

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) BILL

LETTER FROM CONVENER TO MINISTER FOR LOCAL GOVERNMENT AND PLANNING IN RELATION TO COMMON GOOD LAND

I am writing in my capacity as Convener of the above Committee seeking information on whether the Scottish Government has any plans to address an apparent legislative anomaly which has been brought to the Committee's attention during its Preliminary Stage consideration of the above Bill.

The Bill's objective relates to removing the legal obstacle which is currently preventing the Council from building a new High School in Portobello Park. The Bill would reclassify the Park as alienable (as opposed to the current inalienable) common good land for the purposes of Part VI of the Local Government (Scotland) Act 1973 and thereby allow for appropriation of the Park from a recreation to an education function. Such appropriation is not currently possible because the 1973 Act (as interpreted by the Inner House of the Court of Session in a decision on the Portobello Park case) allows a Council to dispose of inalienable common good land but not to appropriate it for a different function. This has been described by many witnesses to the Committee as an anomaly in the current law.

As part of the Private Bill process, the Committee established to scrutinise the Bill must satisfy itself that the promoter has considered alternative ways of achieving the Bill's policy objectives, and that the Private Bill procedure is likely to be the most appropriate means of delivering those objectives. In this case, one of the alternatives considered by the promoter was to encourage a change to the 1973 Act, possibly through measures which might be included in the draft Community Empowerment and Renewal Bill, or by way of an Order made under existing legislation – in either case, to provide a statutory mechanism for local authorities to appropriate inalienable common good land. The Council concluded that the Private Bill process was preferable to any other route for various reasons, including uncertainty of any such measures being progressed, and uncertainty regarding timescales.

The Committee is aware that the Council wrote to Scottish Ministers in October 2012 about the potential for legislative resolution to this matter. Details of the exchange and response from the Cabinet Secretary for Finance, Employment and Sustainable Growth were provided in a report to the Council on 22 November 2012, in which it was reported that: "...Mr Swinney fully recognised the importance of the issue and the need to find a suitable resolution quickly, but acknowledged that the workability of the various options which had been suggested could not be presumed".

It would be helpful to the Committee to know whether Scottish Ministers have plans to address the 1973 Act anomaly or otherwise seek to amend the law as it currently relates to common good land and, if so, an indication of what the timetable for this might be.

Siobhan McMahon MSP
Convener
14 November 2013