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## Local Government and Transport Committee Official Report 23 January 2007

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### Scottish Parliament

#### Local Government and Transport Committee

*Tuesday 23 January 2007*

[THE CONVENER *opened the meeting at 14:00*]

#### Subordinate Legislation

#### Scottish Local Government Elections Order 2007 (Draft)

**The Convener (Bristow Muldoon):** I call today's meeting of the Local Government and Transport Committee to order. Before introducing agenda item 1, I welcome to the committee Mark Ballard MSP, who is not a committee member but is here to participate in discussion of our first agenda item. I also welcome committee members.

Item 1 is consideration of the draft Scottish Local Government Elections Order 2007. George Lyon MSP, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business, is here to speak to the draft order and to move the motion that has been lodged in the name of Tom McCabe. The minister is accompanied by the following officials: Rab Fleming, head of the local governance and licensing division of the Scottish Executive; Russell Bain, head of the local democracy team; and Norman Macleod and Shazia Razzaq, from the office of the solicitor to the Scottish Executive. I welcome the minister and his team.

We will follow the usual practice for dealing with an instrument of this nature. First, the minister will have an opportunity to make some introductory remarks about the aim of the order. We debated two draft orders at a previous meeting, so a number of committee members have a good grasp of the order's contents. After the minister has spoken, I will allow members the opportunity to put to him any questions that they may have, before we move to the formal debate on the order.

**The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon):** I will begin by explaining some of the Scottish local government elections rules that are set out in the draft order, which deals with the conduct of elections for members of local authorities. The order is significant, as it deals with the detailed administrative processes that are involved in running a local government election. At the committee's meeting of 12 December, members had the opportunity to discuss the format of the new ballot paper. However, although

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the ballot paper is important, only some of the changes included in the rules relate to it.

Essentially, the rules serve two main purposes. First, they provide for the introduction of procedures involved in running a single transferable vote election using e-counting. Secondly, they provide for the introduction of some of the administrative changes to local government elections that were made by the Local Electoral Administration and Registration Services (Scotland) Act 2006 and for the replication of a number of administrative changes to parliamentary elections that were made by the Electoral Administration Act 2006. I hope that it will be helpful if I cover three main areas in my

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*Motion agreed to.*

That the Local Government and Transport Committee recommends that the draft Scottish Local Government Elections Order 2007 be approved.

**The Convener:** That result will be reported to Parliament when the issue is debated in the chamber.

I thank the officials who accompanied the minister for this agenda item. We will have a brief suspension while his team changes over.

14:59

*Meeting suspended.*

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15:01

*On resuming—*

### **Petitions**

#### **Common Good Assets (PE875)**

#### **Listed Buildings (Consultation on Disposal) (PE896)**

#### **Common Good Land (PE961)**

**The Convener:** We will consider three petitions that relate to common good property and funds that are held by local authorities. The Deputy Minister for Finance and Public Service Reform, George Lyon, is with us and is supported by two Scottish Executive officials: Hilary Pearce, who is the efficient government portfolio manager; and David Milne, who is team leader on best value and performance. I welcome the minister and his officials.

As the minister knows, the committee has taken evidence from the petitioners, who are Miss Mary E Mackenzie, David Harvie—on behalf of West Dunbartonshire Heritage Limited—and Sally Richardson. We have also heard evidence from the Society of Local Authority Lawyers and Administrators in Scotland and from Audit Scotland. This is the final timetabled evidence session on the petitions, so after we have heard from the minister we will meet again to discuss our recommendations and responses to the petitioners. I invite the minister to make introductory remarks before committee members ask questions.

**George Lyon:** I have followed the debate with interest and I acknowledge the value that communities throughout Scotland place on common good funds. The presence of common good assets can be a source of civic pride that binds communities together and creates a link between the generations—our ancestors and our descendants. Communities that are in receipt of common good assets are grateful for the chance to benefit from the gifts that were bequeathed in the past. We acknowledge our responsibility to ensure that future generations have the opportunity to benefit in the same way.

I will summarise our position. First, the common good should be viewed not as a single entity but as a series of individual gifts—I am sure that the committee heard evidence to that effect. Each bequest would, of course, have had its own terms and conditions on the gift's use, disposal and management. The conditions for some gifts are more restrictive than those for others.

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Secondly, although decisions about whether and how common good assets can be used or disposed of depend on the conditions that are attached to each gift, the law is clear about where the responsibility for reaching such decisions and managing the common good rests: it rests, appropriately, with local authorities—as it does in relation to other council assets, such as schools and libraries. The basis for the approach is the Local Authorities (Property Transfer) (Scotland)

Order 1995 (SI 1995/2499), which was made under section 15 of the Local Government etc (Scotland) Act 1994. That order provided that on 1 April 1996 any common good property should transfer to the authority that covered the burgh of whose common good the property formed part on 15 May 1975.

It appears to us that the existing legislation is sufficient, given that it makes clear the responsibility that rests with local authorities. A substantial body of supporting guidance and advisory notes clarifies more fully the nature of local government's responsibilities. That guidance includes the accounting standards that are set by the Accounting Standards Board and, in particular, the code of practice on local authority accounting. It also includes the advisory notes that are produced by the Chartered Institute of Public Finance and Accountancy and the Royal Institution of Chartered Surveyors on the principles of good asset management.

In addition, the Scottish Executive has published material that the best value task force produced. It includes statutory guidance on the principles of best value, non-statutory advisory notes on best value in relation to asset management and sustainable development, and statutory guidance on local authorities' approach to the content of their public performance reporting.

The Executive regularly liaises with the Convention of Scottish Local Authorities and Audit Scotland on issues that relate to asset management, financial reporting and best-value policy generally. If it became apparent that local authorities were uncertain about how to fulfil their responsibilities appropriately, we would be happy to listen to their suggestions on how good practice could be built on.

I hope that those remarks clarify the Executive's position.

**David McLetchie:** I understand that the essence of the question is whether more rigorous requirements are needed for separate accounting for common good assets because of the perception that such assets are held for a purpose that is separate from a local authority's general purposes. To what extent do separate purposes exist in reality? I do not refer to physical assets such as a park that a generous benefactor might

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have gifted in the past and which will remain as a park—we will leave such assets aside and consider just invested funds. To what extent are invested funds, which are not assets that have a designated purpose, held for a purpose that is separate from a local authority's general purposes and competences?

**George Lyon:** Audit considerations and how such matters are presented in local authority accounts are issues for the Accounting Standards Board. I understand that the local authorities accounts advisory committee, whose core business is development of the code of practice on local authority accounts and which works with the ASB, has agreed to review the accounting arrangements for common good assets, so some work will be done on that.

As the member is probably aware, as part of its relocation policy, the Executive is producing a record of the assets that are held. We have a record of the assets that the Executive holds, but we are gathering information on and recording all the assets that non-departmental public bodies hold. If it were thought to be practical or sensible to extend that to local authorities, that might provide an opportunity to ask local authorities to record the assets that are held in common good funds as a separate part of the register of assets that they hold. That might be one opportunity to provide more clarity.

In some ways, it is for local authorities to decide how to deal with such matters. The local authority is the responsible body that holds and manages the public goods. It is responsible for managing them in the interests of the community when the public goods are held on the community's behalf.

**David McLetchie:** Councils have a power of general competence as a result of legislation that Parliament passed. On freedom to spend and the purposes for which councils may spend money, what is the difference between expenditure that is pursuant to the statutory power of general competence that Parliament gave councils in the Local Government in Scotland Act 2003 and the power to expend common good funds?

**George Lyon:** As I said in my introduction, conditions are attached to the use of many bequests. Local authorities are therefore bound by such conditions to manage assets appropriately.

**David McLetchie:** Yes—but that would be when a particular benefactor may have left a particular asset to a council for a particular purpose. There is plenty of other money in common good funds that is nothing to do with that kind of specific bequest.

**George Lyon:** It may be that any pot of money that is left by an individual to the common good fund also carries conditions concerning how and

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where the proceeds from that investment are to be spent.

**David McLetchie:** I thought that we had established in earlier evidence that there is no trust attaching to the assets that are in common good funds. Correct me if I am wrong, but I am confident that that is what came out in earlier evidence. If there is no trust, there cannot be a trust purpose, therefore the money cannot be as ring fenced as you suggest.

**David Milne (Scottish Executive Finance and Central Services Department):** The approach as we understand it is as the minister has said. If there is any further legal information that I can provide to assist the committee, we can come back to you with that. The terms of a bequest will determine the nature of the controls that restrict how a local authority can use a common good asset. In relation to some common good funds, there may be no controls, in which case there would be a power of general competence similar to that which arises under the power of well-being in the Local Government in Scotland Act 2003. However, there may be specific trusts that have their own on-going conditions that apply notwithstanding the terms of the 2003 act.

**David McLetchie:** I am not saying that there cannot be a specific trust in relation to particular bequests, however that is not true of the totality of assets in common good funds. Most common good funds are not the product of specific bequests with specific conditions attached to them; they are the inherited or accumulated wealth, over generations, of local authorities or their predecessor borough councils. So, the bequests argument is not correct as far as the majority of the funds are concerned.

**George Lyon:** The balance of funds would surely still have to be spent in the best interests of the local community, therefore they would be covered by the duty of best value. They would have to be managed appropriately in the best interests of the community for whom the common good fund was held. We would expect that area to be covered completely by the duty of best value, and it is open to Audit Scotland to examine how that duty is being discharged. I understand that, in its evidence, Audit Scotland did not give any indication that it has any great concerns about the way in which common good funds are being managed and dealt with. If there were concerns about mismanagement or sharp practice, the Executive would acknowledge those concerns and respond accordingly.

**David McLetchie:** I agree with you, minister. It takes us back to my earlier point. Unless we can point to a specific separate and dedicated purpose, what is the difference between a council's applying the fund as part of its general

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application of assets, subject to all the statutory controls to which you have referred—best practice, and so on—and its management? It seems to me that the case must be made for separate accounting by reference to a separate purpose. If we cannot identify a separate purpose that is applicable only to common good funds, relative to the other powers of authorities, the question must often arise whether there is a need for separate accounting at all. That seems to go to the heart of the matter.

**George Lyon:** That is a fair argument, which I am sure those who are looking into the matter will take into consideration.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** In listening to the evidence on the three petitions, it seemed to me that the most basic problem that they highlight is a lack of local

public awareness, knowledge and understanding of common good funds. There has been little local publicity about what common good funds and assets there are and what has happened to those assets. There is a lack of local awareness about the whole issue.

Petition PE875, from Mary Mackenzie, urges the Executive to ensure that all common good assets are

"properly recorded, audited and insured".

From the evidence that we have taken, it appears that the position is patchy throughout Scotland. Therefore, there must be a strong case in principle for publishing a register of the common good funds that are held. Precisely which assets should be included in that register can be debated, but the details of all heritable assets should surely be made public and substantial moveable assets and bequests should be included.

15:15

From what the minister has said, I understand that he thinks that the existing system is fine and that local authorities should not be unduly constrained. However, is doing nothing satisfactory? Do you agree that there would be advantages if local authorities were asked to publish a register of common good funds, perhaps through guidelines that were issued by the Executive? People would then know what property had been left to the local authority for the common good. Furthermore, local civic philanthropy might be encouraged if people thought that those who had given in the past were being respected and their generosity was being marked. Would not local philanthropy and local civic pride be encouraged? Two benefits would derive were the Executive to give local authorities a lead.

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Perhaps there should not be an absolute requirement to do something within six weeks, for example, but every local authority in Scotland could first of all be encouraged to publish details of their common good assets so that local people would know what those assets are. We could take things from there.

**George Lyon:** I return to what I said in my opening remarks. I understand that Audit Scotland has said that councils have already recorded the vast majority of common goods. Therefore, it does not think that a problem exists.

When we discuss such matters, we always return to the question of what the appropriate response is. Unless substantial evidence exists that there is a major problem, the proportionate response is to say that the matter is for local authorities to deal with. Under freedom of information requirements, local authorities are of course required to publish information, but they should voluntarily publish information on common good funds in order to ensure that local communities are fully aware of what is held in them, what the money is being used for and how it is being spent. Such information should be made available as a result of FOI requests if individuals think that councils are trying to withhold information from them, although I see no reason why councils should try to do so.

As I said to Mr McLetchie, the Executive is gathering information on and recording the assets that non-departmental public bodies hold. If we decide to extend that exercise and to register the assets of local authorities, it may be appropriate to set up a register as part of that exercise. However, no decision has yet been taken on whether to extend it. Obviously, we would have to discuss the matter with COSLA.

**Fergus Ewing:** I am not sure that what you have said takes me much further forward. Would it be a good idea for local authorities to promulgate details of their common good assets?

**George Lyon:** I think that doing so would be in their interests, but the responsibility for doing so lies with local government. I expect local authorities to do that as one of their responsibilities to the communities that they serve.

**Fergus Ewing:** By what means should they do so?

**George Lyon:** They should have a sense of duty.

**Fergus Ewing:** Should local authorities have a debate and then issue a policy statement and a list?

**David Milne:** The current best-value regime offers help. Local authorities are subject to public performance reporting requirements under section

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13, I think, of the Local Government in Scotland Act 2003, which provides a general duty—the duty does not relate specifically to common goods—on local authorities to report to the public on their performance in a way that will engage their communities. Although the supporting best-value guidance does not specify what local authorities should provide information on, it makes it clear that they should ensure that they know who their stakeholders are, and how much performance information they are required to make available to them.

Alongside that, again under the best-value label, there is the "Asset Management under Best Value Advisory Note", which states:

"Because the level of public investment represented by a local authority asset base is significant"—  
assets are such a significant part of local authority investment—

"the standard of asset management within an authority will be of particular public interest."

Within that, the statement about interest and local authority assets generally can encapsulate more specific issues about common good assets.

**Fergus Ewing:** I am afraid that I just did not understand that at all. I want to know whether, in the Executive's view, local authorities should publish a list of assets. I thought that we were making progress. The minister said that, given that the Executive is publishing a list of its assets as part of its financial husbandry, he believes that local authorities, too, should publish a list of their common good assets. As I said, I thought that we were making progress, but then—unfortunately—the fog descended again.

**George Lyon:** I am sure that we can write to you, Mr Ewing, to clear your fog. I thought that I had made it clear that the Executive is gathering information on the assets that the Executive, wider Executive agencies and NDPBs hold. In due course, we will consider whether that information gathering should be extended to local government, which might be the appropriate place to create a register of the common good assets—a register that would be included as part of the overall register of local authority assets. No decision has been taken as yet on the matter.

As I said, we have to be careful to ensure that our response is balanced and proportionate. One of the key concerns of local government—which seems to have support, certainly across Parliament—is that the current level of scrutiny and inspection is too onerous. Indeed, the Executive established the Crerar committee to look at that very matter. The Executive will read with interest the committee's views, once you have come to your conclusions on the matter.

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**Fergus Ewing:** Plainly, we acknowledge the work that is involved in all of this. However, if it is the case, as Mr Milne said, that the local authorities have records at the moment, all that we are asking is that the authorities make public those records within a reasonable time. Given that the Executive has decided that its effects should be made public, I do not understand why the minister cannot now say that that principle should also be applied to local authority common good assets.

**George Lyon:** I think I did say that I would support the disclosure of that information, but Mr Ewing is asking me to introduce regulations and legislation to force that to happen. I said that we should look at the issues involved and decide on a proportionate response. I also said that the opportunity exists for consideration of whether to extend the public sector register of assets to local authorities. It may well be that we will do that. If so, local authority common good assets will be included in the register, probably in a discrete section that is labelled "common good assets". I hope that that fully explains the position to you, Mr Ewing.

**Fergus Ewing:** I appreciate your personal view, minister, and I hope that it can become the Executive view. Indeed, I hope that all committee members share the view that I have put forward.

However, I recall that, as part of a previous committee inquiry in which I was engaged—namely the relocation inquiry that the Finance Committee held some three years ago—a similar suggestion was made. If it takes as long to make progress on this matter as it has taken on that, members will still be sitting on committees and considering the matter when we enter another decade before we make progress. We do not need to delay much longer than a few nanoseconds before we decide that the public has a right to know what the common good assets are. As the petitioners argue, benefits would derive from that. Their view is supported by others.

**George Lyon:** I should correct you. We currently have a register of all the Executive-held assets, which we are extending to NDPBs and public agencies. You can rest assured that we took cognisance of the issues that were raised in relation to the relocation issue some three years ago.

**Dr Jackson:** Petition PE896, by Florence Boyle, on behalf of West Dunbartonshire Heritage Limited, says that there is a need

"to conduct structured and meaningful public consultation before any disposal of listed buildings, common land or related endowments held in public ownership or trusteeship."

The petition is linked a wee bit to petition PE962, by Sally Richardson. These can often be quite delicate and sensitive issues. In the discussions

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that you are having with COSLA about best practice, are you looking for guidance to help local authorities to engage their communities in consultation on disposal of common good funds?

**George Lyon:** I would have thought that local authorities would want to engage with their communities if they were considering disposing of common good assets. I expect that consultation of communities takes place at the moment. If it does not, I hope that it will in the future. Under the existing guidance—even under the duty of best value—when local authorities decide to dispose of assets, we expect them at least to take into consideration their local communities' views on the matter before progressing. It could be argued that local elected councillors represent their communities in such matters, which is the fundamental principle behind local democracy.

**Dr Jackson:** What actions can communities take—apart from approaching their local elected members—if consultation on the disposal of assets is not taking place?

**George Lyon:** It is my experience of representative democracy that, if communities feel strongly about assets being disposed of, modified or changed, they should make representations to their locally elected councillors in the first instance, because they have responsibility for that. People can also approach other elected representatives to take the matter up with the council if they feel that they are not being properly consulted and listened to. That is the experience that I have had in matters such as you describe.

**Dr Jackson:** That is clearly not happening, which is why we have the petition. What discussions are you having with COSLA on the issue?

**George Lyon:** As I said, we have received no representations from COSLA for any further measures to be taken in regard to the matter. In all the discussions that we have had with COSLA on various issues, there have been no representations from COSLA for further Executive action in that area.

**Dr Jackson:** Would you be willing to ask COSLA about that specific issue?

**George Lyon:** I am certainly willing to do so; however, I will wait until the committee has published its recommendations. We can then engage in a conversation with COSLA on the basis of the recommendations that flow from your discussions with me and others on the matter.

**Dr Jackson:** Okay. Thank you.

**Mike Rumbles:** From the evidence that has been given to us, I understand that local authorities are required by law to know what assets they have, including those that are in the

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common good funds. I do not think that there is any disputing that legal requirement on local authorities, but the public should know, too. For me, therefore, the question is whether there is a register of local authority assets that the public can access. From the evidence that we have received, it seems that the 32 local authorities may have 32 different ways of recording their assets. As we are in the business of openness and accessibility in connection with the public, the committee will have to ask, in its recommendations to you, whether the 32 councils in Scotland should have a similar—if not the same—system for recording assets, which would be accessible to the public. They should have that right.

15:30

The public elect their local authority councillors to represent them—as has been said, that is one of the fundamentals of democracy. As an individual who lives in Aberdeenshire, I should be able to go to a local authority and say, "I'd like to see X in the accounts," and as good public servants they should be able to say, "Yep, there it is." There is no great point of principle here. Are you saying that you recognise what should happen, but that if you asked the council to do it, it might be too big a job?

**George Lyon:** What I am trying to say is that one would expect that information to be readily available to the general public through various existing mechanisms, whether they are to do with best value, the accounting process or even freedom of information.

I take the point that such information might be held in 32 different ways, but as a minister I would have to take a view on whether there is a big problem of councils attempting to shield that information, or probity issues about how the common good funds are administered. Do we take a sledgehammer to crack a nut? It all depends on the scale of the problem.

We all expect councils to make such information available to communities and councillors, as part of best practice. If there were a widespread problem with the way common good funds are administered and with the way local authorities record their assets, the Executive would feel the need to take action to deal with it. At the moment, I am not aware of a great requirement for us to take action. Audit Scotland seems to confirm in its evidence that it does not see any significant problem and, on that basis, I am not persuaded that we need to take a sledgehammer to crack a nut at the moment.

**Mike Rumbles:** Taking that logical approach one step further, if you are saying that you are content that the 32 local authorities in Scotland

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have systems that allow local citizens, whether they live in Ayr or Aberdeen, to walk into the local authority office and say, "I'd like to see the asset register or the common good fund," and the Scottish Executive is not aware of problems with that system, is it too difficult to ask the Scottish Executive to ensure—it cannot be if you say that there is no problem—that the 32 local authorities have such a system? It does not have to be a single system, just one that satisfies people.

As you know, the committee looks at petitions from the general public and it is our duty to examine them. If you say that there is no big deal with the current arrangements, surely the Scottish Executive can sort out the problem that the petitioners have highlighted.

**George Lyon:** I assure you that I will look closely at the committee's conclusions and recommendations and we will take appropriate action once we have reflected on them. If the committee thinks that there is a significant problem that needs to be addressed, I am willing to consider whether we need to take further action. I will also undertake to make some general inquiries on the back of today's discussion to assure myself that information about councils' assets and common good funds is indeed available throughout the 32 local authorities.

**Paul Martin:** You made the point clearly that you see no need for regulation at this point and you want to enter into discussions with the various authorities. I will simulate the process that you might follow when you consider the matter. Let us say that we propose a voluntary scheme for the various authorities, after a consultation period, and a number of local authorities say, "Actually, we're not signing up to this," which would continue the theme about which the petitioners have raised

concerns. Would such a scenario make the Executive introduce regulation?

**George Lyon:** It might do. We might consider issuing guidance under the best-value regime. We could use a number of mechanisms.

What I am saying to the committee today is that I will make inquiries of all 32 local authorities to ensure that the information is being provided. I will certainly consider the committee's recommendations carefully and reflect on them before I decide what action, if any, we need to take.

**Paul Martin:** Is there an issue about the potential for fraudulent activity to take place, which would make the case for the approach to be uniform across a number of local authorities?

**George Lyon:** I think that we would get evidence on whether that was a problem from best-value audit inspections. I have not seen it

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identified as a problem in any of the best-value reports on local authorities that I have read.

**Paul Martin:** Do you accept that, in relation to a number of high-profile cases of fraudulent activity in local government and other parts of government over the years, it has been accepted at a later date that very few people who carried out audits detected the fraud at an early stage and presented the evidence? In most cases, everybody has said that they did not see any fraudulent activity because of the creativity of the perpetrators of the fraud. Fraudsters do not make their activities clear so that auditors can follow the trail. Should we not operate on the basis that there is possibly activity that must be dealt with? That is the case that the petitioners make.

**George Lyon:** I can give you an assurance that if there is evidence of widespread mismanagement and misappropriation of funds, the Executive will take action. There is no doubt about that. I am indicating that, as a first step, I will make inquiries around local authorities to see what information exists.

**Paul Martin:** I raise the issue because many of the auditors' activities are intended to ensure that fraudulent activity is kept to a minimum. Do you accept that a more uniform approach, rather than one that is tailored locally, would minimise the opportunities for fraudulent activity?

**George Lyon:** That may well be one of the matters that needs to be addressed if we find that there are huge disparities and that it is therefore difficult to ascertain what is going on. We will come to a view on that on the basis of our conversations with the councils.

**The Convener:** As all members who want to ask questions have done so, I thank the minister for his attendance at the committee this afternoon. The committee will come to its conclusions on the petitions in due course and communicate them to the petitioners and, I expect, to the minister.

#### Home Safety Officers (PE758)

**The Convener:** PE758, by Jim Black, on behalf of the home safety committee of the Scottish Accident Prevention Council, is on home safety officers.

The committee has completed its oral evidence-taking sessions on the petition, which calls on the Scottish Parliament to urge the Executive to place a statutory duty on local authorities to employ home safety officers and to provide the necessary funding for them.

I seek committee members' views on the central objective of the petition—and any other views they have. I propose, if—ideally—there is a degree of consensus, to write a letter to the minister to

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convey the view of the committee. If members have different views, I will try to reflect the balance of opinion in the committee.

**David McLetchie:** I think that the petitioner has failed to make the case for imposing the duty that the home safety committee seeks. There was no consensus among local authorities that what the petition proposes is a desirable course of action and there appeared to be little support for it from

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