



City of Edinburgh Council (Portobello Park) Bill

Bill Number:	SP Bill 29
Introduced on:	25 April 2013
Introduced by:	City of Edinburgh Council
Passed:	26 June 2014
Royal Assent:	1 August 2014

Passage of the Bill

The [City of Edinburgh Council \(Portobello Park\) Bill](#) [SP Bill 29] was introduced in the Parliament on 25 April 2013. The Bill is a private bill and is subject to different procedures than a public bill. The [City of Edinburgh Council \(Portobello Park\) Bill Committee](#) was established on 29 May 2013.

The objection period ran from 26 April 2013 to 24 June 2013, and 59 admissible objections were received. The Committee published its preliminary stage report on 4 December 2013. The preliminary stage debate took place on 9 January 2014. Following this, the Bill entered consideration stage with the Committee publishing its consideration stage report on 22 May 2014. The Committee's final consideration of the Bill took place on 12 June 2014 and the Final Stage debate took place on 26 June 2014.

Purpose and objectives of the Bill

The purpose of the Bill is to remove a legal obstacle in order to allow the City of Edinburgh Council (Edinburgh Council) to use Portobello Park, Edinburgh (the Park), as the site for a new Portobello High School. Heretofore, the Council was unable to do so, because the Park was what is known as "inalienable common good land".

In simple terms, common good land is a special form of property where title is held by local authorities for the 'common good' of the local population (it relates to property which used to be owned by the Scottish burghs).

In the common law¹ there are two types of common good property:

1. alienable common good land which traditionally could be disposed of (i.e. sold/leased) or used for a different purpose (known as appropriation); and
2. inalienable common good land where this was not possible

Rules in the Local Government (Scotland) Act 1973 (1973 Act) now regulate the disposal or appropriation of common good property. The basic rules are that:

- if no question arises as to whether the property is alienable under the common law, it can be disposed of/appropriated under the rules in the 1973 Act (section 75(1)); and
- if there is a question as to whether the property is alienable, it can only be disposed if authorised by the Court of Session/sheriff (section 75(2))

The question in the Portobello Park case was whether Edinburgh Council could legally build a school on the Park, which it accepted was inalienable common good land. The council's plan was challenged in the Court of Session.² The court found that, although section 75(2) allowed the courts to authorise the disposal of inalienable common good land, it did not provide a procedure for local authorities to appropriate inalienable common good land.

Provisions of the Bill

The Bill solves the problem caused by the Portobello Park case by providing that the Park is deemed to be alienable common good land, rather than inalienable common good land. This enables the City of Edinburgh Council to appropriate the Park for functions other than recreation, although the Bill limits this to education functions.

Parliamentary consideration

At the preliminary stage, issues were raised on whether the private bill procedure was appropriate; whether the Council's consultation process was flawed; different views on how the park is being used at present; and compensatory measures for the loss of open space. The Committee agreed to the general principles of the Bill at the preliminary stage.

At the preliminary stage, the Committee gave preliminary consideration to all admissible objections and rejected those objections where the objector's private interests were, in the Committee's opinion, not clearly adversely affected. At the consideration stage, the Committee considered the remaining objections in detail. Objections concerned the use of the Park; road safety, traffic and congestion; visual impact of the new school, environmental issues;

¹ The "common law" is the traditional law formed by the decisions of judges in individual cases

² [Portobello Park Action Group Association v City of Edinburgh Council \[2012\] CSIH 69](#)

impact on the character of the area and reduction in property values; and impact on the golf course on the Park. All objections were rejected.

One amendment was agreed to the Bill at the consideration stage. This amendment ensures that, if the park is not used for educational purposes within ten years, it will revert to its previous inalienable common good status.

The Bill was passed on 26 June 2014 following the final stage debate.