mirrors the UKGAAP compliant local authority I&E account and is fundamental to understanding the financial performance of the Common Good in the year of account. Where the local authority manages several funds inherited from several burghs, the funds can be aggregated, for financial reporting purposes, into one single statement. Supporting records should however be maintained and be capable of readily identifying individual funds. Common Good funds registered as charities will require to adhere to the Charities SORP.

### *Debits to the Income & Expenditure Account*

- 4.18 The nature of the Common Good Fund is that it is not possible to provide an exhaustive list of items which may be debited to the I&E a/c. Expenditure will generally be met from income credited to the Common Good in the year. Charges should however be consistent with legislation. The Committee would anticipate that the following debits will be charged to and where appropriate, readily identifiable in the supporting records to I&E a/c:

- depreciation of fixed assets;
- impairment of fixed assets;
- repair & maintenance of assets; and
- apportioned overhead costs reflecting the management of the fund by the local authority.

### *Credits to the Income & Expenditure Account*

- 4.19 As for debits to the I&E a/c it is not possible to provide an exhaustive list. The Committee would anticipate that the following credits will, where appropriate, be identifiable in the supporting records to the I&E a/c:
- income from investments held including rent. Income should be at a level consistent with what could be reasonably expected to be received;

- interest from investments in the local authority loans fund; and
- any contributions from the local authority in the year to enable repairs and maintenance of property or other form of contribution.

4.20 The following suggested I&E a/c consolidates a number of identified good practice disclosures from local authorities in Scotland. The suggested disclosure is the required minimum but does not preclude local authorities from providing additional information.

**Common Good Income & Expenditure Account Year Ended 31 March XX**

**Expenditure** **£**

**Income**

**Gross Income**

**Surplus or Deficit for the Year**

**Balance Sheet**

4.21 The Common Good Balance Sheet as at 31<sup>st</sup> March will also be fundamental to enable an understanding of the financial position of the Common Good. The balance sheet should be simply stated but should include the assets and liabilities of the Common Good. No additional balance sheet disclosures are required.

<b><u>Common Good Balance Sheet as at 31.March XX</u></b>	
	£
<b>Intangible Assets</b>	
<b>Tangible Fixed Assets</b>	
<b>Investments</b>	
<b>Current Assets</b>	
<b>Current Liabilities</b>	
<b>Total Assets Less Liabilities</b>	
<b>Revaluation Reserve</b>	
<b>Common Good Fund (including any earmarked reserves)</b>	

**Disclosure Notes**

- 4.22 The Common Good varies in materiality between local authorities. The level of disclosure necessary is left therefore to the local requirements of each local authority. Any disclosure should however be proportionate to the material value of the fund.
- 4.23 There is no prescribed requirement to disclose the asset register as part of the financial statements although some local authorities may wish to disclose information on assets held where this aids the user of the accounts.

## **5 Audit**

- 5.1 Given the stewardship role of local authorities and the wide interest in Common Good Funds, clearly there will be an expectation that the Common Good statements will have been the subject of audit. The audit will be undertaken by the appointed auditor to the host Local Authority as appointed by the Accounts Commission under S106 of the Local Government (Scotland) Act 1973.
- 5.2 The Statement of Recommended Practice for local authority accounts treats the Common Good Fund as one of the trust funds administered by Councils and therefore accounts of Common Good funds are disclosed as part of the notes to the accounts of the council rather than as separate financial statements. Accordingly there is no requirement for a separate audit certificate on the Common Good statements and the Common Good is therefore audited as part of the audit of the Council and not as if it was a separate entity.

Appendix 1

Common Good Act 1491 (c.19) - Statute Law Database

## Common Good Act 1491 (c.19)

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### Common Good Act 1491

1491 c.19

Of the commoun gud of all burrowis.

Annotations:

Modifications etc. (not altering text)

C1 Short title "The Common Good Act 1491" given by Statute Law Revision (Scotland) Act 1964 (c. 80), Sch. 2

C2 This Act is listed in 12mo edition as 1491 c. 36

Item it is statut and ordinit that the commoune gud of all our souerane lordis burrowis within the realme be obseruit and kept to the commoune gude of the toune and to be spendit in cornmoune And necessare thingis of the burght be the avise of the consale of the toune for the tyrne and dekkynnis of ctaftis quhare thai ar ... F1

Annotations:

Amendments (Textual)

F1 Words repealed by Statute Law Revision (Scotland) Act 1906 (c. 38)

.....

.....

Attribute\$.QJ~ Common Good Act 1491 (c.19)

**Appendix 2**

**Accounting for the Common Good - Transitional Arrangements**

<b>Transitional Arrangement</b>		
<b>Action</b>	<b>Common Good Funds Currently applying FRS 15</b>	<b>Common Good Funds Applying Treatment Other</b>
Full Application of Accounting Guidance	April 2008	April 2009
Review of Asset Register Arrangements	April 2008 – March 2009	April 2008 – March 2009
Introduction of Asset Register	April 2009	April 2009
Consideration of Registered Charitable Status	By 31 March 2010  (NB this is broad guidance only, registration status is a matter for local authorities and OSCR)	By 31 March 2010  (NB this is broad guidance only, registration status is a matter for local authorities and OSCR)

Local authorities can of course elect to apply the guidance at an earlier stage and are encouraged to do so.