



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC PETITIONS COMMITTEE

AGENDA

9th Meeting, 2017 (Session 5)

Thursday 11 May 2017

The Committee will meet at 9.30 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Consideration of a new petition:** The Committee will consider a new petition—

[PE1640](#) by Eileen Bryant on Action against irresponsible dog breeding and will take evidence from—
Eileen Bryant, Mr Mark Rafferty, Chief Inspector, Special Investigations Unit, Scottish SPCA.

3. **Consideration of new petitions:** The Committee will consider the following new petitions—

[PE1642](#) by Norma Austin Hart on Sale and marketing of energy drinks to under sixteens;

[PE1644](#) by Katherine Perlo on behalf of Ethical Voice for Animals on Country sports tourism funding;

[PE1645](#) by James Ward on Review of legal aid in Scotland.

4. **Consideration of continued petitions:** The Committee will consider the following continued petitions—

[PE1545](#) by Ann Maxwell on behalf of Muir Maxwell Trust on Residential care provision for the severely learning disabled;

[PE1548](#) by Mrs Beth Morrison on National guidance on restraint and seclusion in schools.

[PE1595](#) by Alexander Taylor on Moratorium on shared space schemes;

[PE1600](#) by John Chapman on Speed awareness courses;

[PE1604](#) by Catherine Matheson on Inquests for all deaths by suicide in Scotland;

[PE1619](#) by Stuart Knox on Diabetes Continuous Glucose Monitoring Sensors;

[PE1631](#) by Maureen McVey on Child Welfare Hearings;

5. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 9 May 2016 to 8 May 2017.

Catherine Fergusson
Clerk to the Public Petitions Committee
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The Scottish Parliament
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The papers for this meeting are as follows—

Item 2

Note by the Clerk	PPC/S5/17/9/1
PRIVATE PAPER	PPC/S5/17/9/2 (P)

Item 3

Note by the Clerk	PPC/S5/17/9/3
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Item 4

Note by the Clerk	PPC/S5/17/9/6
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Item 5

Annual Report	PPC/S5/17/9/13 (P)
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Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1640: Action against irresponsible dog breeding

Note by the Clerk

Petitioner Eileen Bryant

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to investigate what actions it can take to address the farming and illegal transportation of puppies.

Webpage parliament.scot/GettingInvolved/Petitions/PE01640

Purpose

1. This is a new petition that collected 936 online signatures, with a further 551 offline signatures. The petition also received 127 comments in support.
2. Members have a summary of the petition and the Committee is invited to consider what action it wishes to take.

Background (taken from the [SPICe briefing](#))

3. The RSPCA notes the way in which a puppy is bred and reared plays a significant role in its future physical and psychological health. Partly in order to meet the significant demand for what are sometimes termed ‘designer dogs’, puppies are being bred in a way and in conditions that are detrimental to them and their mothers. Some of the welfare issues identified by the RSPCA include—
 - Bitches being bred so often as to affect their wellbeing
 - Puppies being separated from their mothers too early, resulting in poor physical and mental health
 - Puppies not being socialised at the correct age, leading to chronic behavioural problems
 - Dogs being kept in unsanitary, unsafe and uncomfortable conditions, resulting in the spread of disease.
4. The unregulated puppy trade is also thought to lead to further welfare abuses. BBC Scotland reported that “around 20% of puppies bought on the internet will die [with]in six months”.¹

¹ BBC Scotland. The Dog Factory (2015).

What is puppy farming?

5. There is no formal definition of the term ‘puppy farming’. Non-government organisations (e.g. Kennel Club) tend to define it as high volume breeding with little regard to welfare, and with profit being the main motivation. This is to differentiate it from ‘responsible breeding’ where the motivation is to produce healthy dogs, and ensure the welfare of both breeding dogs and puppies (e.g. Kennel Club), or as based mainly on welfare considerations (e.g. People for the Ethical Treatment of Animals).
6. Under the [Breeding of Dogs Act 1973](#), it is not legal to keep a “breeding or rearing establishment for dogs except under the authority of a licence” (section 1(1) as amended). Such licenses can be granted by the local authority, unless the applicant is disqualified under any other animal welfare legislation.
7. A ‘breeding establishment’ is defined in the Breeding of Dogs Act 1973 (as amended) as being where five or more litters are produced in a twelve-month period from any bitches at any location (section 4A). A rearing establishment is defined as being where the business of rearing dogs for sale is carried out.
8. Puppy farms are not necessarily unlicensed or illegal. A 2015 investigation by BBC Scotland into the puppy trade included collecting video footage at Furnish Kennels in Northern Ireland, which claims to be the largest breeding establishment in the UK.
9. According to the voiceover, puppies were found in disused trailers outside the main building. The narration stated it was “a battery farm for dogs, complete with automatic feeding systems”. Scotland’s Chief Veterinary Officer, Sheila Voas was interviewed, and said “it was barbaric... a production line... using animals as a commodity”, adding ‘I’m not easily upset, but, yes, that upset me.’ However, an inspection by Fermanagh District Council found the establishment to be ‘in good order’.

Who supplies puppies in the UK?

10. According to the website [The Commercial Breeding and Sale of Puppies in the United Kingdom and Republic of Ireland](#), there are currently 132 license holders in Scotland. This data is understood to have been collated from Freedom of Information requests to local authorities. It can be compared to similar data gathered by the Battersea Dogs and Cats Home (2015), which found 91 licensed breeders in 2015. The more recent online list doesn’t provide information on the scale of all of the establishments, but the largest is given as having 76 breeding dogs.
11. The Royal Society for the Prevention of Cruelty to Animals’ (RSPCA) 2016 report ‘*Sold a Pup?*’ estimated UK demand to be between 700,000 and 1.9 million puppies per year². The Battersea Dogs and Cats Home (2015) estimated that just under 70,000 of these are bred by licensed dog breeders. The rest include puppies from—

² Report available at: <https://view.pagetiger.com/RSPCAPuppyTradeReport>

- Small-scale breeders who produce fewer than 5 litters per year and do not require a license
 - Illegal (unlicensed) breeders
 - Imports from the European continent and Ireland
12. The RSPCA estimates that around half the puppies in the British marketplace could come from unlicensed breeders.
 13. Countries identified by the RSPCA (2016) and the Dogs Trust (2015) as countries of origin for imported puppies include the Republic of Ireland, Lithuania, Poland, Hungary, Romania, Czech Republic.

Importing puppies

14. In terms of dogs and certain other animals, the 'EU trade' is defined as including EU countries as well as Switzerland, Liechtenstein, Norway and Iceland. Consignments of live dogs must be accompanied by an Intra Trade Animal Health Certificate (ITAHC). To bring live dogs into Great Britain, an ITAHC must be arranged in the country of origin, and the Animal and Plant Health Agency (APHA) must be notified at least 24 hours prior to the arrival of the animals (UK Government).
15. Importers must also comply with EU Council Regulation [EC 1/2005 on the protection of animals during transport and related operations](#). This is enforced through [The Welfare of Animals \(Transport\) \(Scotland\) Regulations 2006](#) and [The Welfare of Animals \(Transport\) \(Scotland\) Amendment Regulations 2009](#). It applies to the transport in the EU of all live vertebrates in connection with an economic activity, except humans. This includes commercially bred pets (Department for the Environment Food and Rural Affairs (DEFRA)).
16. Under the EU Council Regulation, animals must be fit for travel, and provided with the necessary water, food, rest and space. Dogs younger than 8 weeks cannot travel without their mothers. Responsibility for enforcement lies mainly with local authorities. Transport companies must ensure that the requirements of the Regulation are met, under authorization from Scottish Ministers. Scottish Ministers in turn must ensure "the applicants have demonstrated that they have sufficient and appropriate staff, equipment and operational procedures at their disposal to enable them to comply with this Regulation, including where appropriate Good Practice Guides."
17. Thus transporters such as airlines are responsible for ensuring that animals being transported under both commercial and non-commercial rules, which latter include the Pet Travel Scheme.

Pet Travel Scheme (PETS)

18. Under [EU Regulation 576/2013 on the non-commercial movement of pet animals](#), 5 or fewer pets can be brought into the UK as long as they meet the requirements of the Regulation, which include:

- Having the pets microchipped;
 - Obtaining pet passports or third country veterinary certificates;
 - Having the pets vaccinated against rabies;
 - Having the pets' blood tested for rabies antibodies if they come from countries which do not participate in PETS.
 - Ensuring the animals arrive within 5 days of their keeper.
19. If the pets are to be sold or re-homed, the owners must also comply with commercial rules.
20. More than 5 pets can be brought into the country only if written evidence of registration for a show, competition or sporting event can be provided. In these cases, the pets must be over 6 months old.
21. Following the harmonization of the UK rules on importing pets with the rest of the EU in 2012, tougher UK rules such as the quarantine requirement are no longer applicable (RSPCA). This made it “cheaper and easier to travel abroad with pets” (DEFRA)³. Since then, numbers of dogs have increased significantly. *The Puppy Smuggling Scandal* (Dogs Trust, undated)⁴ states that, based on information from DEFRA:
- 61% more dogs entered Britain in the year after the relaxation of controls;
 - There was a 780% increase in dogs entering Britain from Lithuania between 2011 and 2013;
 - Dogs from Hungary entering Britain increased by 663% between 2011 and 2013.
22. RSPCA figures are similar, again citing DEFRA as the source⁵:
- A 450% increase in dogs imported from Hungary in 2015;
 - A 7,700% increase in dogs imported from Romania from 2011 to 2015;
 - An 852% increase in dogs imported from Lithuania from 2011 to 2015.
 - An estimated 30,000 – 50,000 dogs are bred annually in Ireland annually, most of which are imported into the UK.
23. The Dogs Trust has carried out investigations into the puppy trade. It concluded that PETS is being taken advantage of by puppy farmers in the other

³ DEFRA press release 30 June 2011. Available at: <https://www.gov.uk/government/news/new-rules-mean-it-will-be-easier-and-cheaper-to-travel-abroad-with-pets>

⁴ Dogs Trust report – The Puppy Smuggling Scandal. Available at: [https://www.dogstrust.org.uk/press-materials/dt_puppy_smuggling_report_v12_web\(1\).pdf](https://www.dogstrust.org.uk/press-materials/dt_puppy_smuggling_report_v12_web(1).pdf)

⁵ RSPCA report – Sold a Pup? Figure 2, page 6.

countries to import puppies into the UK. Some examples of how this is done include:

- **Falsified paperwork:** In 2014, investigators were able to buy pet passports and microchips from vets in Lithuania and Hungary for fictitious / unseen puppies. They were asked to return the rabies stickers on the passports for reuse. They found several other vets willing to sell falsified passports and that “most of the breeders and dealers that we met in Eastern Europe also stated that they could easily arrange for passports to be falsified by vets”.⁶ (Dogs Trust).
- **Underage animals:** Also in 2014, Dogs Trust staff were able to buy a French bulldog pup from a dealer advertising online, who “boasted that he brings three to five puppies every week into the UK”.⁷ The dealer also admitted that the bulldog puppies were younger than 15 weeks, contradictory to the information in their passports. Under PETS, vets can only vaccinate puppies against rabies on seeing proof that they are at least 12 weeks old. They cannot enter the UK until at least 3 weeks after receiving the vaccine, which means that 15 weeks is the youngest age at which a dog can be imported under this Scheme. The pups were verified to be ten weeks old and not vaccinated against rabies by Heathrow Airport quarantine vets.
- **Dangerous dogs:** In the same year, Dogs Trust researchers were able to visit the premises of a breeder in Lithuania selling, among other breeds, pit bull terriers, which are banned in Britain under the Dangerous Dogs Act 1991. The breeder “explained that the Pit Bulls were pedigrees which he can easily bring into the UK by claiming on their paperwork that they are crossbreeds’ and ‘that port officials were unable to tell the difference”.
- **Traceability:** In 2015, a stuffed toy dog in an opaque carrier was smuggled into the UK using the same pet passport and microchip multiple times via several ferry routes as well as the Eurotunnel. According to Dogs Trust, transporter “Staff never looked inside her carry cage to check and she was waved through border control. This is because owners are handed the [microchip] scanner themselves to scan their pet” (Dogs Trust).⁸
- **Health and welfare:** Dogs Trust provided quarantine for 194 puppies seized at Dover in 2015 and 2016, with a view to rehoming them. 96% of the puppies were judged to be underage and around 8% died before they could be rehomed. ‘Designer’ breeds comprised 82% of 194 puppies.

⁶ Dogs Trust report – The Puppy Smuggling Scandal. Page 14.

⁷ Dogs Trust report – The Puppy Smuggling Scandal. Page 15.

⁸ Dogs Trust report – The Puppy Smuggling Scandal Continues. Available at:

<https://www.dogstrust.org.uk/puppysmuggling/final%20use%20this%20one%20puppy%20smuggling%202.8.pdf>

Designer dogs and the puppy trade

24. It is thought that dogs and humans co-evolved⁹, and humans have long been breeding dogs for desirable characteristics. However, to establish a 'breed', several generations of cross-breeding are required, and it is suggested that continued production of 'pure breeds' can lead to inbreeding defects¹⁰.
25. The RSPCA report suggests that rapidly increasing demand for particular types or breeds, including 'designer dogs' and 'handbag dogs', driven by factors like fashion and status, have created a market that cannot be supplied by UK breeders alone.¹¹ In European cultures, dogs have been used as status symbols since the 15th century, when exorbitantly expensive pedigrees and lapdogs, "cropped or crimped, dressed in the style of the day, perfumed, fondled"¹² were used as a display of wealth.
26. Plemons (2008) contends that the conspicuous consumption of designer dogs is a similar status-displaying activity, albeit available to the 'mass market', rather than restricted to a small elite—

"No longer is the puppy chosen for its functionality, or even the connection that is made when it looks into your eyes. Puppies are being bred specifically to satisfy a shallow, superficial desire for status—and at an outrageous price... These prices show a clear example of conspicuous consumption; the pets are commodities that are bought vicariously so that they may illustrate the pure ability to afford items that are much more expensive than the rest. They are status markers of those who have the disposable wealth to buy them, have the knowledge and cultural capital to choose the 'right' breed, and they are competitively displayed (highly visible). The fact that certain puppies have waitlists indicates a high demand, but more importantly, prestige over the masses because they lack access to the product."¹³

Black market trade

27. Middlemen or puppy dealers are also part of the puppy trade. The five-year-long RSPCA investigation in Manchester found that puppies illegally imported from Ireland were advertised on the Internet with a different mobile phone number for each, to make "it appear that the puppy seller only specialised in this breed rather than being part of a multi-million pound business".¹⁴ The puppies were shown to potential buyers in 'fake homes to make it look like the puppies for sale had been bred in a homely, family environment. Sometimes an adult dog was used to appear as the mother of the puppies." A raid on the business found 87 dogs.

⁹ Hare & Woods, National Geographic (2013). Available at:

<http://news.nationalgeographic.com/news/2013/03/130302-dog-domestic-evolution-science-wolf-wolves-human/>

¹⁰ K9 magazine. The Rise of the Designer Dog – What's the Problem? February 2017

¹¹ RSPCA report – Sold a Pup? Page 5

¹² Mery, The Life, History, and Magic of the Dog (1968), quoted in Plemons (2008). See footnote 13.

¹³ Available at: <http://oaktrust.library.tamu.edu/bitstream/handle/1969.1/ETD-TAMU-3068/PLEMONS-THESIS.pdf>

¹⁴ RSPCA report – Sold a Pup? Case study 3

28. The RSPCA's 2016 report estimated prices of £500 - £1,000 for pedigree puppies, and £200+ for non-pedigree ones. The BBC Scotland (2015) investigation estimated one dealer was making around £200,000 a year importing puppies from Ireland into Scotland. Based on a price of £750, at which "French Bulldogs and Pugs are regularly advertised on internet sites", the Dogs Trust¹⁵ estimates potential annual profits of dealer could be over £100,000.
29. Another investigation by the RSPCA found puppy dealers in Manchester to be earning £35,000 per week. From this it estimates the UK illegal economy in puppies could be worth £2 million per year.¹⁶
30. In addition to the loss of revenue, the illegal puppy trade and the poor conditions at puppy farms and smaller scale 'backstreet breeders'¹⁷ are leading to puppies infected with zoonotic diseases – diseases of other species that can be transmitted to humans - such as rabies and *Echinococcus* (a type of tapeworm). The combination of the relaxation of quarantine rules and insufficient enforcement of pet travel regulations and illegal dog importation present a disease risk to dogs, humans and wild animals.

Scottish Government Action

31. The Scottish Government has [commissioned research on the sourcing of pet dogs from illegal imports and puppy farms](#). According to the original contract documents this was due to be completed in March 2017 but, with DEFRA participation, the scope of the research has now been widened beyond Scotland, and the report is now expected around June.
32. The Government has also made available a range of legislation and advice--
 - [legislation and advice on buying puppies](#)
 - [a guide to buying a new pet](#)
 - [Information on micro chipping of dogs](#)
 - [The Microchipping of Dogs \(Scotland\) Regulations 2016](#)

Scottish Parliament Action

33. The Parliament has seen a number of motions, questions and a Member's debate towards the end of 2016. Details of these motions and questions are set out as an annexe to this note.

¹⁵ Dogs Trust report – The Puppy Smuggling Scandal. Page 22

¹⁶ RSPCA report – Sold a Pup? Case study 5

¹⁷ Battersea Dogs and Cats Home. Licensed Dog Breeding in Great Britain (2015). Available at: <http://www.bdch.org.uk/files/Licensed-Dog-Breeding-in-Great-Britain-report.pdf>

Conclusion

34. The Committee is invited to consider what action it wishes to take on this petition. Options include—

- To write to the Scottish Government to seek its views on the action called for in the petition
- To seek the views on the action called for in the petition from the agencies referred to in the petition: SSPCA; ferry companies; Police Scotland; Port Authorities and trading standards. The Committee may invite respondents, where appropriate, to provide an update on Operation Delphin
- To write to other agencies or organisations to seek their views on the action called for in the petition. These might include: DEFRA; Dogs Trust; Companion Animal Welfare Council; Dog Advisory Council; Pet Advertising Advisory Group.
- To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe

Parliamentary motions and questions

[Motion S5M-02371: Emma Harper, South Scotland, Scottish National Party, Date Lodged: 07/11/2016:](#)

BAFTA-winning Puppy Dealer Programme: That the Parliament congratulates Liam McDougall, Samantha Poling and Sandeep Gill on winning the Current Affairs award at the BAFTA Scotland Awards 2016 for the programme, *BBC Scotland Investigates: Britain's Puppy Dealers Exposed*; commends the production team on the secret filming techniques that were used to expose the underground puppy dealers, and applauds Liam, Samantha and Sandeep on their ability to inform and educate the public about both the illegal trafficking and how to source a healthy and happy puppy.

[Motion S5M-02381: Stuart McMillan, Greenock and Inverclyde, Scottish National Party, Date Lodged: 08/11/2016:](#) BAFTA for Inverclyde Film Maker: That the Parliament congratulates the Greenock-born film maker, Liam McDougall, who won a BAFTA Scotland award in the current affairs category for his documentary, *Britain's Puppy Dealers Exposed*, a BBC Panorama investigation into puppy farms that reveals the ruthless world of parts of the dog breeding industry; notes that the BAFTA Scotland awards event was hosted in Glasgow; further congratulates Samantha Poling and Sandeep Gill on their investigative journalism, and wishes Mr McDougall the very best in his career.

[Question S5W-04921: Finlay Carson, Galloway and West Dumfries, Scottish Conservative and Unionist Party, Date Lodged: 22/11/2016:](#) To ask the Scottish Government what steps it is taking to reduce illegal puppy trafficking from taking place at Cairnryan.

Answered by the Cabinet Secretary for Environment, Climate Change and Lnad Reform on 30 November 2016

Unfortunately the movement of puppies originating from Northern Ireland and the Republic of Ireland via Cairnryan is only part of a wider long-running issue of national concern including the illegal or irresponsible breeding and sale of puppies and other pet animals in Great Britain as well as imports from elsewhere in Europe. The Scottish Government supports the excellent work that has been done by the Scottish SPCA and local authorities in conjunction with other enforcement bodies in intercepting illegal consignments at Cairnryan, as well as enforcing existing legislation on licensing of commercial puppy breeders and dealers in Scotland by prosecuting those found to be selling animals illegally elsewhere.

The Scottish Government is currently considering the issues of advertising, movement and sale of pet animals in an ongoing review of pet animal welfare as well as the possibility of amending the maximum penalties available for animal cruelty offences. The Scottish Government is also working closely with key animal welfare stakeholders to explore what more can be done to address the need for greater public awareness of the risks of buying illegally bred or imported puppies and the most effective way to reinforce the vital message that puppies should only be

purchased from reputable breeders and always seen with their mother at the breeder's premises before sale.

The Parliament held a Member's debate on the illegal puppy trade on 21 December 2016 in the name of Emma Harper MSP.

The *Motion debated was as follows*,

That the Parliament notes the reported concerns about the illegal puppy trade and the view that this business is a blight on animal welfare that must be tackled; understands however that the trade is big business in Scotland, with thousands of dogs being brought into the country each year from Ireland in particular; further understands that the Scottish SPCA and activists in Stranraer have been attempting to disrupt such activity at the port of Cairnryan; believes that the animals involved are bred and kept in horrendous conditions, which can lead to illness and death; understands that, as Christmas approaches, more people might be tempted to purchase a puppy; notes the Scottish SPCA's recommendation that people should try to rehome a dog in the first instance but that, if someone is intent on buying a puppy, then they should do so from a reputable and licensed breeder and insist on seeing the puppy's mother and, if possible, father, as well as its living conditions; notes that it also states that puppies should not be purchased in a public place, such as a car park, and that this should set alarm bells ringing if it is suggested by the seller; understands that, while reputable breeders do advertise with it online, the charity generally advises against buying animals via the internet and that searching the seller's phone number online could reveal whether they deal in multiple litters and breeds, and notes the view that tackling illegal trafficking through raising public awareness of it is one of the primary ways that Scotland can begin to disrupt this cruel trade.

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10705>

Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1642: Sale and marketing of energy drinks to under sixteens

Note by the Clerk

Petitioner	Norma Austin Hart
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to ban the sale of caffeinated energy drinks to children under sixteen years of age and to encourage the maximum use of existing powers by local authorities to restrict sale and marketing of energy drinks to children.
Webpage	parliament.scot/GettingInvolved/Petitions/PE01642

Introduction

1. This is a new petition that collected eleven signatures. The Committee has a copy of the petition and the SPICe briefing and is invited to consider what action it wishes to take.

Background (taken from [the SPICe briefing](#))

2. According to the [UK Food Standards Agency](#)—

“Energy drinks can contain high levels of caffeine, usually about 80 milligrams (mg) of caffeine in a small 250ml can – this is similar to three cans of cola or a mug of instant coffee. As well as caffeine, they may contain other ingredients, such as glucuronolactone and taurine, and sometimes vitamins and minerals or herbal substances.

Some of the smaller 'energy shot' products can contain anywhere from 80mg to as much as 160mg of caffeine in a 60ml bottle. Based on current scientific opinions on the safety of caffeine, we advise that children, or other people sensitive to caffeine, should only consume caffeine in moderation.”

3. The European Food Safety Authority (EFSA) published a [‘Scientific Opinion’](#) in 2015 on the safety of caffeine which concluded that—

“For children and adolescents, the information available is insufficient to derive a safe caffeine intake. The Panel considers that caffeine intakes of no concern derived for acute caffeine consumption by adults (3mg/kg bodyweight per day) may serve as a basis to derive single doses of caffeine and daily caffeine intakes of no concern for these population subgroups.’ (i.e. children and adolescents).

For a 10-year-old child weighing 30kg, this would equate to around 90mg of caffeine per day.”

4. The petitioner cites a more recent [briefing from the Food Research Collaboration](#), an organisation seeking to facilitate joint working between academics and civil society organisations to improve the UK food system.
5. The Food Research Collaboration briefing covers different aspects relating to caffeinated drinks such as ingredients, marketing, the market situation, scientific evidence and interventions taken in a number of countries to control the availability of caffeinated drinks. Under the evidence section, the authors assert that—

“Robust evidence, largely from North America, Europe and the Middle East, demonstrates that consumption of energy drinks by children and adolescents is strongly and consistently associated with three clusters of risky behaviours: use of alcohol and/or binge drinking; smoking or susceptibility to smoking; and illicit drug use.”

6. It goes on to discuss the links in studies made between caffeinated drinks and hyperactivity, sleep problems, heart problems and other conditions. The briefing includes a substantial references section.

Statutory labelling and the British Soft Drinks Association (BSDA) voluntary Code of Practice

7. The EU Food Information Regulation ([Regulation \(EU\) No. 1169/2011](#) (passed into Scots law by The Food Information (Scotland) Regulations 2014) states that labelling of caffeinated drinks (with certain exceptions) must contain the following particulars—

“High caffeine content. Not recommended for children or pregnant or breast-feeding women’ in the same field of vision as the name of the beverage, followed by a reference in brackets and in accordance with Article 13(1) of this Regulation to the caffeine content expressed in mg per 100 ml.”

8. Under the EU Directive on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine (2002/67/EC), if the caffeine content of a soft drink is above 150mg/l the product must be labelled as having ‘high caffeine content’, along with the amount of caffeine per 100ml of product. This
9. Directive was passed into domestic legislation through the ‘[The Food Labelling Amendment \(Scotland\) Regulations 2003](#)’. UK Government food labelling guidance states: [Drinks that contain caffeine from whatever source at a level over 150mg/l must state](#): ‘Not suitable for children, pregnant women and persons sensitive to caffeine.’
10. In April 2015, the BSDA produced a [voluntary code of practice](#) relating to the EU Regulation above. On labelling it recommends that ‘Consume moderately’ is included with the statutory wording. Under ‘Responsible marketing’ it lists a number of points—

- No marketing communications concerning energy drinks will be placed in any media with an audience of which more than 35% is under 16 years of age (in line with BCAP and Ofcom guidelines).
- No commercial activity of any sort relating to energy drinks by BSDA members will be undertaken in primary or secondary schools.
- No static outdoor advertising of energy drinks will be placed within 100 metres of primary or secondary school main gates.
- Sampling activity will not deliberately be aimed at or specifically designed to appeal to under 16s.
- Marketing communications will not promote irresponsible or excessive consumption of energy drinks.
- Marketing communications will not suggest any association with illegal or anti-social behaviour.
- Manufacturer-produced and controlled marketing communications, including labels, will not make any claims that the consumption of alcohol together with energy drinks counteracts the effects of alcohol.
- Energy drinks are functional beverages and not sports drinks. Although normal consumption of energy drinks also provides water to the body, energy drinks will not be marketed as sports beverages which deliver a rehydration benefit unless they contain specific ingredients in addition to caffeine to support this claim.

Scottish Government Action

11. [Food Standards Scotland](#) has no specific information or guidance relating to caffeine in soft drinks.
12. The [Healthy Eating in Schools: A Guide to Implementing the Nutritional Requirements for Food and Drink in Schools \(Scotland\) Regulations 2008](#) do not cover caffeinated 'energy' drinks, but do stipulate which drinks can be provided in state schools. The criteria for soft drinks are—

“Drinks made with a combination of water (still or carbonated) and fruit and/or vegetable juice (see criteria).

- no added sugar
- no more than 20g of sugar per portion size
- 50% or more fruit or vegetable juice and
- no more than 200ml fruit or vegetable juice .”

13. The petitioner makes reference to a [study](#) indicating that even if unhealthy drinks are not available within school, availability outside, and the freedom pupils have to leave the school at lunchtime undermines efforts by schools to ensure that pupils eat healthily during the school day.
14. The Scottish Government's 2014 [Better Eating, Better Learning: a new context for school food](#) also does not discuss caffeinated drinks, but focuses on sugary drinks. Caffeinated drinks are available in sugar-free formulations, and so are not covered by this report. In the same year, they also published [Beyond the School Gate: Improving food choices in the school community](#), which also makes no specific reference to caffeinated drinks.

Scottish Parliament Action

Competency

15. The issue as to whether setting an age limit for caffeinated drinks would be a reserved or devolved matter is a complex one. However, one of the key legal questions in this case might be whether the legislation can be said to fall within c.7(a) of schedule 5 of the Scotland Act, on the "regulation of the sale and supply of goods and services to consumers" which, with the exception of food safety and consumer protection, 1 is reserved to Westminster; or whether it can be viewed as a health measure on which the Scottish Parliament would be competent to legislate.

Licensing legislation

16. The [Civic Government \(Scotland\) Act 1982](#) gives broad-ranging powers to allow local authorities to impose licensing restrictions on a range of activities. Section 44 (1) states that—

"Additional activities

(1) The Secretary of State may, by order made by statutory instrument, designate any activity other than one of those specified in this Part of this Act—

(a) as an activity for which, subject to a resolution of the licensing authority in relation to it under section 9 of this Act, a licence shall be required and which, subject to such a resolution, shall be regulated in accordance with the provisions specified in the order; or

(b) as an activity for which a licence shall be required and which shall be regulated in accordance with the provisions specified in the order."

Taxation

17. The petitioner does not discuss taxation as a way to influence the behaviour of retailers, but there is a precedent in Scotland in the guise of the Public Health Supplement. The Scottish Government announced plans to introduce a "public health supplement" in September 2011, at the time of the Spending Review (<http://www.gov.scot/News/Releases/2011/09/21141303>).

18. It was introduced for three financial years – 2012-13 to 2014-15. It applied to retail properties with a rateable value of £300,000 or more that sold both alcohol and tobacco.
19. In 2012-13, the supplement was set at 9.3p on top of the standard poundage rate and the large business supplement. For 2013-14 and 2014-15, the public health supplement was set at 13p above the standard poundage rate and large business supplement. A case study was carried out of the levy: [Hard to Avoid but Difficult to Sustain: Scotland's Innovative Health Tax on Large Retailers Selling Tobacco and Alcohol](#).

Other Parliament Activity

20. Caffeine in alcoholic drinks was discussed by the Health and Sport Committee in Session 4 in its report on the [Alcohol \(Licensing, Public Health and Criminal Justice\) \(Scotland\) Bill](#) which had been introduced by Dr Richard Simpson MSP. In its report, the Committee said—

“47. The Policy Memorandum refers to a number of academic studies, including the McKinlay Report for the Scottish Prison Service which linked particular patterns of alcohol consumption (including of the highly caffeinated tonic wine Buckfast) with criminal behaviour. The Policy Memorandum states that the study for the Scottish Prison Service found that 43.4% of those who admitted drinking prior to committing their current offence had consumed a well-known brand of tonic wine, despite this drink accounting for less than 1% of total alcohol sales nationally.

48. In oral evidence to the Committee, Alcohol Focus Scotland said that research showed that there was a high proportion of young offenders who drank caffeinated alcoholic drinks and that there was some evidence that caffeinated alcohol can “exacerbate” alcohol-related offending. On that basis it indicated it would “advocate for a restriction to be considered and implemented”. However, Alcohol Focus Scotland described the evidence base for this provision as “indicative” and “not conclusive” and emphasised the importance of evaluating the results if a ban on caffeinated drinks was introduced.”

Conclusion

21. The Committee is invited to consider what action it wishes to take. Options include —
 - To write to the Scottish Government, Cross Party Group on Independent Convenience Stores, Community Food and Health (Scotland), University of Strathclyde Centre for Health Policy and the Jamie Oliver Food Foundation seeking their views on the petition.
 - To take any other action the Committee considers appropriate.

Clerk to the Committee

Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1644: Country sports tourism funding

Note by the Clerk

Petitioner	Katherine Perlo on behalf of Ethical Voice for Animals
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to prohibit, in its future directives to VisitScotland, the funding of country sports tourism involving the killing of animals.
Webpage	parliament.scot/GettingInvolved/Petitions/countrysportstourismfunding

Introduction

1. This is a new petition. The Committee has a copy of the petition and a SPICE briefing and is invited to consider what action it wishes to take.

Background (the following is taken from the [SPICe briefing](#))

2. [VisitScotland](#) is a non-departmental public body (NDPB) funded directly by the Scottish Government.
3. Until the [Tourist Boards \(Scotland\) Act 2006](#) came into force, VisitScotland was known the Scottish Tourist Board, and was initially established under the [Development of Tourism Act 1969](#).
4. According to Section 19(1) and (2) of the 1969 Act—

“(1) The relevant Minister may, after consultation with a Tourist Board, give to it directions of a general character as to the exercise of its functions.

(2) Subject to the provisions of any scheme under section 3 [. . .] of this Act, the relevant Minister may, with the approval of the Treasury, give to a Tourist Board directions as to—

[...]

(c) the conditions to be imposed in making any grant under the scheme [. . .]; and such directions may distinguish between different classes of case.”
6. To date, VisitScotland has not received direction from the Scottish Government on where it can or cannot award its funds. Its Growth Fund supports collaborative tourism marketing projects which focus on growth in the tourism sector.

7. The fund is a platform which supports groups in leveraging additional and focused marketing investment, stimulating collaboration within the industry, closer working with VisitScotland and achieving strategic alignment with the national Tourism 2020 strategy.

Scottish Parliament Action

8. In December 2016, Andy Wightman MSP asked the following parliamentary question ([S5W-05930](#))—

“To ask the Scottish Government whether it will provide a breakdown of the recipients of financial contributions from VisitScotland to the strategy, Game for Growth Strategy - Country Sports Tourism in Scotland 2016; what information it has regarding how each recipient will use this; what action it has taken to ensure that no money was provided to the owners or managers of landholdings on which crimes against wildlife have been committed; whether it will publish the strategy on its website, and what aspects of this it is supporting or plans to support with public money.”

9. Fiona Hyslop MSP replied—

“VisitScotland has approved a grant of £17,925 to the Scottish Country Sports Tourism Group to promote Scotland as the destination of choice for all country sports. The Group will use this to develop content and supporting digital activity to attract visitors from across the UK and Scandinavia. As this money is for a specific project, no funding will be provided to individual estates or land owners. There is no intention to publish the strategy on VisitScotland's website and so there will be no funding support for this.”

10. VisitScotland acknowledges that the issue of country sports is a sensitive matter. However, as a public body, it is required to remain impartial and cannot discriminate against one sector of the tourism industry.

Conclusion

12. The Committee is invited to consider what action it wishes to take. Options include —
 - To write to the Scottish Government, Scottish Tourism Alliance, Scottish Land and Estates and the Scottish Wildlife and Adventure Tourism Association seeking their views on the petition.
 - To take any other action it considers appropriate.

Clerk to the Committee

Public Petitions Committee

9th Meeting, 2017 (Session 5)

Thursday 11 May 2017

PE1645: Review of legal aid in Scotland

Note by the Clerk

Petitioner James Ward

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to review legislation relating to access to legal aid in Scotland, particularly in relation to clarity about discretionary powers.

Webpage parliament.scot/GettingInvolved/Petitions/PE01645

Introduction

1. This is a new petition that was not open for collecting signatures. The Committee has a copy of the petition and the SPICe briefing, and is invited to consider what action it wishes to take on the petition.

Background (taken from the [SPICe briefing](#))

2. The petitioner's concern is that Scottish Ministers can currently use discretionary powers to decide whether someone can access legal aid. He believes that the powers are not clearly defined, making the law unclear and open to misapplication.

Legal aid

3. Legal aid provides financial assistance to enable those on low or moderate incomes to access legal services. It is funded by the Scottish Government and administered by the Scottish Legal Aid Board.
4. There are various types of legal aid, covering criminal, civil and some tribunal matters. An individual who wishes legal advice can apply for legal aid via their solicitor.
5. Legal aid is a vital tool in ensuring the right to a fair trial.
6. Further information about how legal aid operates is available from the SPICe briefing "[Legal Aid](#)" (2011). The briefing is not up-to-date in terms of recent developments.

Discretionary powers

7. The statutory framework for legal aid is set out in the Legal Aid (Scotland) Act 1986. This has been amended on a number of occasions. Much of the detail is contained in subordinate legislation.

8. The 1986 Act contains a number of provisions which give Scottish Ministers discretionary powers. However, most do not relate to an ability to decide whether an individual should be awarded legal aid.

Scottish Ministers power over the Scottish Legal Aid Fund

9. It seems most likely that the constituent's concern stems from the power that Scottish Ministers have to determine that payments should be made from the Scottish Legal Aid Fund. This power is contained in section 4(2)(c) of the 1986 Act.
10. Essentially, this provision enables Scottish Ministers to authorise payments to be made which are outside the normal framework for legal aid. For example, it was this provision which was used to grant legal aid for private prosecution proceedings in relation to the Glasgow bin lorry tragedy.
11. The legislation gives Scottish Ministers very wide discretion to make payments out of the legal aid fund which would not otherwise be granted. However, the principles of administrative law do create general limits to the way the power can be exercised. For example, it could not be used to make payments which were not connected to legal aid, or which conflicted with the existing rules.
12. The Scottish Government has described in more detail how a decision to exercise the power would be approached. It states—

“In deciding whether to exercise the power, the Scottish Ministers will assess each case on its merits and whether it is reasonable to grant assistance in the particular circumstances to ensure effective participation in legal proceedings. Accordingly, it is not possible to set out an exhaustive list of factors that are considered. However, the approach taken by Scottish Ministers in considering whether to grant legal aid generally involves consideration of whether—

(a) it is necessary to protect [European Convention on Human Rights] rights

(b) the creation of eg. new civil proceedings in legislation has created a temporary gap which needs to be filled pending amendment of existing regulations.”¹

13. It is possible to challenge a ministerial decision in relation to the discretionary power to make payments in the courts. This is done by way of judicial review.
14. Judicial review looks at the process and legality of official decision-making, rather than the merits of the decision itself. It is also expensive to undertake. This is because judicial review actions must be raised in the Court of Session, Scotland's most senior civil court. This requires representation from an advocate as well as a solicitor.

¹ Scottish Government. (2017) Email correspondence with author on 20 April 2017.

Scottish Government Action

15. On [1 February 2017](#) (cols 16-20), the Scottish Government announced that it was setting up an [independent group](#) to review the legal aid system. The remit of the group is “legal aid in the 21st Century: how best to respond to the changing justice, social, economic, business and technological landscape”.
16. Separately, the Scottish Government is undertaking work to simplify and streamline the current legal aid system. [Further information](#) is available from the Scottish Legal Aid Board’s website.

Scottish Parliament Action

17. The Scottish Parliament has considered legal aid issues on a number of occasions. Previous Justice Committees have carried out Stage 1 scrutiny of two Bills dealing with legal aid. In the first session of the Scottish Parliament, the Justice 1 Committee carried out an [inquiry into legal aid](#) (2001).
18. The 2016 manifestos of the SNP, Scottish Conservatives, Scottish Labour and the Scottish Greens all contained a commitment to reviewing legal aid.

Conclusion

19. The Committee is invited to consider what action it wishes to take. Options include—
 - Seeking the views of the Scottish Government on the action called for in the petition
 - Seeking the views of the independent review group, the Law Society of Scotland and the Scottish Legal Aid Board on the action called for in the petition
 - Any other action the Committee wishes to take.

Clerk to the Committee

Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1545: Residential care provision for the severely learning disabled

Note by the Clerk

Petitioner	Ann Maxwell on behalf of Muir Maxwell Trust
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to recognise residential care as a way severely learning disabled children, young people and adults can lead happy and fulfilled lives and provide the resources to local authorities to establish residential care options for families in Scotland.
Webpage	parliament.scot/GettingInvolved/Petitions/PE01545

Introduction

1. At its meeting on 30 March 2017 the Committee agreed to write to the Scottish Government and to seek an update from the petitioner. Responses have been received and the Committee is invited to consider what action it wishes to take.

Background

2. The Scottish Government's written submission dated [11 May 2015](#) set out the relevant policy background in the learning disability strategy entitled the [Keys to Life](#). The Scottish Government explained that most people with profound and multiple learning disabilities may consider that residential care does not meet their needs.
3. The Scottish Government noted, however, that people should have options. In this regard, the Keys to Life strategy "recommends that alternative models of provision are available" and "the residential model is recognised as a model of provision where for a few supported independent living is not an option". The Strategy also recommends that a national framework agreement for procurement is developed "to improve the quality and consistency of support for people with learning disabilities who have a long-term need for specialist residential care".
4. The Scottish Government agreed with the petitioner that the available data on adults and children with profound and multiple learning disabilities could be improved. Since the petition was lodged, the Scottish Government has consulted the petitioner and committed to funding a project to improve data collection on the demand for residential care. It has also launched a project to identify suitable alternatives to out-of-area placement. The Scottish Government has been engaging with the petitioner on those projects and has provided a two-year project plan.

5. One project within the plan is a quantitative analysis. This will “identify numbers and profiles of adults and young people with complex needs who are Out Of Area or Delayed Discharge”. The Scottish Government indicated that this first piece of work will be completed by February 2017.
6. Another project within the plan is a qualitative analysis. This will seek to “understand the issues impacting on either Out Of Area or Delayed Discharge. This piece of work will involve working collaboratively with the families of people with complex needs, housing providers and Integrated Joint Boards Chief Officers”. The Scottish Government has indicated that the timescale for this plan is March 2017 to September 2017.
7. At its meeting on 29 September 2016, the Committee agreed to defer further consideration of the petition until March 2017. This was the timeframe within which the Scottish Government expected to complete the first project (i.e. the quantitative analysis) in its project plan.

Committee consideration

8. The Scottish Government advised in its submission dated 19 April 2017 that it is in the process of completing stage 1 of the project plan. The Scottish Government noted that it “...is committed to meet the timescales within the two year plan”. It also noted that it will meet again with the petitioner to keep her informed of the project’s progress.
9. The petitioner’s written submission noted her view that the data being gathered on out of area placements “...will not fill the gap in data relating to people in Scotland with profound and multiple learning disabilities.” In her view, the data being collected by the Scottish Government focuses on the “policy requirements as outlined in “The Keys to Life”, which is to bring those in out of area placements back to Scotland by June 2018 and bears little resemblance to the issues raised by our petition.”

Conclusion

10. The Committee is invited to consider what action it wishes to take. Options include —
 - To seek the Scottish Government’s view on the petitioner’s concerns that the data being collected will not fill the gap in data relating to people in Scotland with profound and multiple learning disabilities.
 - To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- [PE1545/Q: Scottish Government submission of 19 April 2017 \(63KB pdf\)](#)
- [PE1545/R: Petitioner submission of 25 April 2017 \(30KB pdf\)](#)

All written submissions received on the petition can be viewed on the petition [webpage](#).

Public Petitions Committee

9th Meeting, 2017 (Session 5)

Thursday 11 May 2017

PE1548 on National Guidance on Restraint and Seclusion

Note by the Clerk

Petitioner Beth Morrison

Petition summary Calling on the Scottish Parliament to urge the Scottish Government to

1. Introduce National Guidance on the use of restraint and seclusion in all schools; this guidance should support the principles of:

- Last resort - where it is deemed necessary, restraint should be the minimum required to deal with the agreed risk, for the minimum amount of time
- Appropriate supervision of the child at all times, including during “time out” or seclusion.
- Reducing the use of solitary exclusion and limiting the time it is used for (e.g. maximum time limits)
- No use of restraints that are cruel, humiliating, painful and unnecessary or not in line with trained techniques.
- Accountability of teaching and support staff for their actions; this should include recording every incident leading to the use of seclusion or restraint and monitoring of this by the local authority.
- Regular training for staff in how to avoid the use of restraint
- Where restraint is unavoidable training in appropriate restraint techniques by British Institute of Learning Disability accredited providers and no use of restraint by untrained staff.

2. Appoint a specific agency (either Education Scotland or possibly the Care Inspectorate) to monitor the support and care given in non-educational areas including the evaluation of the use of restraint and seclusion of children with special needs in local authority, voluntary sector or private special schools.

Webpage parliament.scot/GettingInvolved/Petitions/PE01548

Introduction

1. This petition was last considered by the Committee at its meeting on [20 April](#), at which it took evidence from the Deputy First Minister. During the evidence, the Deputy First Minister offered to share a draft of the guidance on ‘de-escalation

and physical intervention' and stated that he would consider any comments the Committee may have. The draft guidance is included at annexe A of this paper.

2. The Committee agreed to invite the petitioner to comment on a written evidence session. The petitioner's submission and with a joint submission from the Children and Young People's Commissioner Scotland and ENABLE Scotland. are included in annexe B to this paper.

Committee consideration

3. During oral evidence the Deputy First Minister addressed the Committee's questions on the communication passport, the proposed refresh of child protection guidance and how that guidance is regarded, local authorities' responsibilities in taking forward policies including recording and training provision and the issue of seclusion and use of isolation rooms.

Communication passport

4. With regard to the communication passport, the Deputy First Minister confirmed that the material is readily available on the glow network but also acknowledged that "we actively promote the attributes of the communication passport". He advised that he has invited the petitioner and a constituent, Mrs Kate Sanger, to attend a meeting with the advisory group for additional support for learning on 30 August. He explained—

"I want Mrs Morrison and Mrs Sanger to have the opportunity to speak face to face with those bodies, which will be either the enablers or the inhibitors of the communication passport being widely understood and used in our education system, so that they can explain the rationale behind the passport and encourage participation in and use of such a tool."

5. The petitioner confirmed that she has accepted the invitation to speak to the advisory group and said that she is "delighted that the Scottish Government have decided to promote the use of the communication passport as a pro-active strategy to help staff avoid the use of physical intervention".

Proposed refresh of child protection guidance

6. The Deputy First Minister explained that the purpose of the refreshed guidance "is to address the issues that the petition raises from the perspective of encouraging positive behaviour". He indicated that there "had not been unanimity" but that it had been considered by the Scottish advisory group on relationships and behaviour in schools, and that the guidance could be published by the end of May, subject to any feedback from the Committee and the petitioner.
7. With regard to the petitioner's concerns that the guidance was being treated as an education issue rather than a learning disability issue in an education environment, the Deputy First Minister said that there had been extensive consultation with a range of stakeholders, principally through SAGRABIS

(Scottish Advisory Group for Relationships and Behaviour in Schools) which is chaired jointly by the Scottish Government and COSLA. He said—

“Although the material will be under the umbrella of school exclusion guidance, the thinking and the rationale behind [it] is all about encouraging positive relationships and behaviour.”

8. While acknowledging the difficulties in achieving unanimity the Deputy First Minister considered that the extensive stakeholder involvement “has resulted in the development of a guidance document that takes a proactive and preventative approach to how one might address the issue of physical restraint”, and added that it “presents any question of physical restraint as an absolute last resort...”.

Local authorities’ responsibilities

9. In terms of the role of local authorities in developing policies, providing adequate and appropriate training, and, in particular on recording systems the Deputy First Minister acknowledged views about a national recording system but said that “fundamentally, we have a decentralised education system in which our local authorities have the operational role”.
10. In response to the question of what role the Scottish Government will have in ensuring that any framework is followed, the Deputy First Minister considered that the guidance was “sufficiently clear to set out to local authorities what we expect to see”.
11. However, when pressed further on striking a balance between the role of Government and the responsibilities of local authorities, the Deputy First Minister said—

“Our intention is to promote what I would characterise as a voluntary route, whereby we are not putting anything in statute but are seeking to encourage and motivate good practice. However, if we find that that approach has not been successful, I would have to consider other options.”

12. In her submission that petitioner indicated that she was “very pleased to hear Mr Swinney say he would look at the situation again in a year or two to see if the guidance had in fact made a difference”. She asks whether it would be reasonable to ask the Deputy First Minister to give “a commitment to do exactly this say in May 2019”.

Seclusion and the use of isolation rooms

13. The Committee put concerns expressed by the petitioner and others including Dr Brodie Paterson and the Children’s Commissioner with regards to the use of isolation rooms to the Deputy First Minister.
14. The Deputy First Minister considered that “seclusion might have to be used as a very last resort” but not used as a form of punishment. He explained—

“What the guidance will do is set out, first, that seclusion should be absolutely a last resort and, secondly, that it must be deployed with support and supervision as part of a plan that has been proactively considered on what is to be used in certain circumstances, should those circumstances prevail.”

15. In response to the Committee’s questions which identified the petitioner’s remaining concerns that UNCRC recommendations on isolation rooms being abolished, the Deputy First Minister responded—

“I assure the committee that I am not playing with words on the matter or using terminology to perpetuate an existing practice”.

16. The Deputy First Minister referred to pictures he had been shown by the petitioner of “what might be described as isolation rooms” and that he judged them to be “totally unacceptable”. He expanded on this point—

“When I talk about the need for seclusion as a last resort, I am talking about a separate room or a safe space that is deemed to be appropriate for helping to de-escalate the situation. Therefore, a young person could not be taken to any old room; they would have to be taken to a particular space where the situation could be de-escalated with support from a member of staff as part of a plan that recognised that to be a measure of last resort.”

17. In her submission, the petitioner indicates that she remains disappointed that and concerned that isolation rooms will remain. She says—

“There is a difference between a calm, nurturing, comfortable quiet space that a child can choose to go to “escape” when things become too much or they are having difficulty coping. We do not have a problem with that whatsoever. This is not the reality though. The vast majority of these spaces are bare isolation/seclusion rooms resembling cells and cupboards that are very frightening to children.”

18. She expressed her hope that the guidance will be very clear and that “all such rooms [will] be gone from our schools as they are not fit for purpose”.

19. The draft guidance has a section on ‘seclusion’ which it describes as—

“Seclusion or isolation of a child or young person within a separate room or ‘safe space’ is also a form of physical intervention and should also only be used as a last resort to ensure the safety of a child or young person or others. The use of this form of physical intervention should be included in an agreed plan. Where seclusion or isolation is used it should be used under supervision, time limited and should take into account the additional support needs of the child or young person”.

Action

20. The Committee is invited to consider what action it wishes to take on the petition. Options include—

- To write to the Deputy First Minister with feedback on the draft guidance and inviting him to respond to the petitioner's suggested timescale for reviewing the guidance
- To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe A

De-escalation and Physical Intervention

There are times when children and young people will exhibit challenging and distressed behaviour. Staff's knowledge and detailed assessment of a child or young person should be used to predict and plan for the type of situation which may cause that child or young person severe stress or frustration that can lead to challenging and distressed behaviour. Staff should recognise that all behaviour is communication and endeavour to identify, where possible, the triggers that may lead to a child or young person acting in a challenging and distressed way.

This information should be included in an individual plan to support behaviour. The plan should state how the child or young person should be supported and clearly outline agreed strategies that should be used by staff. Specific consideration should be given to a child or young person's additional support needs and the impact that these may have on communication and behaviours. Including, as a result of needs such as complex additional support needs, [language and communication needs](#) and autism.

Risk and health and safety assessments should also be carried out to determine any potential concerns arising from the child or young person's behaviour and should identify any steps deemed necessary to support the child or young person in preventing harm to themselves or others. The risk and health and safety assessments should be informed by the information gathered using the National Practice Model and should be shared with the child or young person, their parents and all staff who are involved with the child or young person.

An important aspect of these assessments is the understanding that risk can never be completely removed; and should also inform a school's decision whether to exclude a child or young person. Risk and health and safety assessment processes should also be applied to situations where unpredictable challenging and distressed behaviour arises and in such cases, consideration should be given to the wellbeing of all children and young people as well as staff. Local authorities should generate their own guidance about risk and health and safety assessments.

There may still be times when despite clear assessment and planning, a decision is made to physically intervene as the last resort to ensure the safety of a child or young person or others. All education authorities have a duty of care to all children and young people attending school in respect of the health, safety, wellbeing and welfare of the children and young people in their care.

Education authorities should develop their own policy on de-escalation and physical intervention based on their own individual needs and context. Education authorities should develop this in the framework of promoting a positive ethos, relationships and behaviour. This should clearly articulate the expectations of staff under the duty of care i.e. it is only acceptable to physically intervene where the member of staff reasonably believes that if they do not physically intervene, the child or young person's actions are likely to cause physical damage or harm to that pupil or to another person.

A key aspect of a school approach to intervening early and reducing the need for exclusion is staff having an understanding and awareness of de-escalation techniques. All staff should, where possible, be offered professional learning opportunities to learn about de-escalation techniques and to understand the different types of behaviour. Staff should also be provided with opportunities to reflect on the emotional impact that can occur for children, young people and staff during any incidents of challenging and distressed behaviour and engage in discussions about how this can be supported in a school context. Education authorities, in consultation with staff and key partners including staff unions should develop their own policy on de-escalation and physical intervention within the wider context of positive relationship and behaviour approaches.

Seclusion

Seclusion or isolation of a child or young person within a separate room or 'safe space' is also a form of physical intervention and should also only be used as a last resort to ensure the safety of a child or young person or others.

The use of this form of physical intervention should be included in an agreed plan. Where seclusion or isolation is used it should be used under supervision, time limited and should take into account the additional support needs of the child or young person. Local authorities should ensure that appropriate support and training is provided where necessary and should include guidance on support following an incident for all those involved.

An education authority policy should also specify the appropriate levels of intervention when responding to challenging and distressed behaviour, recognising that the majority of children and young people in our schools will never require any form of physical intervention.

Any incident where a decision is made to physically intervene must be recorded and monitored. Details on how this should be undertaken should be included in an education authority's policy on de-escalation, physical intervention. The recording and monitoring of such incidents will help education authorities to monitor the effectiveness of their policy and practice. It will ensure transparency, enable them to review and improve their policy and help identify professional learning needs and further supports where appropriate.

The rights of all children and young people should be a key consideration where physical intervention is being considered. This reflects the recognition and realisation of children and young people's rights across Scottish public policy, public services and society as a whole. It is important to consider the United Nations Convention on the Rights of the Child (UNCRC) in this context. Article 37 states that 'No one is allowed to punish children in a cruel or harmful way.' Article 3 states that 'the best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children'.

For references section

Resources to support communication

[Code of practice – working with children and families](#)

The Additional Support for Learning Code of Practice provides statutory guidance to those working with children and young people with additional support needs on seeking and taking account of their views and good practice in communicating and working with parents.

[Autism Toolbox](#)

The Autism Toolbox provides a wide range of advice and support for those working with children and young people with autism. The Toolbox includes advice on [supporting pupils](#), their [wellbeing](#) and a range of supports and strategies to support [communication needs](#). One of which is highlighted below.

[Communication Passport](#)

A communication passport (person-centred booklet for those who cannot easily speak for themselves) may be a useful tool to help highlight to all staff (including those who don't know the child well) the areas of difficulty where a child or young person may require support and the agreed strategies. Ownership of the passport by the child or young person will increase its effectiveness.

[Technology to support children and young people with complex additional support needs](#)

This resource demonstrates how Isobel Mair School in East Renfrewshire is using a range of technology to enable children and young people with complex needs to access the curriculum and support them to learn and communicate.

Annexe B

The following submissions are circulated in connection with consideration of the petition at this meeting—

- [PE1548/EE: Children and Young People's Commissioner Scotland and ENABLE Scotland joint submission of 19 April 2017 \(233KB pdf\)](#)
- [PE1548/FF: Petitioner submission of 2 May 2017 \(127KB pdf\)](#)

All written submissions received on the petition can be viewed on the petition [webpage](#).

Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1595: Moratorium on shared space schemes

Note by the Clerk

Petitioner	Alexander Taylor
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to place a moratorium on all shared space schemes until safety and equality concerns have been addressed.
Webpage	http://www.parliament.scot/GettingInvolved/Petitions/PE01595

Background

1. This Committee last considered this petition at its meeting on 9 February when the Committee agreed to seek clarification from Sustrans on its position on controlled crossings within shared space schemes. The Committee also noted the forthcoming seminar on shared space that the Minister for Transport and the Islands agreed to when he gave evidence to the Committee on this petition.

Shared Space seminar

2. A seminar on shared space was held on 25 April 2017, having been arranged by the Scottish Government in conjunction with Napier University's Transport Research Institute. Participants in the seminar included local authorities, Sustrans, Transport Scotland officials, stakeholder groups and the petitioner. The seminar was also attended on behalf of the Committee by the clerks and Rona Mackay MSP.
3. The aims of the seminar included discussion of—
 - The definition and understandings of shared space schemes
 - The objectives of shared space schemes
 - The benefits/disbenefits of shared space schemes to different users.
4. There was also reference made the position of shared space schemes in relation to equality law, with a presentation given on behalf of the Equality and Human Rights Commission by Professor Tom Rye, Director of the Transport Research Institute. Other presentations were made by the petitioner and his fellow campaigner, Sarah Gayton, Robert Huxford of the Urban Design Group, and the Scottish Disability Equality Forum.
5. The intention is that a draft report of the seminar will be produced and circulated to participants for feedback before a final version is produced.

Response from Sustrans

6. The response from Sustrans comments on the Committee's consideration of the petition to date and provides the following clarification of its position on the place of controlled crossings—

“A street design which retains standard traffic features such as controlled crossings reduces the impact, effect and purpose of shared space streets as identified in the Scottish Government's 'Designing Streets' policy. Such a design permits and encourages traffic to continue to be the dominant user in a street, and negates the benefits for placemaking and people walking or cycling. For example, if it were on a spectrum of the varying degrees of shared space, a street with controlled crossings would be at the very margins of the shared space concept, much closer to an orthodox street than one truly delivering a public space where the car dominates much less. This is at odds with creating a more pedestrian-friendly street environment and vibrant community space. We have stated this previously and this continues to be our position.”

Report of the House of Commons Women and Equalities Committee

7. Members may also wish to note that the issue of shared space was considered by the House of Commons Women and Equalities Committee in its report ['Building for Equality: Disability and the Built Environment'](#) which was published on 19 April 2017. In the report, the Women and Equalities Committee reached the following conclusions—

“172.The Government should not shy away from the debate on 'shared spaces' and take leadership. In light of the evidence that such schemes are excluding disabled people from the areas in which they are used, urgent action is needed.

173.We recommend that the Government require local authorities to call a halt to the use of shared space schemes, pending clear national guidance that explicitly addresses the needs of disabled people. This should, in particular, instruct local authorities that controlled crossings and regular height kerbs are to be retained and that they should undertake an urgent review of existing schemes, working with disabled people in their area to identify the changes that are necessary and practicable...

180.We were concerned to hear that the Government now appears to expect the results of the review of shared spaces by the Chartered Institute of Highways and Transportation to be the identification of gaps in evidence—not new guidance—leaving no clear plan to address the lack of a common approach on shared spaces that takes full account of the extensive concerns of disabled people and the organisations that represent them. The Government does not seem to have grasped the seriousness of the barrier to inclusion that

certain features (or the lack of certain features) present to so many disabled people.

181. We recommend that the Government takes a clear lead and urgently replaces the 2011 Local Transport Note on shared spaces with new guidance, founded on an inclusive design approach, to ensure that any resultant schemes are inclusive, navigable and welcoming for disabled people. This guidance should:

- a) be developed with disabled people;
- b) explicitly address the needs of all disabled people, including but not limited to people who are blind and partially sighted, people who have ambulant mobility difficulties and people with a neuro-diverse condition or learning disability;
- c) lay down consistent national standards so that disabled people can navigate, learn and independently use such schemes anywhere in the country;
- d) be clear that safety and usability requirements, such as controlled crossings and kerbs, are not optional;
- e) Provide details on how the requirements of the public sector equality duty and the duty to make reasonable adjustments apply to the design and implementation of such schemes.

182. Adequate guidance is important, but individuals also need an accessible means to challenge decisions when such guidance is not adhered to. We recommend that the Government bring forward Regulations under section 22(2)(a) of the Equality Act 2010 to specify that organisations which fail to comply with the new guidance recommended above will not be considered to have taken reasonable steps for purposes of the duty to make reasonable adjustments. This will make it easier for disabled individuals to establish discrimination contrary to section 21 of the Equality Act 2010.

183. The Government should also ensure that advice is readily available for individuals on how to challenge local authorities on existing or new schemes which exclude or have the potential to exclude disabled people.”

Action

8. The Committee is invited to consider what action it wishes to take on the petition. Options include—
 - Inviting the petitioner to make a further written submission that addresses the response received from Sustrans, his view on the recent seminar and any comments he has in relation to the report by the UK Parliament’s;
 - To write to the Scottish Government seeking confirmation of the intended timetable for circulation of a report of the seminar on 25 April;

- any other action the Committee wishes to take.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- [PE1595/RRR: Sustrans submission of 17 March 2017 \(185KB pdf\)](#)

All written submissions received on the petition can be viewed on the petition [webpage](#).

Public Petitions Committee**9th Meeting, 2017 (Session 5)****Thursday 11 May 2017****PE1600 Speed awareness courses****Note by the Clerk**

Petitioner	John Chapman
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to introduce speed awareness courses.
Webpage	parliament.scot/GettingInvolved/Petitions/PE01600

Purpose

1. The Committee last considered this petition at its meeting on 2 March 2017. At that meeting the Committee agreed to write to Transport Scotland inviting it to provide an update on what action the Scottish Government is going to take to establish a trial of Speed Awareness Courses, following the meeting of the Strategic Partnership Board. The Committee also wrote to the Department for Transport (DfT), requesting to be kept updated on progress with publication of its evaluation of speed awareness courses.
2. The DfT had previously indicated in its submission of 5 January that it expected the final report to be presented to the Project Board in mid-2017, and there is no indication at this stage that this timetable has moved. Transport Scotland provided a submission on 20 April, to which the petitioner has responded. These submissions are included at the annexe to this note. The Committee is invited to consider what action it wishes to take.

Correspondence

3. In its submission, Transport Scotland noted that the Strategic Partnership Board (SPB) considered that it would be “inappropriate to have more detailed discussions” on whether speed awareness courses should be carried out in Scotland until the results of the UK Government’s evaluation are known.
4. It added, however, that Police Scotland had provided an update on progress with preparatory scoping work at the SPB meeting on 22 March. The SPB asked Police Scotland to continue with the scoping work and to provide a more detailed paper – to “provide in-depth information on what suggested models for both the pilot programme and wider roll-out, if that was the agreed outcome from the pilot, together with comprehensive descriptions of its intended monitoring and evaluation for both” – at the next meeting of the SPB, scheduled for September.
5. The petitioner repeated his previous frustration at the length of time it appears to be taking to reach a decision on this issue, and expressed surprise at the

position of awaiting the UK Government's report before making any judgement, noting that "the Scottish Government seem to be at odds with the UK Government".

Action

6. The Committee is invited to consider what action it wishes to take, in light of the most recent correspondence. Options include –
 - To defer further consideration of the petition until the Department for Transport has reported on its three-year Speed Awareness Course evaluation
 - To take any other action members consider appropriate.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- [PE1600/I: Transport Scotland submission of 20 April 2017 \(43KB pdf\)](#)
- [PE1600/J: Petitioner submission of 25 April 2017 \(50KB pdf\)](#)

All written submissions received on the petition can be viewed on the petition [webpage](#).

Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1604: Inquests for all deaths by suicide in Scotland

Note by the Clerk

Petitioner	Catherine Matheson
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to expand the remit of the review into the arrangements for investigating the deaths of patients under Section 37 of the Mental Health (Care and Treatment) (Scotland) Act 2015 to include an inquest-type system for all deaths by suicide in Scotland; and to include both patients who were released from hospital or receiving care in the community under Compulsory Treatment Orders.
Webpage	parliament.scot/GettingInvolved/Petitions/inquestsfordeathsbysuicide

Introduction

1. The Committee last considered this petition at its meeting on 2 March 2017. At that meeting, The Committee agreed to write to the Scottish Government and Healthcare Improvement Scotland. Responses have been received and the Committee is invited to consider what action it wishes to take.

Committee Consideration

2. Following its last meeting, the Committee sought clarification from the Scottish Government on the timetable and content of the Section 37 review.
3. The Minister for Mental Health confirmed that she has agreed to extend the terms of the Section 37 of the Mental Health (Care and Treatment) (Scotland) Act 2015 and to include both patients who were released from hospital or receiving care in the community under Compulsory Treatment Orders. The review is underway and the Minister noted—

“The Act requires that the review engages families where practicable, and through the review we will seek to understand their experiences of how deaths have been investigated and take account of their views. Meaningful engagement with families will offer an opportunity to gain valuable insight to what families need from review processes.”
4. The Minister advised that the review will be completed by 24 December 2018.
5. The Minister also explained the Scottish Government will begin “engagement with stakeholders regarding possible content of a future Suicide Prevention Strategy or Action Plan” in late spring 2017.

6. The Committee also sought clarification from Healthcare Improvement Scotland on the number of health authorities that are meeting its target to commence a suicide review within 2 weeks and complete it within 3 months. Healthcare Improvement Scotland explained that in the preceding twelve months, 37% of suicide reviews were carried out within 3 months from the date of death.
7. The Committee also sought clarification on how bereaved families or carers can raise concerns with Healthcare Improvement Scotland when they consider that health authorities are not learning from suicide reviews, particularly where these have been highlighted in findings by the Scottish Public Services Ombudsman. Healthcare Improvement Scotland noted it has produced a leaflet with relevant information and that the number of enquiries is “small”. Healthcare Improvement Scotland also explained “The SPSO is responsible for the monitoring of its findings and this is not an area in which Healthcare Improvement Scotland is involved”.
8. The petitioner welcomed the Minister’s decision to extend the terms of the section 37 review. Mrs Matheson considered that Healthcare Improvement Scotland could be doing more in its guidance to encourage NHS boards to include families in the review process.

Conclusion

9. The Committee is invited to consider what action it wishes to take. Options include —
 - To write to the Scottish Government asking it to consult with the petitioner as part of its engagement with families under Section 37 of the Mental Health (Care and Treatment) (Scotland) Act 2015; to keep the petitioner informed as to opportunities to participate in relation to the development of the future Suicide Prevention Strategy or Action Plan and to ask what action it takes to ensure that all health boards can be supported to meet the target for commencement and completion of suicide reviews and to learn from these reviews and any finding from the Scottish Public Services Ombudsman;
 - To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- [PE1604/U: Minister for Mental Health submission of 22 March 2017 \(51KB pdf\)](#)
- [PE1604/V: Healthcare Improvement Scotland's submission of 31 March 2017 \(82KB pdf\)](#)
- [PE1604/W: Petitioner submission of 4 May 2017 \(57KB pdf\)](#)

All written submissions received on the petition can be viewed on the petition [webpage](#).

Public Petitions Committee
9th Meeting, 2017 (Session 5)
Thursday 11 May 2017

PE1619: Access to Continuous Glucose Monitoring

Note by the Clerk

Petitioner	Stuart Knox
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to make continuous glucose monitoring sensors, such as Freestyle Libre, available under prescription to all patients with type 1 diabetes.
Webpage	parliament.scot/GettingInvolved/Petitions/diabetes

Introduction

1. The Committee considered this petition at its meeting on 2 March 2017 and agreed to write to the Scottish Government. A response has been received and the Committee is invited to consider what action it wishes to take.

Committee Consideration

2. In its submission dated 20 January 2017, the Scottish Government advised that it intends to invest £10 million over the course of this Parliament to increase NHS Scotland's provision of insulin pumps and continuous glucose monitoring (CGM) technology for those with the greatest clinical need.
3. At its last consideration of the petition on 2 March 2017, the Committee agreed to seek clarification from the Scottish Government on how the people with the greatest clinical need will be identified for the purposes of the additional funding.
4. The Scottish Government's written submission dated [31 March 2017](#) explained that the Scottish Diabetes Group (SDG) in 2016 identified a number of groups which are considered a high priority, including "very young children, those with hypoglycaemic unawareness, and those who continue to experience severe hypoglycaemia despite high level of care". It also explained that clinicians are able to identify individuals with a clinical need for continuous glucose monitors and the SDG's findings do not preclude "...NHS Boards in providing CGM for anyone who would benefit from this technology as recommended by clinical guidelines."
5. The Committee also sought clarification on how the funding will be split between the provision of insulin pumps and CGM devices.
6. The Scottish Government explained that "proposals for the detail of the split of this funding across NHS Boards are currently being finalised for consideration by Ministers".

7. At its meeting on 24 November 2016, the Committee agreed to undertake engagement to gather the views of people affected by type 1 diabetes. This work is being taken forward by the clerks with engagement activities to be arranged in due course.

Conclusion

8. The Committee is invited to consider what action it wishes to take. Options include —
 - To defer further consideration of the petition until the Committee holds its fact-finding visit.
 - To take any other action the Committee considers appropriate.

Clerk to the Committee

Public Petitions Committee**9th Meeting, 2017 (Session 5)****Thursday 11 May 2017****PE1631: Child Welfare Hearings****Note by the Clerk**

Petitioner	Maureen McVey
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to change the laws that govern the recording of discussions at Child Welfare Hearings (CWH) in Scotland so that presiding Sheriffs have access to such records.
Webpage	parliament.scot/GettingInvolved/Petitions/PE01631

Introduction

1. The Committee last considered this petition at its meeting on 2 March 2017. At that meeting, the Committee took evidence from Maureen McVey, June Loudon, Secretary, Grandparents Apart and Scott McVey.
2. The Committee agreed to write to the Scottish Government, the Scottish Courts and Tribunals Service (SCTS), the Scottish Children's Reporter Administration, the Sheriffs' Association, the Scottish Child Law Centre and the Children and Young People's Commissioner Scotland. Responses have been received and the Committee is invited to consider what action it wishes to take.

Committee Consideration

3. The Children and Young People's Commissioner agreed with "...the Petitioners' view that a gap currently exists in the recording of such hearings, and that there is a need for change". He explained that this should be mandatory, but not necessarily verbatim. In the Commissioner's view, it is important that the views of the young person are sought and recorded.
4. The SCTS explained that the rules that govern child welfare proceedings do not require a recording to be taken. It noted that the standard practice would be for an interlocutor to be produced, which outlines the decisions on further procedure made by the sheriff at the hearing.
5. The SCTS also explained that the Scottish Civil Justice Council is currently reviewing case management as part of its overall review of the court rules and process. The SCTS noted that the petition may have resource and data protection implications that would need to be addressed.
6. The Minister for Community Safety and Legal Affairs explained that the Scottish Government will raise the issue of case management in family actions with the

Family Law Committee of the Scottish Civil Justice Council in the form of a policy paper. This will be considered at a meeting on 8 May 2017.

7. The Minister also explained that making a recording of a Child Welfare Hearing recording “could fundamentally change the whole nature” of these proceedings. The Minister noted that this could make them more formal and that a move to digital recording would also have cost implications.
8. The Scottish Children’s Reporter Administration (SCRA) provided a copy of its proforma for information to illustrate how child hearings are recorded.
9. The petitioner noted in her submission that the child hearings’ proforma could be a starting point for developing a system of recording child welfare hearings. In this regard, she considered that a full verbatim recording of the proceedings may not be required but some record would benefit all those involved and provide continuity in the consideration of each case.

Conclusion

10. The Committee is invited to consider what action it wishes to take. Options include —
 - To write to the Family Law Committee of the Scottish Civil Justice Council seeking its view on the petition;
 - To write to the Scottish Government for more information about the cost implications that a move to digital recordings might have and how these would compare to costs for using a proforma template such as that used by the SCRA
 - To take any other action the Committee considers appropriate.

Clerk to the Committee

Annexe

The following submissions are circulated in connection with consideration of the petition at this meeting—

- [PE1631/A: Scottish Children's Reporter Administration submission of 13 March 2017 \(160KB pdf\)](#)
- [PE1631/B: Minister for Community Safety and Legal Affairs submission of 24 March 2017 \(66KB pdf\)](#)
- [PE1631/C: Scottish Courts and Tribunals Service submission of 29 March 2017 \(23KB pdf\)](#)
- [PE1631/D: Children and Young People's Commissioner Scotland Submission of 4 April 2017 \(46KB pdf\)](#)
- [PE1631/E: Petitioner submission of 27 April 2017 \(87KB pdf\)](#)

All written submissions received on the petition can be viewed on the petition [webpage](#).