

LASAAC

Accounting for the Common Good Fund: A Guidance note for Practitioners

Consultation Draft issued September 2007

Response by James Perman

There has been a clear lack of consistency in the manner of accounting for the common good across the local authorities in Scotland. This consultation document is a welcome opportunity to attempt to standardise the accounting and financial reporting aspects of the common good.

However, there are other aspects relating to the common good which will require to be addressed before the reporting can take place. One of the most fundamental is ‘what are the assets of the common good?’

Without a standard definition applied by all local authorities to all assets under its control in order to determine whether an asset forms part of the common good or not, standardising the accounting for what may be an erroneous and incomplete list of assets would appear to have little practical utility.

This issue and others are provided as comments to question 4, below.

In response to the four specific questions posed by the Committee:

1. Do you agree that the legislative distinction of the Common Good should be reflected with a separate disclosure of common good statements?

Yes, since ‘The Common Good Fund is... distinct from and different to that of funds held by the local authority’ (paragraph 3.1 of the consultation).

2. Do you agree that the Common Good should not be subsumed into the local authority single entity accounts?

Yes, as they are governed by separate fiduciary responsibilities.

3. Do you agree that the Common Good is not a single entity?

No, the Common Good should be accounted for as a single entity and effectively treated as a subsidiary of the local authority for all financial reporting purposes.

4. Are there any other comments you would like to contribute to the development of the guidance?

See all that follows.

Reference to Consultation Document and Comment

2.6 – Local Government Reorganisation

If we consider the original intention of the legislation, the Local Government (Scotland) Act 1973, states at s222 that it is the ‘property’ which has to be administered with regard to the interests of the inhabitants of the area to which the common good formerly related. This is quite distinctly different from the wording used in s75 which refers to the disposal of ‘land’ forming part of the common good. Consequently the word ‘property’ encompasses more than ‘land’ and also more than heritable property. It must include all tangible and intangible, heritable and moveable property. This would include cash, debtors, rights to receive income etc.

Consequently it is all of the ‘property’ of the common good which requires to be administered with regard to the interest of the inhabitants of the former burgh, not just any revenue which may be raised from the disposal of heritable property. This property includes that deriving from the original property transferred at 16 May 1975, by additions of profits and income etc.

In order for the local authority to ensure that all property is administered with regard to the interest of the inhabitants of the former burgh as a separate and distinct fiduciary responsibility then (at least) separate fund accounting for each common good fund within the local authority’s overall Common Good is required. This precludes your suggestion that all of the common goods can be rolled into one for the benefit of everyone in the local authority area.

Additionally, the Common Good Act of 1491, reproduced at Appendix 1, states that the

‘...commoune gud of... (the) burrowis...be...kepit to the commoune gud of the toune...’.

I suggest that this makes it plain that the intention was that it was to be used to benefit the inhabitants of the former burgh, not to be used over a wider (local authority) area.

3.3 and 3.4 – Revenues and Expenditure

While I accept that expenditure from the common good is a matter of discretion so long as it is not illegal or against public policy, the over-riding consideration is still that it is administered with regard to the interests of the inhabitants of the former burgh.

I suggest that it is not in the interests of the inhabitants of one former burgh to have the funds from its common good used to meet the statutory expenses of the local authority over the entire area of its administration. In this case, the spending of, say £100,000 from that former burgh’s common good may only have the benefit of reducing the ‘rates’ paid by the inhabitants of the former burgh by a much lesser amount, say £20,000, the balance of £80,000 effectively

subsidising the ‘rates’ of all other inhabitants of the local authority’s current area of administration.

I suggest that this is directly contrary to the principal of ‘best value’ as being applied to that specific common good. It is clearly not in the interests of anyone to spend £100,000 to benefit by only £20,000.

3.12, 3.13 and 3.14 – Loans Fund

The local authority loans fund is, and should be the only accounting link between the single entity accounts of the local authority and the single entity Common Good accounts.

3.15, 3.16 and 3.17 – Asset Registers

Identification of what assets form part of the common good (or not) is fundamental. While a definition has been provided at 2.3 (...all property of a burgh not acquired under statutory powers or held under special trusts...) from a case heard in the Inner House of the Court of Session (1944 SC 36) this definition has not been universally applied by all local authorities.

There may be some difficulty in determining the status of some assets of great antiquity, but gifts from benefactors in Victorian times and later have legible and understandable deeds. The local authorities should address this identification issue before the creation of the asset registers. If they do not, then the registers may be materially incorrect.

If, by the above definition, land forms part of the common good, consideration must also be given to any building or other construction on that land. The application of the law of fixtures in Scotland (Inaedificatum solo, solo cedit – That which is built on the ground goes with the ground) would need to be considered.

If the land forms part of the common good and a public building has been erected on it, paid for by the rates, does the building then form part of the common good or not?

If it does, does the local authority require to lease it from the common good, perhaps on a full repairing and insuring basis?

If it doesn’t does the local authority require to pay a ground rent to the common good?

Without the identification of what assets form part of the common good the Income and Expenditure issues relating to these cannot be adequately addressed.

3.18 and 3.19 – Registered Charity

Since it is possible that all common good funds may become Registered Charities or alternatively that those common goods currently registered will be deregistered, it is important that the financial reporting of both are as similar as practicable in the interim period. This will facilitate any future transition either way.

Consequently, the accounts for each individual common good fund should be in accordance with those applicable to those registered as charities, without, perhaps, only the additional reports of the trustees etc. required by those registered as charities.

This would also enhance the comparability of the accounts currently prepared under both regimes.

4.2, 4.3 and 4.4 - Accounting

Agreed, see 3.12 etc, above. This means that the assets and liabilities and the reserves are not part of the accounts of the local authority.

If, however the assets and reserves of the common good are (equally) misstated then this misstatement will not affect the accounts of the local authority, only those of the common good.

Therefore, an audit of the single entity accounts of the local authority does not ensure that any material misstatement will be detected in the common good accounts, as most of the assets and liabilities will not be subject to audit review.

4.5 to 4.9 - The Common Good as Single Entity

In order to enhance comparability the Common Good of the local authority should be treated as a single entity for financial reporting purposes and consolidated within the group accounts as a subsidiary. This will make the methods of reporting and consolidation (virtually) the same as with Leisure Trusts, Venture Trusts, and Regeneration Companies and other entities over which a local authority exerts dominant influence.

The Local Authority SORP provides a flowchart at Chapter 5 to assist local authorities with classification of relationships. One question is 'Is the body delivering a service or carrying on a trade or business of its own?' If the answer is No then it is 'Not an entity'. Conversely, if the answer is Yes then it IS an entity.

The collective common goods of an authority will rent property, invest money and pay for, and therefore provide, specific and perhaps varied (non statutory) local services. By this definition the collective common goods of the authority are an entity. Some of the smaller common goods within this may not have sufficient activity to pass this definition on their own, but the entire Common Good of the local authority area will.

Consequently, the Common Good should be treated as a single entity for all financial reporting purposes. Within this single entity each former burgh's common good should be treated as a separate and distinct fund and accounted for separately within the single entity accounts.

The single entity accounts of the Common Good should be subject to audit, and a separate certificate provided by the auditor in this respect.

4.10 to 4.21 – Application, Presentation and Disclosure

The form and nature of the Common Good single entity accounts should conform, insofar as is practicable, with that prescribed for those common goods registered as charities. This will aid comparability and transition between the charitable and non-charitable regimes in future.

This should include application of FRS 15 to the funds within the Common Good single entity accounts.

Within these single entity accounts the separate funds relating to the common good of each distinct former burgh should be disclosed generally in accordance with the headings exhibited at 4.20 and 4.21. This should be a disclosure requirement addressed at 4.22 and 4.23.

5 – Audit

The Single Entity accounts will require to be provided with a separate audit certificate. See 4.5 to 4.9, above.

Other Matters

In 2000 Lord Penrose ‘created’ a common good fund for Bridge of Allan, when none existed before. Specific in his judgement was that Stirling Council should administer it in conjunction with the Community Council. I suggest that this is a model which could be followed.

Communities should look upon the common good as a tool to instil some elements of civic pride, all too often lacking today.

Thank you for the opportunity to contribute to this consultation. I shall be please to provide further explanation on any of the above, if necessary.

James Perman
4 Northfield Park
Largs
KA30 8NZ

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