



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# PUBLIC PETITIONS COMMITTEE

Tuesday 17 February 2015

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**PUBLIC PETITIONS COMMITTEE**  
**3<sup>rd</sup> Meeting 2015, Session 4**

**CONVENER**

\*John Pentland (Motherwell and Wishaw) (Lab)

**DEPUTY CONVENER**

\*David Torrance (Kirkcaldy) (SNP)

**COMMITTEE MEMBERS**

\*Jackson Carlaw (West Scotland) (Con)

\*Kenny MacAskill (Edinburgh Eastern) (SNP)

\*Angus MacDonald (Falkirk East) (SNP)

\*Hanzala Malik (Glasgow) (Lab)

\*John Wilson (Central Scotland) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Barbara Cummins (Historic Scotland)

Noel Fojut (Scottish Government)

Andrew Graham-Stewart (Salmon & Trout Association (Scotland))

Fiona Hyslop (Cabinet Secretary for Culture, Europe and External Affairs)

Councillor Donald Kelly (Argyll First)

Councillor John McAlpine (Argyll First)

Jamie McGrigor (Highlands and Islands) (Con)

Councillor Douglas Philand (Argyll First)

Olivia Robertson

Michael Russell (Argyll and Bute) (SNP)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Public Petitions Committee

*Tuesday 17 February 2015*

*[The Convener opened the meeting at 09:31]*

### Current Petition

#### Tinkers' Heart of Argyll (PE1523)

**The Convener (John Pentland):** Good morning and welcome to this meeting of the Public Petitions Committee. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with the sound system. We have received apologies from David Torrance.

Agenda item 1 is an evidence-taking session with the Scottish Government and Historic Scotland as part of the committee's consideration of current petition PE1523, by Jess Smith, on giving the Tinkers' Heart of Argyll back to the Traveller people. Members have a note by the clerk and various submissions.

I welcome to the meeting Fiona Hyslop, who is the Cabinet Secretary for Culture, Europe and External Affairs; Noel Fojut, who is the head of historic environment legislation in the Scottish Government; and Barbara Cummins, who is the director of heritage management at Historic Scotland. I also welcome Mike Russell MSP, who has a constituency interest in the petition.

I invite the cabinet secretary and Ms Cummins to make brief opening statements, after which we will move to questions.

**The Cabinet Secretary for Culture, Europe and External Affairs (Fiona Hyslop):** Good morning, convener. I want to say a few words to set the scene before I hand over to Historic Scotland to talk about the details of the case.

The Traveller community's contribution to Scotland's life and culture represents an important and often neglected strand in Scotland's story and deserves to be valued and appreciated as a whole. The Travellers' lifestyle is to move lightly through the land, leaving few physical traces, which is why I think we will all agree that the Tinkers' Heart is so significant. It represents a rare tangible monument to the community's presence in Scotland's landscape.

As the petition itself asks ministers to direct

"Historic Scotland to investigate what action can be taken to ensure the restoration and preservation of the"

Tinkers' Heart, I want to talk briefly about when ministers should and should not intervene. With

the strong support of all parties, we have firmly established the principle that our national collections and other bodies that make curatorial decisions should make such decisions free from ministerial interference—in other words, free from ministerial direction. With the support and encouragement of MSPs of all parties, we applied the same principle to Creative Scotland and in the legislation that created the new body, Historic Environment Scotland, which Parliament passed on 4 November 2014. Neil Bibby MSP and Liz Smith MSP in particular were keen to test ministers' powers of direction under that bill, and all members agreed that it is not the job of ministers to direct what should be scheduled, collected or grant aided. Those are matters for expert judgment against established operational criteria, which in this case are set out in the Scottish historic environment policy and have been developed through public consultation.

It has been suggested that the Tinkers' Heart be scheduled. However, it is important to remember that scheduling is intended for a very specific purpose; it is a means of recognising nationally important sites with a view to protecting them against deliberate damage. In other words, it is an end in itself. It does not change ownership, bring added public rights of access or automatically result in the kind of restoration and preservation that are requested in the petition.

The petition seeks action: action to restore or preserve our heritage does not depend on scheduling. Public and charitable resources, including funds, are available to support communities that want to care for and provide access to important monuments. Those can be mobilised only with sites' owners' agreement. Historic Scotland can do much, but it cannot compel local co-operation.

With your permission, convener, I hand over to Barbara Cummins, who is the director of heritage management at Historic Scotland, to outline what has been done and what further action is in hand.

**Barbara Cummins (Historic Scotland):** Thank you, cabinet secretary, and thank you, committee, for inviting me to attend today. I welcome the opportunity to explain our position.

Historic Scotland recognises that the Tinkers' Heart is of significant cultural heritage interest. We have been positive and supportive since the case was brought to our attention in 2012. For example, we have ensured that the site is properly recorded, we have attended local meetings and we have involved Archaeology Scotland's adopt-a-monument scheme, which we part fund.

The petition calls for the preservation and the restoration of the Heart, with the implication that it should be laid out in good order for visitors as a

physical reminder of the important contribution of the Traveller community to Scotland's history. We would be supportive of such an initiative. However, Historic Scotland can do little to change the situation. We have been called on to schedule the site, but that would not achieve the petition's aims. Those can be achieved only by constructive dialogue and the co-operation of the site's owner and the local community. The chair of the local group—Here We Are—says that the community is well aware that the Heart is a special site, but that it and the owner want it to be preserved as it is. The newly installed fence means that the Heart is protected from cattle damage, which was previously a concern. Historic Scotland can and does encourage co-operation, but as the cabinet secretary said, we cannot enforce it.

On scheduling, there are more than 300,000 recorded monuments in Scotland, of which only about 3 to 5 per cent are scheduled, depending on what part of Scotland you are in. We take seriously the strength of concern about our decision not to schedule the Heart, as well as this committee's strong interest. We are very aware that the monument is associated with, and is especially important to, a marginalised and underrepresented group in Scottish society. Many monuments do not meet scheduling criteria. However, few—if any—have challenged us as this one has.

Just before Christmas, John Finnie MSP asked several questions in Parliament about equalities issues, and asked specifically about whether an equalities impact assessment should have been undertaken when assessing the Tinkers' Heart for scheduling. In view of the exceptional circumstances that pertain in this case, we consider that an equalities impact assessment of the Tinkers' Heart decision should have been undertaken. Such assessments should not be carried out retrospectively, so we have decided to set aside our earlier decision and to start again with a fresh team. I cannot prejudge the reassessment's outcome, and it is important not to raise expectations, but that is the right way forward.

We will inform all those who have an interest in the site of our intention to revisit the case. I would be happy to report back to the committee on progress in that work. We expect the scheduling reassessment to take three to six months, so I will be in a position to provide a progress update in June 2015.

I hope that the committee will agree that that course of action responds to at least some of the public and this committee's concerns. We remain ready to help in whatever way we can.

**The Convener:** Thank you. We will move to questions.

Ms Cummins, in your introduction you said that Historic Scotland acknowledges that the Tinkers' Heart is of cultural heritage significance but that it does not meet the criteria for a scheduled monument. What sites is the Ancient Monuments and Archaeological Areas Act 1979 designed to recognise and protect? What is the practical effect of scheduling a monument?

**Barbara Cummins:** It is correct that, when we assessed it, we did not consider that the Tinkers' Heart met the scheduling criteria, but we will look again at that. That may continue to be our conclusion, or we may come to a different conclusion. Generally the effect of scheduling and the act is simply to recognise monuments that are of national importance, but the legislation does not set out what that means: Scottish historic environment policy sets the criteria under which we assess whether to schedule.

Monuments can have associative characteristics, which is a very strong element in relation to the Tinkers' Heart, so we will be looking closely at whether that element has been applied correctly. We will, in particular, take account of the equalities impact assessment that we will undertake in parallel, and consider whether we are in this instance adding sufficient weight to the associative characteristics.

**The Convener:** The guidance, which seems to be rather complex, distinguishes between associative, contextual and intrinsic value. How do those concepts help us to identify and recognise sites of national importance and why does the guidance ascribe a higher value to intrinsic qualities than to other qualities?

**Barbara Cummins:** I suppose that there has to be a physical thing or item to consider for it to be scheduled as a monument. The first thing to consider is whether we can identify a site or structure, or evidence of man's intervention. That is why the intrinsic value is the primary concern. We will in this instance, given the interest that is being shown, revisit whether we are applying that too strongly to the detriment of the other characteristics. We need to consider whether we have ascribed too high a value to one characteristic in the scheduling criteria. I do not want to prejudge that now, but I am prepared to accept that it may have been the case in the past.

**The Convener:** You are going to review that.

**Barbara Cummins:** Yes—we will review that.

**The Convener:** The cabinet secretary touched on the next issue that I want to ask about. I will give you the opportunity to expand on it. Do you have any plans to extend the types of sites that are eligible for listing under the guidance or, alternatively, to create a separate national policy on recognition, protection and promotion of sites

that are of cultural importance but which do not meet the criteria to become listed monuments?

**Fiona Hyslop:** One thing to be aware of is that we are in a process of transition, with the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. I talked about the Historic Environment Scotland Act 2014, which set out what ministers should or should not do through direction. The act also made changes to improve scheduling and listing procedures. That will require a new set of regulations to be laid, and a public consultation is under way—it was launched on 19 December and ends at the end of March. That is an opportunity to consider afresh the impacts of heritage management work on a range of interests, including in equalities, business and the environment. We want to ensure that Scotland's heritage is managed in a way that meets the needs of the 21st century.

On your earlier question about the value of intrinsic and associative characteristics, each generation probably has different associations about what is nationally important than might have been the case in previous years. As Barbara Cummins has set out, the particular site that we are discussing has challenged us in ways that other monuments might not have done because of its characteristics. If the committee has a view about the issue, the consultation that is under way is an ideal opportunity for it to express its views.

**John Wilson (Central Scotland) (Ind):** Ms Cummins, how many existing listed monuments originate from minority cultures? The petition is about the recognition of a minority culture within the wider context of Scotland. Are there listed monuments whose origins can be traced to minority cultures?

**Barbara Cummins:** That is not how we have recorded the monuments that we have scheduled or the buildings that we have listed. We would be able to identify listed buildings that are associated with minority cultures, but that is not how we have recorded things as they have evolved over time. We quite often do not know the origins of the creators of scheduled monuments; there is evidence of human activity, but we do not know who those humans were, so it is difficult to identify the creators. We will have, in the new organisation—Historic Environment Scotland—to consider how in the future we will capture information about groups that are represented in the historic environment.

09:45

**Fiona Hyslop:** We have to remember that some monuments are thousands of years old. How do we know who was a minority at that time? That is

quite a historical challenge, but it is a point that we can very much take into account in deciding how to move forward. In fact, that is why I have given my invitation to the committee; if the committee feels that the issue in the petition is important, that will provide a good basis for informing things. The fact is that we cannot unpick what happened thousands of years ago or reschedule, renominate or reclassify retrospectively, but we can try to deal with things going forward, and the petition provides us with an opportunity to do so.

**John Wilson:** I fully understand the point that some of Scotland's standing stones predate the pyramids and that the question who originally built the sites is a matter of some dispute. I am well aware of the history of some sites; clearly, with modern listed monuments, we know who the architect was, who commissioned the work and what the original purpose of the building was. Does Historic Scotland, where it can, keep a record of the origins and purpose of listed ancient monuments? As I have said, there are many buildings in Scotland from the past 300, 400 or 500 years that we can trace back, and we also know who constructed the Antonine wall. Can we get to a situation where Historic Scotland can give us some idea, particularly in a modern context, of the significance of sites to minority cultures and where such listings have come from?

**Barbara Cummins:** We certainly include that information in the data that we capture when a building is listed. When that happens, there is a list description that says where and what the property is. It gives its history, including who the architect was, who commissioned it and what it was used for. If a particular minority had commissioned the building or had a history of using it, that would be part of the history of that building.

However, the inclusion of full data in a listing proposal is a relatively recent phenomenon. With the advent of computer systems, it is possible to search records; in fact, we are constantly trying to upgrade the search facility for the listings search on our website to allow, for example, the use of keywords.

One of the nuances in all of this is how we define "minority community"; after all, certain communities might identify themselves as distinct entities, but we might not realise that they want to be identified in that way. With a well-known, well-documented and well-considered group such as the Traveller community, that sort of thing can be pulled out, but there might be groups that want to search for physical evidence of their background but we cannot easily provide them with that material. There are more than 47,000 listed buildings in Scotland, and it is very difficult to search through individual records to pull out such information. As I have said, we are constantly

trying to update our data to make that sort of search a bit easier; however, we are doing that going forward, and there is a legacy of older decisions that were made by our predecessors for which the same approach is just not possible.

**John Wilson:** Does Historic Scotland actively seek out interested groups in relation to listed monuments? Of course, such an approach is easy with historic church buildings and the relatively modern church buildings that are listed, but with regard to other monuments, do you actively seek out minority groups or individuals who might have a particular interest in or association with the monument?

**Barbara Cummins:** We have not done that, specifically. We tend to focus on themed areas. At the moment we are undertaking a review of courts and prisons. Part of that is because the public estate is considering its assets and disposing of some, so where we think there is an issue we address it.

Clearly there are communities that are poorly represented in terms of the historic environment and what is designated at national level, so we are giving active thought to that as a part of the thematic reviews.

**Hanzala Malik (Glasgow) (Lab):** Good morning, cabinet secretary. I am hoping that Barbara Cummins will answer this question. We have trusts up and down Scotland. What level of engagement have you had with them? Has your board had direct contact with some of the boards on how you would want to see this progress? Might you finish the whole process with some sort of national conference in which you could bring all the ideas together and then publish a meaningful report?

**Barbara Cummins:** I am not quite sure that I understand. Is your question in relation to the Tinkers' Heart itself?

**Hanzala Malik:** It is in relation to what we are trying to achieve on identifying heritage sites and the upkeep of those sites. It is becoming more and more evident that we will need help from communities, businesses and others. What level of engagement have you had with trusts to achieve that goal?

**Noel Fojut (Scottish Government):** I might be able to assist. It is fair to say that, to date, communities have self-identified and asked to be involved in processes, as in this case. There is an active community heritage community and archaeology network across Scotland. We have an annual conference every year; last year's was held at Crieff. There are already ways in which communities can come together and have that discussion with the professionals, if you like.

That will develop. It is only one sector. There are other people who feel that community engagement should be different—that it should not all be focused on archaeology and doing projects but should be more about recognition of lifeways and so on. There are already forums in which that could take place. The first way would be to use the existing mechanisms by which community groups come together to speak to professional archaeologists and others who are interested in this whole area of work.

**Fiona Hyslop:** It is quite a complex area, but I draw to the member's attention the fact that, for the first time ever, Scotland has a historic environment strategy. As part of that, I pulled together a historic environment forum, which for the first time brings together all the interests, including from community planning and other areas. There is a load of workstreams underneath that and different parts of the historic environment community are helping to lead on areas. The National Trust for Scotland is very much involved. It has great expertise in education and engagement, and one of the strands is about community engagement.

The strategy was launched last year and we are bringing everyone together. Some of the issues will be about what we do for the country as a whole and themes that we might want to take forward. The strategy provides an opportunity to get better engagement nationally so that voices are heard that might not otherwise have been heard within our historic environment.

We are looking at developing our first conference, following the historic environment strategy, but I cannot predict what subjects there will be. The idea is that we must separate the them-and-us perception between the owners of historic buildings—Historic Scotland, the National Trust or whoever—and the communities who live where the buildings are. One of the real drivers for change is the fact that local communities' knowledge is often better than that of the professionals. We are asking how to engage with that better. That is very much at the heart of "Our Place in Time", which is our historic environment strategy. That conference might be a vehicle to take forward what Hanzala Malik is suggesting regarding the opportunity to share that experience.

**Hanzala Malik:** That is helpful, but I am talking about Historic Scotland leading, in a way. What engagement does it currently have with the various trusts in Scotland? At the end of the day, if we are going to get our pound of flesh, we need to ensure that we are engaging with everybody and that everybody has access to you and vice versa. I am trying to prise out the level of engagement that you have at the moment. Do you need more opportunities to develop that engagement?



**Barbara Cummins:** The answer to both questions is yes. We currently engage with local trusts. As Mr Fojut said, that tends to be as a result of trusts self-selecting. An issue will come to our attention or we will be in an area, doing a piece of work, and we will engage with a trust over a particular site or piece of work that the trust is undertaking. The trust might come to us for grant funding for a project.

There are many means by which a trust will approach us for our support, and we always try to give that support. In some cases, it can simply be the act of verbal support and providing staff time for work. For example, one of my members of staff is working with the friends of Eyemouth fort, which had a parliamentary reception recently to celebrate its work. The trust is doing all the work and is driving the process, but with the support of Historic Scotland, local businesses and the local authority. Our role is often to bring people together. As I said, one of the key issues is to promote co-operation. However, we can only promote co-operation; we cannot compel it.

Would we like to do more? Absolutely. Through the historic environment strategy, historic environment Scotland will be considering how to do that, with the resources that we have.

**Hanzala Malik:** That is exactly what I am driving at. I do not know whether we can support you in that engagement, but that is what interests me. I do not want trusts to feel that they have been paid lip service, which is why it is important that we recognise how deep the engagement must go. Lip service is not good enough for what we are trying to achieve, cabinet secretary.

**The Convener:** The opportunity for partnership working is there.

**Kenny MacAskill (Edinburgh Eastern) (SNP):** I want to build on the questions from John Wilson and Hanzala Malik, which seem interlinked. First, are you satisfied that current heritage protections sufficiently promote and protect our diverse heritage, including the contribution of minority cultures? As a follow-on from that, what equalities safeguards exist in the current guidance, especially for those communities where written records and so on are not so easily available? Finally, as a consequence of public sector equality duty requirements, do you anticipate any changes? If so, will they have any effect on the Tinkers' Heart?

**Fiona Hyslop:** I will start on that and then ask Barbara Cummins to answer the final point. We are actively in consultation, which is about asking what will be important in scheduling and listing, how we can improve the procedures around that and whether we need to ensure that equalities issues are more at the forefront than they might

have been in, for example, 1979, when some of the legislation that we are referring to was first established.

SHEP—the Scottish historic environment policy—was initiated in the early 2000s and refreshed in 2011. Lessons can be learned from the petition that can be fed into that. We can certainly do that, but it might be helpful if the Public Petitions Committee decided to do so, too.

I ask Barbara Cummins to deal with the point on the equalities duty.

**Barbara Cummins:** We will be instigating new processes and procedures to set up the new organisation, historic environment Scotland, so we will be revisiting the services that we deliver and the processes that we undertake to deliver those services. As part of that, we will have to undertake an equalities impact assessment of those processes to ensure that they are robust and that we are not undervaluing particular areas or disenfranchising particular groups or parts of our community. That is our intention. Clearly, this case accelerates that in relation to the scheduling process. I am sure that we will learn a lot from that.

10:00

**John Wilson:** I have a question on the issues that are raised in relation to the Tinkers' Heart. I was interested in the comment that the cabinet secretary made in her opening remarks that scheduling would go ahead only if there was agreement with the owner of the site. That is an important point for many communities that are trying to achieve their ambition to have a historic monument recognised and to preserve it for the future. If there is no agreement with the site owner, what can Historic Scotland do to ensure their co-operation so that the monument is recognised and preserved?

In the past, things have happened to the site that is referred to in the petition. For example, cattle have gained access to the site and damaged it. Although the current owners have done some work, the difficulty for the petitioner is that there is still much to be done to preserve the site and recognise it as a historic monument for the Traveller community in Scotland.

**Fiona Hyslop:** That is the nub of the issue. As I said, we can reconsider the scheduling—that will be done using the criteria that Barbara Cummins set out—but on restoring and preserving the site, which is what the petition requests, we must consider what restoration and preservation would mean. What would it look like for all the communities involved, including the Traveller community and the local community? The co-

operation of the owner is needed to make improvements or even maintain what is there.

The vast majority of monuments—we have about 300,000—are in some form of private ownership. People do not hear about the very good co-operation with owners and the role that they play in looking after monuments. Hanzala Malik made a point about local trusts and communities. The adopt-a-monument scheme, which is funded by Historic Scotland but run by Archaeology Scotland, is aimed at getting better community involvement. The point is not so much who owns a monument but who cares for it. We want monuments to be cared for, and that is what happens in the vast majority of cases.

If there is no co-operation from the owner—that is highly unusual, because the majority of owners are involved day in, day out—it can be difficult. Historic Scotland can facilitate conversations, which Barbara Cummins can perhaps say more about. The process that Historic Scotland is now embarking on in relation to the Tinkers' Heart may help in facilitating conversations so that there is a common understanding. However, to make progress, we need co-operation and a new arena or space for the local community, the landowner and the Traveller community to come to an agreement about what is needed. That is the way forward in dealing with the issues that are raised in the petition.

As cabinet secretary, I would not direct Historic Scotland on a particular site that it currently looks after, and I cannot direct Historic Scotland in relation to a site that it does not look after. I can provide advice, based on my experience of being cabinet secretary for a number of years. Much of it is about good communication and good relationships. Perhaps the process of looking at the scheduling in a new light, bearing in mind the equalities duties that Barbara Cummins referred to, will be an opportunity for people to have those discussions anew.

**Michael Russell (Argyll and Bute) (SNP):** I welcome the decision to review the scheduling, which is helpful.

I have the advantage of having been at the site—I drove past it this morning and visited it last Monday—and I have some photographs that I would be happy to provide to the committee. The reality of the site is rather different from what we have heard.

The landowner, Kate How, wrote to the committee on 14 December 2014 and said two things that members might want to consider. First, she said:

“As you are aware neither the Scottish Parliament nor Argyll and Bute Council feel that the site is of sufficient historical interest to merit a listing.”

That is her understanding of the listing process, which is that the site is not important enough to be listed. That says something significant. She goes on to say:

“I can assure you that the site is well looked after and protected against cattle.”

She continues:

“I consider that enough has been done to ensure that everyone wishing to visit the Tinkers' Heart can do so.”

The pictures that I have show a rather different story, however. There is an agricultural trailer parked virtually next to the heart. There is a sign on the gate but with no apostrophe in “Tinkers' Heart”, although we shall let that pass. The sign says:

“Tinkers and other local people used to be married at this spot, as it was a central meeting point.”

That is not true. That is not the reason; it was because the site was sacred to the Travelling people and others. The sign continues:

“For example Isabella Brodie, Laglingarton, and John Luke, Cuil Cottage, were married here in 1872.”

That rather cleverly chooses two people who were not Travellers to advertise the site.

The sign continues:

“The heart has recently been refurbished and protected thanks to: Ardno Estate and Here We Are.”

To refurbish a site of this importance would presumably require some professional assistance. Was any sought from Historic Scotland?

**Barbara Cummins:** Not that I am aware of, no.

**Michael Russell:** So a site of this importance has been interfered with by a landowner, who now thinks that it is sufficient unto the day, essentially.

I wonder whether Barbara Cummins would address a further point. I was very surprised by her remark that Historic Scotland is powerless, although I appreciate that it is a difficult issue. When people interfere with scheduled monuments and historic buildings, the law can be used. I suppose that one could call in evidence the endless case of Castle Tioram or the case of Rowallan Castle. There would be the possibility of preventing further damage to the site and helping the landowner to have better access. At present, it does not matter what the Travelling community thinks; the landowner has said what she thinks and she thinks that the case is over and done with. Am I right about the protection of sites?

**Barbara Cummins:** Yes and no. If a site is scheduled, it is protected from deliberate damage. If it is not scheduled, it is not and there is no obligation there. There is protection under the planning system from change through the planning process. Change has to be taken account of as

part of that decision making. Consent is not required to carry out works to a monument if it is not scheduled. If it is scheduled, scheduled monument consent is needed before any intervention is made to restore or excavate, for example. At the moment, works could be carried out to the monument without consent. Going ahead without involving Historic Scotland in the work that has been undertaken so far has not breached the law.

**Michael Russell:** You would not regard it as good practice for any scheduled monument to build a metal case around it, park an agricultural trailer next to it and have an inaccurate sign on the gate that does not tell the truth about it. That would not be the standard that Historic Scotland would aspire to. It would not want to see our monuments being treated in that way.

**Barbara Cummins:** There would be little that we could do if the activities did not intervene within the scheduled area. Activities are undertaken on agricultural land around monuments all the time. They could impact on someone's enjoyment or appreciation of the monument, but we cannot intervene.

**Michael Russell:** With respect, what I actually asked you was: if an agricultural trailer was parked next to such a site, or an extremely ugly metal container was put around it, and if there was a notice on it that did not tell the truth about it, that would not be good practice, would it?

**Barbara Cummins:** That would not be what we would want to see at our own sites.

**Michael Russell:** Thank you.

**Angus MacDonald (Falkirk East) (SNP):** I was certainly pleased to hear the cabinet secretary acknowledge the importance of the Tinkers' Heart, and it is clear from her comments that the scheduling of the monument rests fully with Historic Scotland. However, I also noted Barbara Cummins's comment that scheduling would not achieve the aims of the petition, although I was pleased to hear that there are exceptional circumstances in this case, and it was heartening to hear that the case will be revisited.

There seems to be a degree of intransigence on the part of the landowner, as Mike Russell said. It is unfortunate, to say the least, that she has not been more accommodating. I was struck by Mike Russell's comments in *The National* newspaper a few days ago. Mr Russell is here, but I will quote a paragraph from the piece.

**Michael Russell:** I am always delighted to be quoted.

**Angus MacDonald:** He said:

"The Heart needs the creation of proper access (which would be easy as there is a disused road right next to it which could be made into a small parking area), the installation of sympathetic information boards, upgraded surroundings and proper care."

The salient point in the paragraph is:

"A progressive landlord would give the small area involved to a trust made up of Travellers and local people and that solution needs to be taken forward."

If the landowner were to gift or lease the site to allow access for the Travellers and their trust, I believe that that would go a long way to resolving the issue on the ground.

Historic Scotland states in its letter to the committee that financial assistance is available to the owner of the site of the Tinkers' Heart to care for the site. I presume that that would apply to any trust that was allowed to take over the site. What is the process for applying for those funds, and what sum can be applied for, should the landowner or a trust wish to apply?

**Barbara Cummins:** How long is a piece of string? It very much depends on the project that comes forward—what it is for, what support it has and what it is trying to achieve. We have funded all sorts of projects by local community bodies for the betterment of monuments, whether that involves improving a monument or its interpretation, or putting in place protective measures around it. We have funded all sorts of things like that and, generally, it does not involve large sums of money to achieve those things.

**Angus MacDonald:** Let us say that funding was applied for for the formation of a parking area on the disused section of the old road, for example.

**Barbara Cummins:** I do not know whether we would fund the creation of a car park. Such developments are generally seen as new works that are not necessarily associated with the monument itself. If funds are required to achieve an overall project that includes a car park, it could be part of that wider package.

We have not seen anything come forward for us to respond to. We have various grant funding programmes that can be applied to, but the co-operation of all parties is required. A private landowner must give their permission in order for a grant funding proposal to be successful.

As the cabinet secretary said, perhaps the conversations that will start as a result of our revisiting the case will create a different environment in which different conversations can be had and more co-operation can be fostered.

**Angus MacDonald:** That would certainly help to move things forward.

Is the cabinet secretary satisfied that sufficient funding is available under the current heritage protections to maintain the listed monuments?

**Fiona Hyslop:** As you all know, we are in challenging financial circumstances. Any support from the petition to increase my budget would be greatly appreciated, but the reality is that we have to manage within the constraints that exist.

One thing that I have been absolutely clear about is that, despite a significant reduction in my budget in recent years—and, as I have one of the smallest budgets, reductions can have an even bigger impact—I have managed to maintain Historic Scotland's grant spend. That was a very important part of what I wanted to do, because grant spend is spent in local communities. It usually involves local contractors, such as building merchants and others in local areas, and it helps to ensure that skills and training can be maintained in a difficult environment. Within challenging budgets, I have managed to maintain the grant spend that goes to outside organisations, whether through large organisations such as the National Trust or small organisations such as the trusts that Hanzala Malik referred to.

As I said in my opening statement, I would not micromanage when it comes to the awarding of grants. I cannot and should not tell Historic Scotland which projects or trusts to fund, but I can provide the overall pot to allow it to fund particular projects. That has been extremely challenging.

In addition, there are challenges ahead as regards our estates, both those that are cared for by Historic Scotland and those that are not but which need funding and preservation. Our built heritage is at the heart of our tourism industry—people come to Scotland to see what we have. It is very important that we protect that. Any support that I can get for the built environment, either through the petition or from members generally, would be greatly appreciated.

**Angus MacDonald:** With regard to the overall pot that is provided by the Scottish Government, has any assessment been made of what funds will be needed now and in the future to protect Scotland's listed monuments?

**Fiona Hyslop:** Gosh—that is the million dollar question. We are assessing what is required across the country. That will be a large amount, because we cannot have health and safety issues. If there are concerns about our properties in that regard, they may need to close, so constant investment is required.

We are also co-operating with others. I mentioned the historic environment forum. In addition, the National Trust has undertaken a review of its properties. The methodology that it used and the lessons that it learned are being

shared with Historic Scotland. The work is being done. In addition, I have engaged with the relevant parliamentary committee, the Education and Culture Committee, on the issue.

10:15

**Angus MacDonald:** Thank you very much.

I have a salient point to put on record. It is noted in some of the submissions that we received that the Tinkers' Heart and the old road that was stopped up would have been provided to the current landowner free of charge.

**Fiona Hyslop:** Sorry?

**Angus MacDonald:** When the old road was stopped up, it was owned by Argyll and Bute Council. It was transferred at that point, free of charge, to the current landowner.

**Fiona Hyslop:** Ah, right.

**Noel Fojut:** We would need to double-check this, but it is quite common for the land underneath public roads to remain in the landowner's ownership. The council uses the land for as long as it is needed and then returns it to the landowner. Therefore, I think that it is true that the road surface and the work that was done to the Tinkers' Heart were done by the council, but the landowner probably retained ownership of the solum—I think that that is the correct legal term—throughout the period, from beginning to end.

**John Wilson:** I am sorry to come in again, but there is an issue that I want to get on the record while Ms Cummins and the cabinet secretary are here. In response to an earlier question, Ms Cummins said that she would expect the co-operation of all parties in progressing the matter. The cabinet secretary referred to the need for agreement with the site's owner.

From the information that we have been provided with, there seems to be some intransigence on the part of the owner to accommodate what the petition is looking for. I know that all the issues that are raised in the petition might not be able to be accommodated because of the damage to the site, but what will happen in the event that the site's owner is not prepared to co-operate or to work in partnership with the petitioners and the community that they represent? Other than just leaving it to the owner to decide what happens to the site, does Historic Scotland or the Scottish Government have any powers to ensure that it is preserved in the way that the petitioner is looking for? Mike Russell alluded to the site not being presented at its best, so what hope do we have that the site will be preserved in a way that is appropriate for and meets the needs of the Travelling community?

**Fiona Hyslop:** Quite clearly, that would need the co-operation of the landowner. I suggest that the local community and the Travelling community would also need to be involved. That tripartite approach is the way forward.

On what can be done, ultimately, the site could be taken into compulsory ownership. Such an approach would be highly unusual. I asked officials to identify whether that has ever been done by a local authority or by Government and we can identify no precedent for that. That would be a last resort; it has not happened in any other cases. However, as Angus MacDonald indicated, other options are available, such as a trust arrangement or guardianship.

As far as situations involving unco-operative landowners are concerned, there is the proposed land reform bill and the community empowerment legislation. The petition relates to a specific case, which is unique for many reasons and must be treated as such—that is why I welcome Historic Scotland's decision to revisit it—but there are bigger issues at stake to do with landowners and their relationships with local communities. Those issues will not be resolved by Historic Scotland in a single case, and they will not necessarily be resolved by the petition; they beg bigger questions.

My job is to manage the whole of the historic environment and to work alongside all the good practice on the part of all the landowners. I would not want to compromise my relationship with them by doing something in one case that might jeopardise that fruitful and productive relationship that we are building with the wider sector.

**Michael Russell:** I want to point out to the committee that a trust has been established by the Travellers in Scotland, who have shown great willingness to work with the Here We Are team, which has a great association with Mrs Howe and her family and is keen to work with the community. There is a vehicle that is available to undertake this task. If the committee encouraged that, it would be playing a helpful role. Similarly, if Historic Scotland encouraged the landowner to be more co-operative, that would be helpful, too. I know that RCAHMS met the landowner, but I do not think that Historic Scotland has done so yet. It would be useful if it did so and tried its charms on them.

**The Convener:** As there are no further questions, I ask the committee to decide what action it wishes to take on the petition. Members have a note from the clerk that sets out a possible course of action. Do colleagues have any views?

**Angus MacDonald:** It would be good if we could get a paper from the clerks that covered everything that has been discussed today.

I would be keen to keep the petition open until the issue has been revisited by Historic Scotland and we find out what the outcome of that is. I believe that Barbara Cummins mentioned that that would happen in three to six months' time. I pick up on the cabinet secretary's suggestion that the committee should feed into the consultation. Perhaps we should also write to the Rural Affairs, Climate Change and Environment Committee to highlight the issue in advance of the land reform bill going through the parliamentary process.

**Michael Russell:** Would the committee be prepared to write to the landowner to encourage co-operation? I think that a little bit of gentle persuasion, along with a copy of the cabinet secretary's evidence, might help the landowner to understand that it is highly unusual for a landowner to say that they considered that enough had been done to ensure that everyone who wanted to visit a site could do so and to understand the difficulties around that. If Historic Scotland were also to do that, that would be a two-pronged attack.

**Hanzala Malik:** I am interested in Historic Scotland's comments about legal recourse to protect sites in Scotland. We want to ensure that, if all other efforts fail, there is some sort of legal recourse for the protection of sites. Some recommendations in that area would be helpful. People can sometimes damage sites without realising. We have to give people an opportunity to redress that.

I would be surprised if owners of heritage sites did not want to maintain them, because the sites are probably just as important to them as they are to anyone else. We need to work hand in glove with people but, if all other reasonable efforts fail, there might be a need for legal recourse to protect Scottish heritage.

**The Convener:** Do members agree with the proposal that has been put forward? Do we agree that we want to write to the owner?

**Members** *indicated agreement.*

**The Convener:** I thank the cabinet secretary and Barbara Cummins for attending.

I suspend the meeting for a couple of minutes.

10:24

*Meeting suspended.*

10:25

*On resuming—*

## New Petitions

### A83 (Rest and Be Thankful) (PE1540)

**The Convener:** The next item of business is consideration of three new petitions. The committee agreed to hear from the petitioners in all three cases. The first new petition is PE1540, by Douglas Philand, on a permanent solution for the A83. Members have a note by the clerk and a Scottish Parliament information centre briefing on the petition.

I welcome Councillor Philand and his colleagues, Councillor Donald Kelly and Councillor John McAlpine, from Argyll First. Mike Russell MSP will stay for consideration of the petition, as he has a constituency interest. Jamie McGrigor MSP is also in attendance, as he, too, has a constituency interest in the petition.

I believe that Councillor Philand wants to make an opening statement.

**Councillor Douglas Philand (Argyll First):** I thank the committee for giving us the opportunity to present the petition. I give special thanks to Michael Russell and Jamie McGrigor for their support today, which illustrates the level of cross-party support that we have among MSPs. We also have the support of our MP, Alan Reid, Argyll and Bute Council, our community councils and our business community. In effect, we are advocating on behalf of Argyll and Bute, although the petition is in my name. That is an important point to start off with.

It is equally important to point out the tremendous amount of work that the Scottish Government has done up to this point. There is absolutely no doubt that, when we lodged a previous petition two or three years ago, we would not have had as much attention focused on the A83 had it not been for the intervention of, initially, the Public Petitions Committee and then the Scottish Government. That must be recognised. The evidence that we are presenting to the committee is intended simply to point to the vulnerability of what has been agreed and put in place. Is it a permanent solution? We believe that it is not. That is what we will put forward in evidence and in answer to any questions that the committee may put to us.

There was a meeting of our task force on 14 January in relation to our most recent event, the landslide in October 2014, and a report was given back. Specific mention was made of the netting that was installed to protect the roadside. The

notes of the meeting state that, according to Eddie Ross of BEAR Scotland,

“2500 tonnes of material came down the hillside”

and that he

“made reference to fence 4a being struck during that event.”

The notes go on to say that Eddie Ross

“indicated that the previous largest landslide was 1000 tonnes”

and that he

“confirmed that 1700 tonnes of material was caught by the fences, including boulders, ultimately saving the A83 carriageway structure.”

Eddie Ross then

“indicated that the fence was designed to withstand 1000 tonnes, so it successfully held more than anticipated.”

It is a poignant point that, although the fence was designed to withstand a landslide of 1,000 tonnes, we cannot predict the size of a landslide. Here we had a 2,500-tonne landslide and its effects.

There were other consequences arising from that particular incident. At that meeting, Michael Russell brought up the fact that the old military road had been flooded on two occasions, meaning that our contingency route was cut off and motorists had to make a 65-mile round trip to get into Argyll. Also, particularly if there has been a landslide at night, risk assessments have to be done, which takes time. That is totally understandable for safety reasons.

The problem is the unpredictability of the events. We hear that the nets can take a landslide of up to 1,000 tonnes, but we have a 2,500-tonne fall. What effects will that have, and what other sizeable landslides will there be? That is important factual evidence for the committee to hear. As I have said, we advocate the creation of a permanent solution. We believe that, despite all the hard effort and hard work that have been put in, the current solution is not a permanent one, and the evidence of that can be seen in some of the reports that we have had.

With your permission, convener, I ask Donald Kelly to give the committee some more information, after which we will, of course, be happy to take questions.

10:30

**Councillor Donald Kelly (Argyll First):** To add to the points that my colleague Councillor Philand has made, I note that Argyll and Bute Council signed up to the single outcome agreement. As everyone in the room knows, we have suffered greatly from depopulation; the A83 is the main arterial route into Argyll and Bute, and the

problems that we have had and which we continue to have with the Rest and Be Thankful are certainly putting businesses off from moving into the area, with all the uncertainty that they are creating. The regular flashing lights on the Rest and Be Thankful mean that, even if there has been no landslide, there is a pre-warning of one, which also leads to a lot of uncertainty. Every time it is wet, the lights seem to go on, and Transport Scotland widely distributes an email about the risk of landslide. Numerous businesses have been affected by all that. People—tourists, in particular, and even students at university—are being put off, feeling that the travel is just too onerous. For example, they find themselves unable to link up with buses or trains at the other end in Glasgow.

We came here with our previous petition in 2012. Although three of that petition's component parts have been addressed, its key part was the establishment of a permanent solution for the A83 at the Rest and Be Thankful. At the time, the committee agreed to take that forward. However, despite the various measures that have been put in place, we have had what is basically a piecemeal approach. Every time there is a landslide, more netting is put in place in that location to resolve things. What the community has referred to as a sticking-plaster approach has been going on for three years now. Our petition was signed by 10,000 people in Argyll and Bute, more than 400 businesses within and outwith the area, all the community councils, all the MSPs who represent the area, the MP, the chamber of commerce and so on, and those people are still looking for a permanent solution. The bottom line is: if this situation had occurred on the Royal Mile in Edinburgh, something would have been done and it would have been resolved by now.

I feel very aggrieved in some respects. Although I take on board Councillor Philand's comments about the money that has been spent, the report that was commissioned from Jacobs put various options on the table and obviously the cheapest option was the one that people went for. However, that is still causing problems. When I have asked at several task force meetings that the task force and the Government consider working up one of the other options to ensure that it is ready should a major landslide occur on the A83 that cuts us off, I have been told, "No. We'll just continue with this approach for the moment." Argyll First will continue to campaign until a proper solution to the problem has been put in place.

**The Convener:** Do you want to add anything, Mr McAlpine?

**Councillor John McAlpine (Argyll First):** Not at this point, convener. I am happy with what my colleagues have said—they have summed things

up very well—and I welcome any questions that the committee might have.

**The Convener:** Do members have any questions?

**Michael Russell:** As you know, convener, I support the intention behind the petition, but I should point out that the most recent meeting of the task force was attended by the council's deputy leader, Ellen Morton. She heard a presentation from the new minister, who accepted the principle of continuous access that I think we are talking about; moreover, in response to a point that I made, the task force agreed to meet earlier than July, which is when its next meeting was scheduled for, and to start the consideration of an alternative route that could be put in place. As a result, a lot of what the petitioners are arguing for is already happening.

Now that the council is fully represented on the task force, I wonder whether it is possible for it to use the task force in a way that I am conscious it has not been used up to now and to put forward the strong argument from the council's perspective as well as the perspective of the elected MSPs and the community that the planning for the alternative route now needs to be put in place.

There is no agreement yet on what that alternative route should be. Some options, such as the tunnel, have been ruled out, but others, such as the forest road, the upgrading of the old military road, or a lid over the road—the Donald Clark option as it is known, because he writes letters to the papers about it every week—are still open. Would your group, as part of the administration of Argyll and Bute Council, start to use the A83 task force for that purpose?

**Councillor Philand:** Yes. It was unfortunate that, on that particular day, Donald Kelly and I could not make it, as the weather was particularly bad. However, we have attended regularly and we were represented on that occasion.

To answer Michael Russell's question, there are avenues and possibilities to explore, which is what we are doing. We are using the democratic process and exercising our right to ask for the support of the committee, too. Even though the task force was in place, the committee was extremely effective in allowing us to move to where we are at.

**Michael Russell:** The only point of difference is whether continued investment in mitigation, which is not yet finished, should take place before there is further planning for a permanent alternative route or whether the two things should proceed in parallel. Whatever position the committee chooses to take, I agree with Donald Kelly, Douglas Philand and John McAlpine that, although mitigation is necessary, it needs to happen at the same time as

planning for an alternative route. That is the point of agreement and the most effective course of action.

Am I right in saying that, Douglas?

**Councillor Philand:** Yes.

**Councillor Kelly:** I fully appreciate what Mr Russell is saying and I take his point on board. However, the bottom line is that, when we came to the committee three years ago, the committee agreed that a permanent solution would be the ultimate objective. After another three years of disruption in Argyll and Bute, we still have no permanent solution. The issue needs to be fast tracked. If we continue down this line, without pushing and pushing hard, we will get nowhere. I fully take on board what Mike Russell is saying, but we need to have an endgame. We need a timeline for how we will move forward because, if we do not have that, I fear that we will be in the same position in another 10 years' time.

**Jackson Carlaw (West Scotland) (Con):** I apologise for arriving late.

To follow on from what Mike Russell said, I remember the previous petition, although I think that it had a long-running history before I joined the committee. I am slightly unsure as to what you are asking us to do. When I look at your current petition, it appears that you are asking us to urge the Scottish Government to find a permanent solution. I am sure that the committee would be happy to write to the Scottish Government encouraging it to do exactly that. However, as far as I can see, the petition is not asking us to become some arbiter as to what a permanent solution might be.

Some members of the committee might be slightly less familiar with the area. Like others, I have been on the road and have been diverted, so I understand the issue and I would be bereft if Jamie McGrigor and Mike Russell were prevented from arriving at Parliament because of some landslip on the road—I am sure that that would be a great loss to us all.

If you are asking us to find a solution, I am not sure that we are the ones to do that. As with the previous petition, we are very keen that a solution be found, because it is a problem of enormous longstanding. However, from the submissions that I have received, I am not clear about any more detail, other than, as Mike Russell rehearsed, the various outline options that have previously been advertised.

What exactly do you want the committee to do?

**Councillor Kelly:** As far as I am concerned, we are back to square 1. We have come back to the very start of the petition. There has been an attempt to find a permanent solution, which, as the

committee agreed three years ago, should be the ultimate goal, but that has failed. There is a piecemeal approach to landslides, which are adversely affecting the whole community of Argyll and Bute. There are also problems with the continuing work on the A82 so, if there is a problem with the A83, we are cut off completely.

I urge the committee to write directly to the Government and put a bit of pressure on it to take up one of the solutions that are already on the table, because it is not moving the matter forward at the moment. A couple of task force meetings back, when Keith Brown was the minister responsible, he said that the Government had done the red route as it calls it—that is, the work on netting the Rest and Be Thankful—and that that was as much as it would do at that moment. To me, that is not acceptable, because we are in the same situation as we were in when we first came to the Parliament to petition on the matter.

I am sorry if I am repeating myself, but I feel strongly about the matter. There is a lot of dismay in the wider Argyll community about how it is being moved forward. Closures adversely affect businesses, which affects jobs. They also affect tourism. I mentioned the single outcome agreement. We are trying to portray Argyll and Bute positively as open for business. Regardless of how much work is done elsewhere removing pinch points and on road surfaces, for example, the A83 is the arterial route and the matter needs to be addressed.

**Jackson Carlaw:** Convener, I do not want to pre-empt the discussion and I know that Jamie McGrigor would like to comment, too, but it seems to me that all that the committee can do at this stage is write to the Government and Transport Scotland and, perhaps, having considered what they have to say, take further evidence if that would assist in trying to move the matter forward. I am at a loss as to what we can usefully contribute beyond that at this point.

**Councillor Philand:** That is effective and would be very welcome, because you would be helping the residents of Argyll and Bute as a cross-party committee. You have taken the issue seriously but, as Donald Kelly says, we need to get to the end point, which is a permanent solution. Therefore, your support would certainly be welcome.

**Jamie McGrigor (Highlands and Islands) (Con):** I am most grateful to have the opportunity to comment. I would like to make a short statement, if I may.

I support Councillors Kelly, Philand and McAlpine, as I did three years ago, and commend them for their continuing and impressive efforts to maintain pressure on the Scottish Government on



this major strategic transport issue. I have been doing that myself.

The A83 trunk road is the arterial route into Argyll and Bute and the repeated closures of it because of numerous landslides at the Rest and Be Thankful leave much of the region cut off. Closures hit businesses throughout Argyll, inconvenience local residents and commuters and are bad for tourism. They also send out negative messages to all sorts of other visitors and people who would consider investing in the area.

In Argyll and Bute, we cannot afford for that to continue, not least because we face a real problem with trying to tackle predicted depopulation in the region, which was the subject of my members' business debate in the Parliament only last month. A first-class road network is key to tackling depopulation. If anyone disagrees with that, let them speak now and say why they disagree.

The irony of the Rest and Be Thankful, as it is called, is that the rest is at the top, not halfway up, which is where people are getting stuck. That is not good enough.

We recognise that the Scottish Government has made some investment and we now have a relief road that can be used in emergencies under a convoy system in the event of landslides closing the Rest and Be Thankful. However, it sometimes takes hours to activate that and the convoy system is painfully slow and time consuming. Also, the A819 between Inveraray and Dalmailly, which I know very well, is most unsuited to being a constant diversion, especially for heavy lorries.

We have a sticking-plaster solution, and the petitioners are entirely right to call for a permanent one. That might be a canopy, and we should look to the European continent, where countries have been able to use canopies or tunnels to protect vital road links in, for example, the French Alps. The Scottish Government could do worse than start by costing a canopy for the 400m section, which I believe has been referred to as the Donald Clark solution. Private estimates suggest that such a canopy might cost less than £5 million.

There is a strong feeling in Argyll and Bute that, if a trunk road in the central belt had encountered similar repeated problems, a permanent solution would have been found already.

Jackson Carlaw got to the nub of it when he asked what the petitioners are actually asking for. That point was put well by a 90-year-old constituent, a Mrs Valerie Cox, who lives near Lochgilphead. She handed me a card saying,

"Mend the rest and we'll be thankful."

I think that that is what the petitioners are asking the Scottish Government to do.

10:45

**The Convener:** Are there any further questions or statements?

**John Wilson:** I do not want to make a statement like Jamie McGrigor's, but I want to ask about something. The petitioners mentioned the problems with the old military road and the flooding that has taken place. Has there been any discussion at the task force meetings about resolving the flooding issues? I know that it is not a permanent solution, but if there is a landslip and there is flooding on the old military road, what action is being taken apart from the 65-mile detour that people have to take to get into the region?

I remember the petition well from our original discussion, and I know that there were economic arguments as well as arguments about transport and the route. Jamie McGrigor alluded to those economic arguments and the issues for tourism and local businesses, and to the need for the community to be able to go about its business freely. If the alternative route is subject to flooding, what action is being taken to resolve that?

**Councillor Philand:** Michael Russell was at the previous meeting, so perhaps he could feed back on that.

**Michael Russell:** Part of the old military road has been relaid to raise the surface of the road and to improve drainage on it, so it is hoped that the problem will not recur again, but sometimes these things happen. There was a particularly dreadful night when there was so much rain that the alternative route was flooded, but people are reasonably confident that that will not happen again.

**Councillor Kelly:** For people who do not know, the old military road lies directly below the Rest and Be Thankful, so most of what comes to the Rest and Be Thankful ends up on the military road from time to time. Therefore, albeit it is a bypass road and it has worked in some shape or form, there are still problems with it.

**John Wilson:** I travelled the road quite frequently when I was a child because my grandmother came from that part of the world, so I am well acquainted with it. The issue for me is about trying to ensure that we get a permanent solution. The last time that a similar petition came to the committee, the committee was unanimous in its support to allow the petition to go forward. We thought at that time that there had been agreement with the Scottish Government and the task force to take it forward.

However, if a permanent solution has not been identified, clearly we need to apply pressure again, not only on the Scottish Government but on Argyll and Bute Council. As we said at the time, there

has to be co-operation and joint working with Argyll and Bute Council to ensure that whatever solution is reached is worked out jointly and in co-operation. There are issues that Argyll and Bute Council has to take on board, too; the solution cannot all come from the Scottish Government side. There has to be co-operation from the council as well.

**The Convener:** As there are no further questions, I ask the committee to decide what action it wishes to take on the petition.

**Jackson Carlaw:** I would like to follow up the proposal that I made earlier. We should write to the Scottish Government and Transport Scotland in the first instance to highlight the matters that have been raised and refer, of course, to the fact that this is a recurring petition—we have discussed the issue before. We could consider taking oral evidence at a later date on the back of whatever we hear.

**The Convener:** When we write to the Scottish Government, should we urge it to look for a permanent solution and an associated costing?

**Jackson Carlaw:** We should remind the Government that we have previously urged it to do that, and that our understanding was that there was a consensus that that should happen. We are looking for an update from the Government on where it thinks that whole process has evolved to.

**John Wilson:** I agree completely with Jackson Carlaw on writing to the Scottish Government, but we should also ask it for an indication of the timeline that it is working towards for a permanent solution; it should not be open ended.

Perhaps the task force could meet more regularly to consider the solution to this issue. I am keen that the solution should be arrived at in partnership, not decided by either Transport Scotland or Argyll and Bute Council. The solution must work for the community and for everybody concerned.

**Michael Russell:** In essence, three parties are involved: the Scottish Government, which has responsibility for the roads through Transport Scotland; Argyll and Bute Council, which is a key player and is involved in the task force; and the wider business community, which is represented on the task force. The timber transport group, the chambers of commerce, and a variety of others are represented. It would be useful for all three parties to hear from the committee and for us to ask for their views on the solution.

Jackson Carlaw makes a key point. I do not think that there is any longer any dispute about the need for additional capital to be spent on a permanent solution. However, there is no agreement on what that permanent solution

should be. It is a variant of something in this major report but it could be a combination of two parts of it.

The other thing to do is to urge an early agreement on what that solution is, because of Donald Kelly's point about investment in drawing up those plans. That can go ahead, even without capital having been identified. That is another key point: no capital has been identified for this but the Scottish Government should be persuaded to spend some money drawing up the detailed plans for the agreed option and to identify the capital while it is doing that. That is what I have argued at the task force meetings. That would be a useful step forward, in addition to Jackson Carlaw's proposal.

**The Convener:** Is everyone agreed on that?

**Members** *indicated agreement.*

**The Convener:** I thank Councillor Kelly, Councillor Philand and Councillor McAlpine for attending. I suspend the meeting for a couple of minutes.

10:51

*Meeting suspended.*

10:53

*On resuming—*

### **Animal Health and Welfare (Scotland) Act 2006 (Maximum Sentence) (PE1544)**

**The Convener:** The next petition is PE1544, by Olivia Robertson, on increasing the maximum sentence for convictions under the Animal Health and Welfare (Scotland) Act 2006. Members have the petition, a note by the clerk and a SPICe briefing. I welcome the petitioner, Olivia Robertson, to the meeting and invite her to give an opening statement on the petition, after which we will move to questions.

**Olivia Robertson:** Good morning. I will begin by illustrating why I started this campaign. I am sure that you will all be aware of the social media site, Facebook. Being a user of the site, I have come across a number of disturbing videos of unimaginable animal abuse that have caused me great distress. The thing that really bothers me about those online videos is that the people who commit those heinous acts are proud of what they are doing. They see it as entertainment and something to show off to others. I have no doubt in my mind that they will have carried out that type of abuse on further animals after those videos were made.

Under the Animal Health and Welfare (Scotland) Act 2006, the maximum sentence for dog fighting

or causing an animal unnecessary suffering is 12 months' imprisonment. Under the same act, there is a maximum sentence of six months' imprisonment for cruel operations, mutilation or administering poison. I would like to draw attention to the logic of that. Putting an animal through a cruel operation, mutilating it and/or administering poison to it is still putting it through unnecessary suffering. What purpose is served by halving the sentence for applying the suffering in a different way?

On 10 February, the Scottish Society for the Prevention of Cruelty to Animals publicly released statistics for sentences handed out by the Scottish courts for animal abuse cases. It has been stated that the statistics show that the number of animal cruelty cases is the highest on record.

The article revealed that there has been a 66 per cent increase in disqualification orders since 2010, with the number of orders rising from 38 to 63, 12 of which were for life. Fines have totalled £23,000 and there have been 35 community service orders. However, those figures barely reflect the extent of animal cruelty cases, as a total of approximately 78,000 cases of neglect, cruelty or abandonment have been attended by inspectors and animal rescue workers.

One of the most harrowing cases that the SSPCA dealt with last year—members might have heard about it—was one in which a man admitted to taking someone's dog, tying the dog to a tree, covering him in lighter fluid and setting him alight. The man received only a nine-month prison sentence. Chief Superintendent Mike Flynn of the SSPCA said:

"The number of people banned from owning animals in Scotland is now at a record level and some of the cruelty we encounter is unimaginable. We rely on the public to be our eyes and ears and while it is reassuring that so many people are willing to stand up and speak out, the violence and abuse of animals we are dealing with is unacceptable. I have worked for the Society for 28 years but the cases reported to us continue to shock and disgust me. The incident involving the burned dog in Fife was particularly harrowing. It is disturbing that anyone could carry out such a barbaric, premeditated attack on a defenceless dog."

Another article from the SSPCA reflects the leniency that is shown towards people who cause unnecessary suffering to an animal. The article outlines a case in which a man admitted to throwing a cat over his fence after he found the cat to be injured and held in his dog's mouth. The man failed to do anything to provide treatment for the cat and caused further injury. The cat, which was found on the other side of the fence, had suffered hypothermia, shock and nerve damage, and it later passed away. The man received only a £300 fine.

Psychological studies have revealed that committing violence against animals is a symptom

of deep mental disturbance. Research in psychology and criminology shows that people who commit acts of cruelty to animals do not stop there—many move on to their fellow humans. Robert K Ressler of the Federal Bureau of Investigation in the United States has developed profiles of serial killers. He states:

"Murderers ... very often start out by killing and torturing animals as kids".

A survey of psychiatric patients who had repeatedly tortured dogs and cats found that all of them also exhibited high levels of aggression towards people. According to a New South Wales newspaper, a police study in Australia revealed that

"100 percent of sexual homicide offenders examined had a history of animal cruelty."

To researchers, a fascination with cruelty to animals is a red flag in the backgrounds of serial killers and rapists. According to the FBI's Ressler,

"These are the kids who never learned it's wrong to poke out a puppy's eyes."

11:00

Too often, people who are convicted under the 2006 act are perceived as getting away with murder. In today's society, violence towards animals is on a par with violence towards humans, and it should not be accepted. It has a devastating effect on the family and the community. I experienced that at first hand last week, when my family cat was aggressively kicked and suffered a broken pelvis and lost the function of his bowels and urinary tract. We had to put him down last Wednesday. To put it bluntly, my family was absolutely heartbroken, and that was caused by a stupid, brutal and cruel act. I am sure that, if anything happens to the person who did it, he will receive a petty sentence, but our family cat is gone forever from our lives and we cannot bring him back. Nobody in our community should consider that to be an acceptable thing to do.

We are a nation of animal lovers, with approximately 22 million pets in the United Kingdom. Having a pet creates an emotional connection and bond, and losing anyone, whether it be a human or an animal, is difficult. Anyone who is responsible for that loss of life needs to be appropriately dealt with. The courts need to recognise the seriousness of the offence and the similarities between animals and vulnerable people. When someone causes suffering to an animal without much thought, what reassurance is there that they will not go on to abuse a child or vulnerable person who also may not have a voice or be able to defend themselves?

Australia has taken the lead in standing up against animal abuse, having raised the sentence

to seven years' imprisonment. That has sent an appropriate message that the offence is serious and will not be tolerated and that people will be held accountable for their actions. Violence is never acceptable, be it towards a human or an animal, and steps need to be taken to further protect the public from such violent and aggressive people.

The campaign is not just about raising the sentence; it is about preventing animal abuse from happening in the first instance. Therefore, the steps that I would like the Scottish Government to take are to amend the Animal Health and Welfare (Scotland) Act 2006 to include a higher sentence in order to deter the crime and convey the seriousness of the offence; to create an automatic lifetime ban from owning animals for those who are convicted under the act; to promote better welfare education; to recognise the issues of psychological welfare for animal abusers and take steps to tackle that; and to recognise the effect that such crimes have on the greater community and that animal abusers are fully capable of continuing violence against children, vulnerable people and the general public.

**The Convener:** Thank you for that presentation, Ms Robertson. Do members have any questions?

**Kenny MacAskill:** Are you aware of whether any members of the judiciary, who are involved in sentencing, or the Crown or procurators fiscal have expressed concern about the inadequacy of the sentencing powers?

**Olivia Robertson:** I am not sure. There have been other campaigns to try to get the sentence increased, but I am not aware that the Crown has had any involvement. I suppose that if it had, the act would have been amended.

**The Convener:** As there are no other questions, I ask the committee to decide what action it wishes to take on the petition. We have a note from the clerks that suggests possible actions.

**Jackson Carlaw:** I am happy that the petition has been brought before us, as it is some time since we looked at the legislation. The clerks have provided a useful table that is based on the answers to questions that were asked in 2010. It would be helpful to seek to get that brought up to date. Once we have that information, we should ask the Scottish Government for its views on the legislation and the success of its operation. I am not sure what its views will be on some of the recommendations that have been made, but it would be perfectly sensible for the committee to establish what view the Government takes of the success of the legislation and for us to consider the issue in that light.

**John Wilson:** I support Jackson Carlaw's suggestion that we write to the Scottish Government. If we are looking for figures, would it be possible to get the Scottish Government to break down the figures according to the type of animals that were involved in the offences?

I am aware that a local farmer not far from where I live was banned for life from keeping livestock because of his cruelty to the livestock that he kept, but he can keep horses and ponies. The petitioner asked what is to stop someone who causes cruelty to one form of animal translating that into cruelty to others, such as horses and ponies.

We should ask the Scottish Government to break down the offences that are listed so that we can see whether they involve animal welfare in the wider sense as well as how they impact on domestic animals. The petitioner is concerned about the welfare of dogs, cats and other domestic animals, but some of the offences might incorporate much wider offences under the animal welfare legislation.

**Kenny MacAskill:** It would be appropriate to write to the Government, as we need some clarity on the matter. I am not aware of what common-law offences we would prosecute under in other scenarios, and there might be a gap in the law. It would be interesting to know.

It might also be worth while asking the SSPCA what it thinks, because there are still some issues with the legislation in relation not simply to sentencing powers but to what the SSPCA can do. From speaking to Mike Flynn, I know about the difficulties that it sometimes has in storing animals pending the outcome of a court case where the animal is not signed over. There are some broader issues that are not simply to do with the sentencing powers, and it might be worth while for the committee to hear from the SSPCA as well as from the Government on whether there should be a review in due course of not simply the level of penalties, but how the law operates in practice.

**The Convener:** Do we agree that we will write to the Scottish Government to seek its views and to ask for a breakdown of the figures, and that we will also write to the SSPCA?

**Members** *indicated agreement.*

**The Convener:** Thank you for your attendance, Ms Robertson.

**Olivia Robertson:** Thank you for having me.

**The Convener:** I will suspend the meeting briefly.

11:06

*Meeting suspended.*

11:07

*On resuming—***Scottish Wild Salmon (PE1547)**

**The Convener:** The third new petition is PE1547, by Ian Gordon and the Salmon & Trout Association (Scotland), on conserving Scottish wild salmon. Members have a note by the clerk, an updated SPICe briefing, which has been placed on members' desks, and the petition.

I welcome Andrew Graham-Stewart, director of the Salmon & Trout Association (Scotland). I invite him to speak to the petition for about five minutes, after which we will move to questions.

**Andrew Graham-Stewart (Salmon & Trout Association (Scotland)):** Good morning and thank you, convener. I thank the committee for the opportunity to give evidence this morning in support of our petition. Looking round the room, I think that many of you, like me, are old enough to remember when salmon were truly abundant. That was back in the 1960s and 1970s. Back then, wild salmon was widely available in fishmongers, restaurants and so on. Sadly, that is no longer the case.

What has happened? As I am sure most people will know, each spring, young salmon that are about six inches long leave their rivers of origin and migrate to sea. In the 1960s and 1970s, for every 100 young salmon that migrated to sea, some 25 to 30 would in due course, after one, two or three years at sea, return to our coasts. Marine survival, as it is known, was then 25 to 30 per cent. In stark contrast, it is now less than 10 per cent. In the River Bush in Northern Ireland, which is probably the most closely monitored salmon river in the UK, marine survival has fallen to less than 3 per cent in the past two monitored years.

What has caused those declines? Changes in the environment, pollution, parasites—particularly parasites from fish farms on the west coast—predators, fisheries, bycatch and, probably most important of all, problems in young salmon finding food while they are at sea. The latter factor is probably due to climate change and, as I am sure most people will agree, climate change is here to stay. Despite what Lord Lawson might say, climate change is not going to be reversed; if anything, it is likely to get worse and the impacts that it is producing will get worse.

The result is, to quote from a Marine Scotland Science report of January 2015:

“The overall strength of the Scottish salmon stock (all populations combined) has declined markedly in the last fifty years due to increased mortality at sea”.

Coinciding with that decline has been a great reduction in the coastal salmon netting industry, which has acted as a “buffer”, as Marine Scotland Science puts it, allowing the number of salmon reaching their rivers of origin to remain reasonably healthy. Worryingly, however, we are now seeing significant falls in the numbers reaching key rivers. Marine Scotland Science closely monitors the North Esk river: a counter on the lower river counts all the returning adult fish as they come in from the sea. The five-year average from 2007 to 2011 of the upstream count was just over 14,000; the average for the three years from 2012 to 2014 was 9,300, which was a 35 per cent decline on the previous five-year average. I emphasise that that fact is slightly at odds with the impression given by the briefing that SPICe prepared.

We have now had three poor or very poor years in terms of salmon runs. Although the writing has been on the wall, the Scottish Government has been slow to react and reluctant to employ the powers that it has. However, in the past six months or so, there has been a sea change in the Scottish Government's approach; indeed, there has been a willingness to address the problems, which we welcome. A year ago, the Scottish Government set up the wild fisheries review, which reported in September 2014 and tacitly spelled out the problems, recommending that any harvesting must be sustainable and that there should be no exploitation without a licence to kill.

I had a meeting at Marine Scotland in November 2014 with a senior civil servant who agreed that we do indeed have a problem. I am pleased to say that there is no longer a denial that there is a problem. The Scottish Government is now starting to take some remedial action. In recent months it rushed through a Scottish statutory instrument for the season that has just started to ensure that there should be no killing of any salmon before 1 April. That is a recognition that the earliest-running fish are the most depleted. However, we believe that that is somewhat unambitious because, on the basis of the 2013 catch figures, the number of salmon killed in Scotland before the end of March was just 200. If the ban on killing salmon was extended to the end of June, that would save 6,500, on the official figures.

In the Salmon & Trout Association Scotland's response to the consultation on the measure, we urged ministers to give urgent consideration to introducing another order in time for the 2016 season to say that there should be no exploitation or killing of salmon before 1 July. We have re-emphasised that point in the petition.

The Scottish ministers are now consulting on a licence-to-kill system to be brought in for 2016. We support that, but believe that it should be allied to a presumption against any killing of salmon before 1 July. There is simply no surplus of early-running salmon to enable a crop to be taken.

The second part of our petition addresses the issue of mixed-stock fisheries, which are indiscriminate coastal fisheries for salmon that exploit salmon before they reach their rivers of origin. They are indiscriminate because we do not know whether the fish being caught are from river stocks where there is a sustainable surplus.

11:15

The North Atlantic Salmon Conservation Organization met in June 2014. Scotland is a member of NASCO, through its membership of the European Union, and all salmon-producing countries are members of this important conservation organisation, which meets for a week every summer. At the June 2014 meeting, Scotland was singled out for criticism, because of its failure to develop conservation limits for individual rivers in line with a NASCO agreement on the adoption of a precautionary approach.

Given that failure and the fact that it will take years to address it, Scotland should now, if it is to live up to its international obligations, move swiftly to end exploitation by mixed-stock fisheries. Regrettably, Scotland is moving in the other direction.

The net catch increased by 50 per cent in 2013 compared with 2012. In the past three years, several netting stations have been reopened, having been dormant for several years. That is contrary to basic conservation principles, particularly at a time of declining stocks.

Our petition, if enacted, will go a long way towards giving vital added protection to our declining wild salmon runs.

**Angus MacDonald:** You have just mentioned that the net catches have increased significantly over the past year or so. There was a voluntary ban on the coastal netting of salmon in the spring. As you know, however, that voluntary ban by the netsmen has been lifted, unfortunately.

One solution to commercial coastal netting would be the commercial buy-out of the operators—the netsmen—through one-off compensation for the commercial netters. That would have a major impact on the numbers of wild salmon coming through. Are you aware of any costings that may have been made for the buy-out of coastal netting stations and of what the total accumulated costs could be?

**Andrew Graham-Stewart:** The total accumulated costs would be in the low millions of pounds. There is no reluctance on the part of wild-fish interests to enter negotiations with the coastal netting operators, but the main coastal netting operators are refusing to negotiate. They say that they will not sell, whatever is proposed. We therefore have an impasse, and there is nothing that one can do if they will not come to the negotiating table.

**Angus MacDonald:** That issue clearly has to be examined closely in the future.

**Andrew Graham-Stewart:** We emphasise that there is absolutely no reluctance on the part of wild-fish conservation organisations to engage in a proper negotiation.

**Jackson Carlaw:** This is an area in which you have considerable specialist expertise, which I certainly do not have. You were talking about percentages and the supply being bountiful in the 1960s and 70s. Can you actually quantify it? I would be interested to know what the estimated fish population was then. What is it now? What do you think the trajectory will be? I want to get a picture in my own mind of the relative decline.

**Andrew Graham-Stewart:** To estimate the numbers of a fish that goes thousands of miles out to sea and then returns is obviously not an exact science.

**Jackson Carlaw:** No—but if we are able to estimate a decline in percentage terms, you must have an idea.

**Andrew Graham-Stewart:** Clearly, there must have been a population returning to Scotland of perhaps 10 million or so in the 60s and 70s. These are very rough figures. That allowed a very substantial netting catch of up to 500,000 salmon a year at times. It is clear that the number is possibly as low as 1 million now.

**Jackson Carlaw:** That is quite a dramatic picture.

**The Convener:** Before we make a decision, we should look at the note by the clerk suggesting possible courses of action. Since the note was written, SPICe has updated its briefing to detail more current action that is being taken in this area. The Scottish Government consultation is running until the end of April and a further consultation on a draft wild fisheries bill is due before the end of this parliamentary session. The Rural Affairs, Climate Change and Environment Committee is doing work on the wild fisheries review and is currently taking evidence on that. In those circumstances, I suggest that the petition be referred to that committee now. Do members agree?

**Angus MacDonald:** I certainly agree with that, convener, given the urgency of the issue and the fact that the rural affairs committee is taking evidence from the wild fisheries review group—I think that the group is at tomorrow's meeting. The Rural Affairs, Climate Change and Environment Committee will then take further evidence from stakeholders and the environment minister. Given the urgency, as I say, we should refer the petition to that committee as soon as possible; it is an opportune moment for that committee to look at the petition.

**The Convener:** Are members agreed?

**Members** *indicated agreement.*

**The Convener:** I thank Mr Graham-Stewart for attending.

**Andrew Graham-Stewart:** I will add that my chairman is appearing before that committee next week.

Thank you very much for this opportunity.

11:21

*Meeting suspended.*

11:22

*On resuming—*

## Current Petitions

### Wi-fi in Public Buildings (PE1524)

**The Convener:** The next item is consideration of three current petitions. The first current petition is PE1524, by James Macfarlane, on free wi-fi in Scottish public buildings. Members have a note by the clerk.

**Kenny MacAskill:** The petitioner seems to be welcoming what the Government is doing as progress. It seems to me that we have a direction of travel.

**The Convener:** Members should also be aware that an email came in this morning from the petitioner.

**John Wilson:** Given that the petitioner has submitted further information, we could pass that information on to the Scottish Government and ask it to respond to the issues raised, if that is appropriate.

**The Convener:** I have been advised that we have made a wee mistake about the email, so can we rewind and go back to Kenny? Would you like to start again from your point about the Scottish Government making progress in this area?

**Kenny MacAskill:** There is a direction of travel and, as I said, the petitioner has welcomed that. These things cannot be done overnight but there is clearly a plan to roll out wi-fi, which is necessary, and we welcome that.

**The Convener:** Are members agreed, considering that the Scottish Government has met the terms of the petition, to close the petition?

**Members** *indicated agreement.*

### Social Care (Charges) (PE1533)

**The Convener:** The next petition is PE1533, by Jeff Adamson, on behalf of Scotland against the care tax, on the abolition of non-residential social care charges for older and disabled people. Members have a note by the clerk.

Following the evidence from the Cabinet Secretary for Health, Wellbeing and Sport at the last meeting, the committee agreed to consider the evidence at this meeting and decide what action to take on the petition.

**Jackson Carlaw:** It was all a bit equivocal at the end of the evidence that we heard last time. I think that we want to get a much more specific

idea of the timetable that the cabinet secretary is working towards. It would be useful.

I welcome the approach that was being articulated, but nonetheless there is an urgency and a desire on the part of the committee to move this forward. The next step would be, after reflecting on the evidence given, to ask when the cabinet secretary expects things to coalesce into something a little more definitive.

**The Convener:** As there are no more contributions from members, are members happy to take the approach that Jackson Carlaw has outlined?

*Members indicated agreement.*

### **Sustainability Teaching and Plastic Bags Ban (PE1535)**

**The Convener:** The third and final current petition is PE1535, by Alexander Fraser, on teaching sustainability and banning plastic bags. Members have a note by the clerk and the submissions. I have also been made aware that this is the petition for which the late email came in.

**Kenny MacAskill:** I welcome the action that is being taken within education to deal with the issue.

I see where the petitioner is coming from and I think that he has made his point, but I do not think that it is for us as a committee to set the precise curriculum for schools. There has to be some flexibility. Environmental issues, including the particular points that the petitioner makes, should be raised, but we should not force more things on to a timetable that is ever more constrained.

Therefore, I think that there is a limit to what can be done—other than, as I say, making sure that the issue is raised and leaving it to education authorities and to teachers to deliver in the manner that they see fit.

**Jackson Carlaw:** I am very much of that view. I congratulate the petitioner on having drawn attention to the progress that has been made, but I think that he himself, in his latest email to the committee, respects the Government's advance. Given what has been done and the Government's attitude to it, we have probably taken the petition as far as we can. I would be happy to support it being formally closed.

**The Convener:** Are members agreed to close the petition?

*Members indicated agreement.*

*Meeting closed at 11:27.*



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