



PUBLIC PETITIONS COMMITTEE

AGENDA

10th Meeting, 2015 (Session 4)

Tuesday 12 May 2015

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.

2. **Consideration of new petitions:** The Committee will consider—

[PE1560](#) by John Buston on local authority planning appeals procedure

and take evidence from—

John Buston;

and will then consider—

[PE1561](#) by Karen Gray, on behalf of Rabbits Require Rights (Scotland), on pet rabbit welfare

and take evidence from—

Karen Gray;

and will then consider—

[PE1567](#) by Donna O'Halloran on investigating unascertained deaths, suicides and fatal accidents.

3. **Consideration of continued petitions:** The Committee will consider—

[PE1098](#) by Lynn Merrifield, on behalf of Kingseat Community Council, on school bus safety;

[PE1105](#) by Marjorie McCance on St Margaret of Scotland Hospice;

[PE1458](#) by Peter Cherbi on a register of interests for members of Scotland's judiciary;

[PE1513](#) by Ron Park on equal rights for unmarried fathers and [PE1528](#) by John Ronald on child court reform;

[PE1517](#) by Elaine Holmes and Olive McIlroy, on behalf of the Scottish Mesh Survivors - "Hear Our Voice" campaign, on polypropylene mesh medical devices;

[PE1539](#) by Anne Booth on housing associations to come under the Freedom of Information (Scotland) Act 2002;

[PE1542](#) by Evelyn Mundell, on behalf of Ben Mundell and Malcolm and Caroline Smith, on human rights for dairy farmers;

[PE1552](#) by Peter Campbell on choice of treatment for cancer patients.

4. **External research:** The Committee will consider options.

Anne Peat
Clerk to the Public Petitions Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5186
Email: Anne.peat@scottish.parliament.uk

The following papers are attached for this meeting—

Agenda item 2

PE1560	Note by the Clerk	PPC/S4/15/10/1
PE1561	Note by the Clerk	PPC/S4/15/10/2
PE1567	Note by the Clerk	PPC/S4/15/10/3
Petitioner Email of 5 May 2015		PE1567/A

Agenda item 3

PE1098	Note by the Clerk	PPC/S4/15/10/4
Scottish Government Letter of 2 February 2015		PE1098/WW
PE1105	Note by the Clerk	PPC/S4/15/10/5
St Margaret of Scotland Hospice Letter of 2 April 2015 NHS Greater Glasgow and Clyde Email of 7 April 2015		PE1105/OOO PE1105/PPP
PE1458	Note by the Clerk	PPC/S4/15/10/6

[Judicial Complaints Reviewer Annual Report 2013-2014](#)

Judicial Complaints Reviewer Letter of 12 January 2015		PE1458/LL
Lord President Letter of 1 April 2015		PE1458/MM
First Minister Letter of 30 March 2015		PE1458/NN
Petitioner Letter of 28 April 2015		PE1458/OO
Petitioner Letter of 29 April 2015		PE1458/PP
Petitioner Letter of 5 May 2015		PE1458/QQ
PE1513 and PE1528	Note by the Clerk	PPC/S4/15/10/7
Petitioner Letter of 16 February 2015		PE1513/R
Petitioner Letter of 1 May 2015		PE1513/T
PE1517	Note by the Clerk	PPC/S4/15/10/8
Chartered Society of Physiotherapy Letter of 2 March 2015		PE1517/AA
Scottish Government Letter of 5 May 2015		PE1517/BB
PE1539	Note by the Clerk	PPC/S4/15/10/9
Scottish Government Letter of 16 April 2015		PE1539/M
Scottish Housing Regulator Letter of 24 April 2015		PE1539/N
Petitioner Letter of 24 April 2015		PE1539/O
PE1542	Note by the Clerk	PPC/S4/15/10/10

Petitioner Letter of 27 March 2015

[PE1542/D](#)

PE1552

Note by the Clerk

PPC/S4/15/10/11

General Medical Council Scotland Letter of 8 April 2015

[PE1552/A](#)

Cancer Research UK Letter of 10 April 2015

[PE1552/B](#)

Scottish Government / Scottish Cancer Taskforce

Letter of 10 April 2015

[PE1552/C](#)

Petitioner Letter of 5 May 2015

[PE1552/D](#)

Agenda item 4

PRIVATE PAPER

PPC/S4/15/10/12 (P)

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1560 on Local authority planning appeals procedure****Note by the Clerk****PE1560 – Lodged 10 April 2015**

Petition by John Buston calling on the Scottish Parliament to urge the Scottish Government to eliminate or amend the Notice of Review period of 3 months in order that the Council Complaint Procedure can be concluded prior to a request for a Local Body Review.

[Link to petition webpage](#)

Purpose

1. This is a new petition that collected 7 signatures and attracted no comments. The Committee has invited the petitioner to speak to the petition and then to consider what action to take on the petition.

Background – the following is taken from the SPICe briefing

2. Every application for planning permission falls within one of the following three categories of development:
 - i. **National developments:** Developments designated as of national significance in the National Planning Framework for Scotland
 - ii. **Major developments:** Nine classes of large scale development are defined as major developments in The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009
 - iii. **Local Developments:** Any development which is not a national or major development is automatically categorised as a local development.
3. Decisions on national and major developments are normally made by Councillors of the relevant planning authority while local developments are generally determined by planning officers, under a scheme of delegation. A “scheme of delegation” is a local authority document which sets out a list of local developments that can be determined by an appointed person, normally a planning officer, rather than Councillors at a committee.
4. How an appeal against a decision on an application for planning permission is handled depends on who took the original decision. If the decision was taken by Councillors then the appeal is to Scottish Ministers. If the decision was taken by a planning officer under a scheme of delegation then the appeal is to the council’s Local Review Body, which is made up of at least three elected members who were not involved in the original decision. There is no further right of appeal to Scottish Ministers if an applicant is unhappy with the decision of the Local Review Body.

5. The local review body system operates under the provisions of Section 43A of the Town and Country Planning (Scotland) Act 1997, with detailed provisions set out in The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
6. Planning appeals and reviews must be made by the applicant within three months of the date the original decision was made, as required by Regulations.
7. The planning system operates independently of any local authority complaints procedure.

Scottish Government Action

8. The Scottish Government reduced the time limit for submitting an appeal from six to three months through the Planning etc. (Scotland) Act 2006. Local reviews were introduced by this Act. The deadline for submitting a review request has always been three months.

Scottish Parliament Action

9. The Scottish Parliament has not considered a change in the time limit for submitting a planning appeal or review request since its consideration of the Planning etc. (Scotland) Bill in 2006.

Action

10. The Committee is invited to consider what action it wishes to take on this petition. Options include –
 - (i) To write to the Scottish Government and Heads of Planning Scotland seeking their view on the petition;
 - (ii) To take any other action the Committee wishes to take.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1561 on pet rabbit welfare****Note by the Clerk****PE1561 – Lodged 28 April 2015**

Petition by Karen Gray, on behalf of Rabbits Require Rights, calling on the Scottish Parliament to urge the Scottish Government to:

- Introduce a licensing regime for sellers of young rabbits similar to that for young cats and dogs.
- Initiate a ban on pet shop sales via the implementation of Ordinances Protecting Rabbits as is operational in numerous States & Cities in Northern USA & Canada.
- Create minimum standards for rabbit related products, such as housing and feed.
- Make one body responsible for overseeing and enforcing pet shop licensing regulations, e.g. the SSPCA.

[Link to petition webpage](#)

Purpose

1. This is a new petition that collected 2,044 signatures and attracted 104 comments. All but one comment expressed support for the petition. The main themes from the comments were about the size of housing sold for rabbits and the sale of rabbits in pet stores.
2. The Committee has invited the petitioner to speak to the petition and then to consider what action to take on the petition.
3. The Animal Health and Welfare (Scotland) Act 2006 (the Act) is the main legislation relative to the petition.

Background – the following is taken from the SPICe briefing

4. The current legislation which aims to protect the welfare of all animals is the [Animal Health and Welfare \(Scotland\) Act 2006](#). This places a duty of care on pet owners and others responsible for animals to ensure that the welfare needs of an animal are met. All pets (including rabbits) are protected by the Act.
5. Section 24 of the Act created an offence for a person not to take reasonable steps to ensure the needs of an animal are met. In this context the Act states what an animal's needs are:

(3) For the purposes of subsection (1), an animal's needs include—

- (a) its need for a suitable environment,
- (b) its need for a suitable diet,
- (c) its need to be able to exhibit normal behaviour patterns,

- (d) any need it has to be housed with, or apart from, other animals,
- (e) its need to be protected from suffering, injury and disease.

6. The Act does not make specific provisions related to rabbits (or any other animal) and does not set out what a suitable environment and suitable diet etc. is for a rabbit.
7. However, the Scottish Government has issued various codes of recommendation and practice related to the Animal Health and Welfare (Scotland) Act 2006. These set out guidance for the welfare of specific animals. [Codes of practice](#) for the following animals have been issued: cattle; equidae (horses, ponies, donkeys and hybrids); laying hens; meat and breeding chickens; pigs; sheep; gamebirds; cats; and dogs.

Introduce a licensing regime for sellers of young rabbits similar to that for young cats and dogs

8. The petitioner suggests that rabbit sellers and breeders should have their activities controlled in order to tackle the widespread availability of these domestic pets to reduce the high numbers in rescues and their neglect.
9. The petitioner suggests that this can be done by introducing regulations for the licensing of dealers for rabbits similar to the Licensing of Animal Dealers (Young Cats and Young Dogs) (Scotland) Regulations 2009.
10. The [Licensing of Animal Dealers \(Young Cats and Young Dogs\) \(Scotland\) Regulations 2009 regulations](#) require dealers in young cats and dogs (with some exemptions) to hold a license. The regulations define “young” dogs and cats as being under 84 days old. Section 6 of the regulations states that a licensing authority should take into account the wellbeing, accommodation and diet of the animals when granting a licence.
11. These regulations do not apply in certain circumstances, for example if a person already holds a breeding licence or a pet shop licence.

Initiate a ban on pet shop sales via the implementation of Ordinances Protecting Rabbits

12. The petitioner seeks a ban on pet shop sales of rabbits via the implementation of what are described as “Ordinances Protecting Rabbits”. The petitioner would prefer individuals to obtain pet rabbits from shelters.
13. Bans on the sale of commercially bred rabbits in pet shops are operational in a number of localities in the USA and Canada (e.g. [Los Angeles](#)). In San Francisco, the sale of rabbits is banned to prevent impulse buys, especially around Easter.¹

¹ <http://www.sfgate.com/bayarea/article/S-F-animal-cops-raid-pet-shop-for-bunnies-3185007.php>

Create minimum standards for rabbit related products

14. The petitioner seeks the establishment of minimum standards for rabbit-related products, such as housing and feed. There are no specific minimum standards for rabbit-related products in Scotland. However, the Animal Health and Welfare (Scotland) Act 2006 applies. It required (as set out above) that the “needs of an animal for which the person is responsible are met to the extent required by good practice.”

15. Where an animal’s needs include -

- (a) its need for a suitable environment
- (b) its need for a suitable diet
- (c) its need to be able to exhibit normal behaviour patterns
- (d) any need it has to be housed with, or apart from, other animals
- (e) its need to be protected from suffering, injury and disease.

Make one body responsible for overseeing and enforcing pet shop licensing regulations, e.g. the SSPCA

16. Section 4 of the [Pet Animals Act 1951](#) gives local authorities the power to authorise “any of its officers or any veterinary surgeon or veterinary practitioner” to inspect pet shops.

17. The [SSPCA](#) (Scottish Society for the Prevention of Cruelty to Animals) is Scotland's animal welfare charity. It encourages kindness to animals, aims to prevent cruelty through education, investigates abuse, rescues animals in distress and finds animals new homes. The SSPCA states that its inspectors and animal rescue officers save thousands of domestic, farm and wild animals from harm and danger every year, and its vets and staff look after, rehabilitate and rehome thousands more.

Action

18. The Committee is invited to consider what action it wishes to take on this petition. The Committee may wish to write to the Scottish Government to seek its views on the petition; in particular, the Committee may wish to ask whether the Scottish Government has any plans to produce a code of practice for the keeping of rabbits. In addition, the Committee may also wish to seek the views of the Scottish SPCA and the Pet Industry Federation.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1567 on Investigating unascertained deaths, suicides and fatal accidents****Note by the Clerk****PE1567 – Lodged 28 April 2015**

Petition by Donna O'Halloran calling on the Scottish Parliament to urge the Scottish Government to change the law and procedures in regards to investigating unascertained deaths, suicides and fatal accidents in Scotland.

[Link to petition webpage](#)

Purpose

1. This is a new petition that collected 1,716 signatures and attracted 124 comments. Although the Committee invited the petitioner to speak to the petition she declined. The Committee is invited to consider what action it wishes to take on the petition.

Background – the following is taken from the SPICe briefing*The Petition*

2. The petitioner's key concerns are:
 - that there should be a mechanism for challenging or reviewing Crown Office and Procurator Fiscal Service (COPFS) conclusions in relation to death investigations, and
 - that families should be included more in the decisions reached in such investigations.

Fatal Accident Inquiries

3. Fatal Accident Inquiries (FAIs) are held to establish the circumstances surrounding certain deaths. They are presided over by sheriffs.
4. Mandatory FAIs must be held where someone dies in legal custody or in an accident relating to their work. An FAI can also be held where a death is sudden, suspicious, unexplained or gives rise to serious public concern. The Lord Advocate (through COPFS) has discretion to hold an FAI in these circumstances where he decides it is "expedient in the public interest".
5. COPFS carry out death investigations in a wide range of circumstances. However, only a small proportion of these result in FAIs. Approximately 5,500 death investigations are carried out every year, in comparison to 50 to 60 FAIs.

6. It is not possible to appeal the Lord Advocate's decision not to hold an FAI. There is also no mechanism to challenge the conclusions drawn by COPFS after a death investigation.

Judicial Review

7. Certain official decisions can be the subject of a judicial review. Judicial review looks only at the procedural aspects of an official decision, rather than its strengths or weaknesses. It is also likely to be expensive. Broadly, a decision can be challenged by judicial review where it is argued that:
- the decision-maker acted outwith their legal powers,
 - there was procedural unfairness in reaching the decision, or
 - the decision was so unreasonable as to be irrational.

Human Rights Issues

8. Article 2 of the European Convention on Human Rights creates a right to life. The courts have interpreted this to include a duty on governments to investigate loss of life in certain circumstances. The purpose of such investigations is to ensure that laws protecting life can be enforced and that the state can be held to account where it is responsible.
9. The Scottish Government argues¹ that an FAI is not required in all circumstances to which Article 2 applies. Instead, the death investigation carried out by COPFS may meet the required standards.

Coroners' Inquests

10. Certain deaths in England and Wales are investigated through coroners' inquests. A coroner's inquest must be held where there is reason to suspect: a death was violent or unnatural; the cause of death is unknown; or the deceased died in prison or legal custody.
11. There are significantly more coroners' inquests than FAIs. There were 29,942 inquests in 2013². However, coroners' inquests have a narrower scope. They will usually only look at when, where and how someone died.

Scottish Government Action

12. The Scottish Government commissioned Lord Cullen to carry out a review into FAI legislation in 2008. The [review report](#) (2009) contained a number of recommendations. Many of these are being implemented through the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill. This is currently making its way through the Scottish Parliament.

¹ See Policy Memorandum to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, paragraph 101.

² Ministry of Justice. (2014) [Coroners Statistics 2013 England and Wales](#).

13. The Cullen Review made several recommendations which aimed to improve the communication between COPFS and bereaved families. The Scottish Government states that these recommendations have been implemented. In addition, COPFS has stated in previous evidence to the Public Petitions Committee³ that the material gathered during death investigations is available to families and can be discussed with them.

Scottish Parliament Action

14. The Justice Committee of the Scottish Parliament is currently considering the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill at Stage 1. Patricia Ferguson MSP has also secured the right to introduce a Member's Bill on this topic.
15. The Public Petitions Committee has previously dealt with a number of petitions in this area. These are summarised below:
- **PE 1501 (2013)** – the petitioner's main concern was that it is not possible for families to challenge a COPFS decision that a death is likely to have been self-inflicted or accidental.
 - **PE 1280 (2009)** – the petitioner called for FAIs to be held when a person from Scotland dies abroad.
 - **PE 1332 (2010)** – the petitioner's main concern was that there is no publically accessible investigation into some deaths, even where the circumstances are suspicious
 - **PE 841 (2005)** – the petitioner's main concern was that lessons could be learned from road deaths if FAIs were conducted.
 - **PE 767 (2004)** – the petitioner called for a review of the effectiveness of the 1976 Act.
 - **PE 324 (2000)** – the petitioner's main concern was that there was no way to challenge the Lord Advocate's decision not to hold an FAI.
16. The Scottish Parliament also held a [plenary debate on 27 March 2008](#) looking at FAIs and surrounding concerns.

Action

17. As the Justice Committee is currently considering Stage 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, under Rule 15.6 the Committee is invited to refer the petition to the Justice Committee. The petitioner has indicated that she would be in favour of this course of action.

³ Public Petitions Committee (2014). [Official Report 3 June 2014](#). Col 2321.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1098 on school bus safety****Note by the Clerk****PE1098 – Lodged 09 November 2007**

Petition by Lynn Merrifield on behalf of Kingseat Community Council calling on the Scottish Parliament to urge the Scottish Government to make provision for every school bus to be installed with three point seatbelts for every school child passenger and to ensure that, as part of a local authority's consideration of 'Best Value' in relation to the provision of school buses, proper regard is given to the safety needs of the children.

[Link to petition webpage](#)

Purpose

1. The Committee last considered PE1098 on [11 November 2014](#). At that meeting, the Committee agreed to defer further consideration of the petition pending an update from the Scottish Government on the progress of the devolution of powers relating to seatbelt provision. The Scottish Government has provided an update and the Committee is invited to consider what action it wishes to take.

Scottish Government Action

2. The Scottish Government sought a Section 30 Order to amend part 2 of schedule 5 to the Scotland Act 1998 to make a road transport reservation at section E1. The amendment will devolve power to the Scottish Parliament to legislate in relation to the description of motor vehicles and trailers used to transport pupils and students in Scotland to and from places where they receive education and training.
3. Pending approval of the Section 30(2) Order, on [18 March 2014](#), the Scottish Government announced its intention to introduce legislation in the next session of the Scottish Parliament (post-2016 Scottish election) to ensure that seatbelts are provided on all dedicated school transport in Scotland. The Scottish Government is currently aiming for the requirement to be introduced in 2018 for vehicles carrying primary school pupils and 2021 for those transporting secondary pupils. This scheduled lead-in time aims to give local authorities and bus operators time to prepare and adapt to the changes.

Scottish Parliament Action

4. On [25 February 2015](#), the Infrastructure and Capital Investment Committee considered the Section 30(2) Order and took evidence from the Minister for Transport and Islands before agreeing a motion that the Order be approved. The Bureau's motion was then approved by the Scottish Parliament on [5 March 2015](#).

Westminster Parliament Action

5. The Section 30(2) Order was agreed to by the House of Lords on [9 March 2015](#) and by the Delegated Legislation Committee on [17 March 2015](#), before it was approved by the House of Commons on [18 March 2015](#).
6. The next and final step is for the Order to be approved by the Privy Council after the UK General Election in summer 2015.

Action

7. As the Committee is aware, there has been no contact from the petitioner for a number of years and this petition was lodged more than seven years ago. On the basis that the relevant Orders to devolve the powers have now been approved by both Parliaments and the Scottish Government has expressed its intention to bring forward the necessary legislation in the next Parliament, it is suggested that the Committee may wish to consider closing the petition.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1105 St Margaret of Scotland Hospice****Note by the Clerk****PE1105 – Lodged 23 November 2007**

Petition by Marjorie McCance on behalf of St Margaret of Scotland Hospice calling on the Scottish Parliament to urge the Scottish Government to guarantee retention of continuing care provision for patients who require ongoing complex medical and nursing care, such as that provided at the 30 bed unit at the St Margaret of Scotland Hospice, and to investigate whether arrangements for funding palliative care provision at hospices in the context of HDL(2003)18 are fair and reasonable.

[Link to petition webpage](#)

Purpose

1. The Committee last considered this petition on [3 March 2015](#). The Committee agreed to write to NHS Greater Glasgow and Clyde (NHSGGC) and St Margaret of Scotland Hospice on two issues related to the dispute between the Hospice and the health board: the appointment of Grant Thornton as the independent third party selected to conduct an accountancy review; and what information about the funding of other hospices is being made available by NHSGGC. The Committee has received the responses and is invited to consider what action it wishes to take on the petition.

Committee Consideration

2. This petition was lodged nearly eight years ago. Since then the original aims of the petition have been met: the Scottish Government has continued to fund care for patients with on-going complex medical and nursing care needs and the level of hospice funding is agreed through the Scottish Hospices Forum, of which St Margaret's is a member. The Scottish Government has advised that it remains happy to review any funding issues through the Forum.
3. The St Margaret of Scotland Hospice is in dispute with the local health board about the amount of funding it receives. An arbiter was appointed last year to assist negotiations. [St Margaret of Scotland Hospice](#) advises that Grant Thornton was appointed in early April 2014. The Hospice subsequently obtained advice from other financial experts on the terms of the review and sought information from Grant Thornton about their prior working relationship with the Health Board the Scottish Government. In November 2014, the Hospice was advised that Grant Thornton has previously obtained commissions from the Scottish Government and NHSGGC. The Hospice is unhappy with the appointment of Grant Thornton and with the Board's stance on the provision of information about the level of funding received by other hospices.

4. [NHSGGC](#) advises that the level of funding provided to each Hospice is publically available. However, information about the running costs of each Hospice is not made available because it is deemed to be confidential.
5. NHSGGC made no objection when the Scottish Government suggested Grant Thornton be appointed to conduct the accountancy review. It was unaware of the Hospice's objections to the appointment of Grant Thornton but it is willing to participate in selecting an alternative third party to conduct the review.

Action

6. It is suggested that the terms of the petition have been fulfilled. The Scottish Government has continued to fund care for patients with on-going complex medical and nursing care needs and it has advised that the level of hospice funding is agreed through the Scottish Hospices Forum, of which St Margaret's is a member. The Scottish Government has advised that it would be happy to review any funding issues through the Forum.
7. The Committee is now being asked to become involved in issues specific to one hospice and the funding dispute between it and NHSGGC. As it is not the role of the Committee to become involved in local constituency issues, be an arbiter in an individual dispute or review operational decisions of public bodies, the Committee may now consider that it should close the petition. But in doing so, the Committee may wish to encourage the local member to take forward the remaining concerns. The Committee may also wish to request that the Scottish Government considers:
 - a. St Margaret's Hospice's concerns regarding the appointment of Grant Thornton;
 - b. The willingness expressed by NHSGGC to engage in the appointment of an alternative third party to conduct an accountancy review; and
 - c. Consulting the Scottish Hospices Forum and any other relevant bodies on the issue of the fairness and reasonableness of sharing information about the running costs of individual hospices.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1458 on a register of interests for members of Scotland's judiciary****Note by the Clerk****PE1458 – Lodged 8 December 2012**

Petition by Peter Cherbi calling on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests & hospitality received to a publicly available Register of Interests.

[Link to petition webpage](#)

Purpose

1. The Committee held a debate in the Chamber on [9 October 2014](#) and took evidence from the Minister for Community Safety and Legal Affairs on [9 December 2014](#). The Committee agreed to reflect on the evidence and consider the petition again in the new year when the new rules and guidance on complaints about the judiciary would be available.
2. The new rules and guidance were published on 1 April 2015 and these together with a letter from the new Judicial Complaints Reviewer, a letter from the First Minister and a number of submissions from the petitioner are attached. The Committee is invited to consider what action it wishes to take on the petition.

Background

3. The petition was partly motivated by the New Zealand [Register of Pecuniary Interests of Judges Bill](#) ("the New Zealand Bill"). This was a Member's Bill introduced by a member of the New Zealand Green Party proposing a mandatory register of New Zealand judges' financial interests. After consideration, it was decided that legislation was not necessary but improvements would be made to the rules around recusals and conflict of interest. The Bill was withdrawn.

Committee Consideration

4. In its responses to the Committee, the Scottish Government maintains its view that it is not necessary to establish a formal register of judicial interests. At the evidence session on 9 December 2014, the Minister re-stated the position that the current safeguards are sufficient to ensure the impartiality of the judiciary in Scotland. The existing safeguards are the judicial oath, the statement of principles of judicial ethics and the provisions of the Judiciary and Courts (Scotland) Act 2008. The [Law Society of Scotland](#) suggested that more evidence was required to demonstrate that the systems in place were not effective.

5. A register of interests could be established administratively by the Lord President. However, the Lord President's view is that a register of interests is not necessary because the three existing safeguards are sufficient. The Lord President has also drawn the Committee's attention to the [fourth evaluation round report of the Council of Europe Group of States against Corruption \(GRECO\)](#) that concluded that nothing had emerged to require any recommendation to establish registers of interest. Lord Gill declined two invitations to give oral evidence to the Committee but has provided a number of written submissions to the Committee.
6. The previous Judicial Complaints Reviewer (JCR), Moi Ali, supported the call for a judicial register of interests, including non-financial interests and gave evidence to the Committee on [17 September 2013](#). Her view was that a register would increase transparency, increase public confidence in the judiciary and be consistent with what is required in other areas of public life. Her annual report (enclosed) covering the period 1 September 2013 to 31 August 2014 was published in 2015. In that report she noted that her biggest piece of work had been to respond to the Lord President's consultation on new complaints rules. She expressed disappointment that she had not been invited to be involved at an earlier stage and made a number of recommendations for improvement.
7. In January 2014, the Convener and Deputy Convener had an [informal meeting](#) with the Lord President. At that meeting the Lord President undertook to make publicly available information on cases in which a judge or sheriff formally recused. That information has been available since 1 April 2014. In a letter of [10 June 2014](#) the Lord President advised that he was considering changes to the rules on complaints about the judiciary and would take account of Ms Ali's comments when amendments were instructed.
8. The Committee held a debate in the Chamber on [9 October 2014](#) and took evidence from the Minister on [9 December 2014](#). The Minister welcomed the public register of judicial recusals as an addition to the current safeguards that exist to ensure judicial impartiality but acknowledged the criticisms made by the previous JCT about the system for making a complaint about the judiciary. The Minister expressed the wish that the new complaints rules and guidance would address those concerns. He undertook to ensure that the procedural weaknesses identified are addressed and expressed confidence that the Lord President would reflect on them and reform the process.¹
9. In response to why the judiciary should be treated any differently from other holders of public office, the Minister stated that the position of the judiciary was different. Judges are not able to answer back for themselves publicly as MSPs can and additionally judges and their relatives might be laid open to potentially hostile or aggressive press action, threats or intimidation. The Minister was asked how, without a register of interests, any party would know if there was a conflict of interest. The Minister acknowledged the concerns and undertook to raise them with Lord Gill and the new Judicial Complaints Reviewer, Ms Gillian Thompson OBE in the context of wider discussions. He would seek to establish "what they think is necessary to give the public confidence that, although the

¹ Official Report, 9 December 2014, Cols 8&9

system is largely hidden from view, it is operating robustly...” The Minister recognised that the system must be seen to be properly and robustly applied.

10. In her letter of [12 January 2015](#) the new JCR states that she is in favour of those in public life maintaining a register of interests including hospitality given or received.
11. Following a question asked by the Convener at the Convener Group meeting with the First Minister in [February 2015](#) about access to justice generally, the First Minister asked to be pointed in the direction of particular petitions. This was done and the First Minister [wrote](#) addressing four specific petitions of which this was one. In her letter she re-states the Scottish Government’s position and notes that the Minister met with the Lord President in February.
12. In his letter of [1 April 2015](#) the Lord President advises that the new rules and guidance dealing with complaints about the judiciary have been published and that they simplify and streamline the process and make clear the matters that can properly be investigated.
13. In his submissions of [28](#) and [29 April](#) and [5 May](#) the petitioner questions the Scottish Government’s stance, statements made by the Minister and the transparency of the new complaints rules and guidance. He suggests that the current JCR (and the previous post-holder) be invited to give evidence on the issues raised in the petition and that the Minister provides details of the meeting that took place with the Lord President.

Action

14. It is suggested that the Committee may wish to write to the Minister requesting details of the meeting held (referred to by the First Minister) and invite Gillian Thompson OBE, the JCR, to give evidence at a future meeting.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1513 on Equal Rights for Unmarried Fathers and
PE1528 on Child Court Reform****Note by the Clerk****PE1513 – Lodged 15 April 2014**

Petition by Ron Park calling on the Scottish Parliament to urge the Scottish Government to review the laws that govern parental rights and child access, and their implementation, to ensure unmarried fathers have guaranteed rights to be a part of their children's lives if they are deemed fit parents.

[Link to the petition webpage](#)

PE1528 – Lodged 04 July 2014

Petition by John Ronald calling on the Scottish Parliament to urge the Scottish Government to amend child contact laws to provide that the starting point for the judge should be near to 50/50 contact for both parents if parents are fit and proper to parent.

[Link to the petition webpage](#)

Purpose

1. The Committee last considered these petitions on [25 November 2015](#). The Committee agreed to defer further consideration for six months to see whether the Court Reform (Scotland) Act 2014 would have any impact on the petitioners' concerns. The Committee is invited to consider what action to take.

Submissions

2. Submissions focus on the three main proposals put forward by Ron Park (PE 1513):
 - (i) both parents should be named on a birth certificate before it can be legally registered;
 - (ii) full parental rights and responsibilities should be awarded to both parents if they are deemed fit and able;
 - (iii) if the court orders a DNA test, persons who do not consent to testing should be deemed to be in contempt of court.

Registration of Birth Certificates

3. This proposal lacked support. [Scottish Women's Aid](#) (SWA) argued a blanket approach would not adequately address the many reasons why both parents may not be listed. The [Law Society of Scotland](#) and the [Family Law Association](#) (FLA) noted this proposal would represent a burdensome and undesirable

parent-centred (rather than child) approach. [Scotland's Commissioner for Children and Young People](#) (the Commissioner) concurred that this proposal would subordinate a child's right under Article 7 of the Convention on the Rights of the Child. [Dr Kirsteen Mackay](#) and [Professor Elaine Sutherland](#) echoed many of these concerns.

4. [Families Need Fathers](#) (FNF) argued it is important that the registration of a birth certificate is accurate, not just timely. As such, they suggested that an explanation should be given for sole registrations on birth certificates. In a [second submission](#), FNF cited the [Centre for Social Justice's](#) (CSJ) *Fully Committed?* Report (2014), which *inter alia* recommended: Schedule 6 of the 2009 Welfare Reform Act on joint birth registration should be implemented; and birth registrations should take place in Family Hubs (i.e. not civic registry offices).
5. The Scottish Government does not support the petitioner's proposal (see [19 June 2014](#)), nor FNF's proposal (see [21 August 2014](#)). However, it does intend to consult key bodies on whether a decree of paternity or declarator of parentage should be reflected in the birth register.
6. Following a question asked by the Convener at the Convener Group meeting with the First Minister in [February 2015](#), the First Minister [wrote](#) re-stating the Scottish Government's position.

Presumption of Shared Parental Rights and Responsibilities

7. This proposal was not supported by the majority of submissions received. The [SWA](#) and the [Law Society of Scotland](#) argued it would not provide adequate safeguards for victims of domestic abuse. [The Commissioner](#) noted that this would be "significantly at variance with the general principles of current Scottish child law" and would be "ill-advised". The [FLA](#) argued the existing rights and remedies for fathers are adequate and the proposal is ill-conceived to give paramount status to the best interests of the child and to deal with the complexity of disputes.
8. In contrast, [FNF](#), arguing in favour of this proposal, noted that courts should decide any dispute as to parental rights and responsibilities.
9. In her letter of [30 March 2015](#), the First Minister points out that the Parliament agreed that it is not appropriate to give parental responsibilities and rights to all parents but they can be acquired via the courts. In relation to PE1528 and the request that the starting point be 50/50 contact, the First Minister suggests that an automatic approach such as this would not be compatible with the rights of the child. In some cases it would be contrary to the child's welfare. Nevertheless, courts already have the power to make an order for a 50/50 split when it is thought to be in the best interests of the child.

Compelling DNA Testing

10. The majority of submissions did not support this proposal. The [Scottish Government](#) and [the Commissioner](#) were unsupportive, with the latter noting that

more could be done to remind litigants of the need to act in the best interests of the child.

11. [FNF](#) felt that the current system, which enables courts to draw an inference from the refusal to supply a DNA sample, is adequate. This view was echoed by [Dr Kirsteen Mackay](#). In her letter of [30 March 2015](#) the First Minister noted that it would be difficult to see that it would be in the interests of the child to hold him or her in contempt of court if he or she refused to provide a sample.
12. The [Law Society of Scotland](#) would support a reform that broadens the tools at the court's disposal by empowering it to order DNA testing of the child, subject to the best interest test, and to examine the allocation of parental responsibilities and rights upon receiving DNA results. The views of [FLA](#) members were split.
13. In a letter of [16 February 2015](#) Mr Park advises that in his view, the Court Reform (Scotland) Act 2014 has had no bearing on the issues raised by his petition. In a later submission of 1 May 2015, he was supportive of the Scottish Government's plans to consult on whether any court decree should be reflected in any birth certificate ordered after a decree but urges the Scottish Government to reconsider its position on the issue of DNA testing. There has been no contact from the other petitioner, John Ronald.

Recent parliamentary action

14. On 22 April 2015, John Mason MSP asked about what more could be done to improve the legal rights of fathers in relation to parental custody disputes ([S40-04215](#)). The Minister for Community Safety and Legal Affairs [replied](#) that no legislative changes were planned, but that the Scottish Government is working on related initiatives, including: a working group on child welfare reporters and a refreshment of the parenting agreement for Scotland. The Minister also noted that legal aid and assistance from support groups is available to fathers in need.

Action

15. The Committee is invited to consider what action it wishes to take on the petitions. The Committee may wish to:
 - (1) Close both petitions on the basis that there is opposition to the specific legislative changes sought by both petitioners. In doing so, the Committee may wish to note that there are a number of related initiatives being taken forward and to write to the Scottish Government asking for a timeframe in which it will consult on whether court decrees should be reflected in birth certificates ordered after the decree;
 - (2) Take any other action the Committee deems appropriate.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1517 on Polypropylene Mesh Medical Devices****Note by the Clerk****PE1517 – Lodged 1 May 2014**

Petition by Elaine Holmes and Olive McIlroy, on behalf of the Scottish Mesh Survivors – “Hear Our Voice” campaign, Calling on the Scottish Parliament to urge the Scottish Government to:

1. Suspend use of polypropylene Transvaginal Mesh (TVM) procedures;
2. Initiate a Public Inquiry and/or comprehensive independent research to evaluate the safety of mesh devices using all evidence available, including that from across the world;
3. Introduce mandatory reporting of all adverse incidents by health professionals;
4. Set up a Scottish Transvaginal Mesh implant register with view to linking this up with national and international registers;
5. Introduce fully Informed Consent with uniformity throughout Scotland’s Health Boards; and
6. Write to the MHRA and ask that they reclassify TVM devices to heightened alert status to reflect ongoing concerns worldwide.

[Link to petition webpage](#)

Purpose

1. The Committee has received a letter from the Cabinet Secretary for Health, Wellbeing and Sport with an update on the expected publication date of the report by the Independent Review of transvaginal mesh implants. The letter also provides information requested previously by the Committee about the number of procedures carried out following the former Cabinet Secretary’s announcement. The Committee is invited to note the letter and consider what action it wishes to take on the petition.

Letter from the Cabinet Secretary

2. The Committee last considered the petition on [24 February 2015](#) when it heard evidence from the MHRA and Mr Adam Slater. The Committee agreed to invite the Cabinet Secretary for Health, Wellbeing and Sport, the Chair of the Independent Review, Dr Lesley Wilkie, and the representatives of the European Commission to give evidence, once the Independent Review had reported.
3. In her letter of 5 May 2015, the Cabinet Secretary advises that the report of the independent review will not now be published until the summer. Ms Robison highlights the delay in the expected publication of an opinion of the European Commission’s Scientific Committee on Emerging and Newly Identified Health Risks, originally due in January 2015, as one of the reasons for the delay in the Independent Review’s report.

4. The Cabinet Secretary has provided copies of the Chief Medical Officer's letters to health boards asking that they suspend mesh implant procedures. The first issued shortly after the previous Cabinet Secretary's announcement and the second issued in March this year. Figures showing the numbers of transvaginal mesh procedures that took place in 2014 since 17 June have been provided.

Action

5. The Committee is invited to note the revised timescale for publication of the Independent Review's report and agree that the evidence session with the Cabinet Secretary, Dr Wilkie and the European Commission be scheduled after the report has been published in the summer.
6. The Committee may also wish to write to the European Commission's Scientific Committee on Emerging and Newly Identified Health Risks to make it aware of the Committee's interest and requesting an update on when it is likely to report on polypropylene transvaginal mesh devices.
7. In addition, as the Committee has not yet sought the views of the Royal College of Obstetricians & Gynaecologists or the British Society of Urogynaecology, members may wish to consider seeking submissions from those organisations in advance of the planned evidence session.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1539 on housing associations to come under the Freedom of Information (Scotland) Act 2002****Note by the Clerk****PE1539 – Lodged 10 November 2014**

Petition by Anne Booth calling on the Scottish Parliament to urge the Scottish Government to make an Order under Section 5 of the Freedom of Information Act (Scotland) 2002 to make all housing associations subject to the provisions of that Act. This will ensure that housing associations are more open, transparent and accountable to all their stakeholders, i.e. tenants and factored homeowners.

[Link to petition webpage](#)

Purpose

1. The Committee last considered this petition on [23 February 2015](#). The Committee agreed to write to the Scottish Government and the Scottish Housing Regulator. Responses have been received and the Committee is invited to consider what action to take on the petition.

Background

1. In 2002, during Stage 3 of the Freedom of Information (Scotland) Bill, an amendment made at Stage 2 adding Registered Social Landlords (RSLs) (including housing associations), was removed before the Bill was passed.
2. It is possible to extend the coverage of the [Freedom of Information \(Scotland\) Act 2002](#) (FOISA) by means of an order made under Section 5 of the Act to amend Schedule 1 of the Act which lists the Scottish Public Authorities covered by the FOISA.
3. In July 2010, the Scottish Government undertook a [consultation](#) on whether coverage of FOISA should be extended to other bodies, including the Glasgow Housing Association (GHA). In its [response to the consultation](#) the Government noted that, in the responses which mentioned it, there was near universal support for an extension to apply to all RSLs. The decision to consider extending coverage solely to GHA was seen as particularly anomalous. The Government also noted that it would be consulting on a draft Scottish Housing Charter, which ultimately contained a requirement for the provision of information to customers by RSLs on their housing services and governance arrangements.
4. The FOISA consultation resulted in a draft Section 5 order which covered arm's length culture, sport and leisure trusts, but not RSLs. It was the Scottish Government's intention to consult further in due course on extending freedom of information coverage to other arm's length organisations.

5. The [Scottish Social Housing Charter](#) was published in 2012. It provides that:

“Social landlords manage their businesses so that:

tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.”

6. This covers all aspects of landlords’ communication with tenants and other customers. The Government saw the outcome as not just relating to how clearly and effectively a landlord provides information to those who want it, but also as a way of ensuring that tenants, and other customers, can use that information to improve services and performance.
7. In February 2013, the Freedom of Information (Amendment) (Scotland) Act 2013 received Royal Assent. This Act amended the Freedom of Information (Scotland) Act 2002. During scrutiny of the Bill the question of housing associations being made subject to FOISA was raised. A Scottish Government official informed the [Finance Committee](#) that:

“Ultimately, extension is a political decision. The Scottish ministers’ view on that is clear. They have consulted contractors, Glasgow Housing Association and various other bodies and the decision was made to defer the decision on extension.”

Committee consideration

8. The Committee considered this petition for the first time on [9 December 2014](#). It agreed to write to the Scottish Government, the Scottish Information Commissioner, a number of RSLs, tenants’ organisations and other interested parties.
9. The RSLs and bodies that represent the housing sector were supportive of RSLs being open and transparent to their tenants and customers. However, it was argued that RSLs already have duties to be open and transparent under the Scottish Social Housing Charter. The RSLs stressed that they do not consider themselves as public bodies and expressed concern that a designation under FOISA could lead to unintended consequences, e.g. the RSLs would be considered as public bodies for other purposes, for example debt held by RSLs being considered public debt. Several submissions raised concerns about the administrative and financial burden of freedom of information requests.
10. The Scottish Information Commissioner is supportive of the petition. In her submission she notes that, in a [special report published in January](#), she recommended that Scottish Ministers bring forward a Section 5 order to extend the coverage of FOISA to include, among others, all RSLs. The Committee agreed to seek the views of the Scottish Government on the Commissioner’s position.

11. In its letter of 16 April 2015, the Scottish Government reiterated that it intends to consult on extending the coverage of FOISA with a view to laying an order in Parliament later this year. The Scottish Government's response focuses on whether tenants of housing associations have had a loss of information rights, it does not address the wider benefits identified by the Commissioner of others having a right to information¹. The Government stated that it will respond to the Commissioner's special report later this year in its first report of the use of section 5 powers². The Scottish Government also indicated that it does not consider factoring to be services of a public nature and therefore doubts whether the factoring activities of RSLs would come under FOISA, even if the RSLs became subject to the Act.
12. The Scottish Housing Regulator (SHR) wrote to the Committee on 24 April 2015 outlining its role in regulating RSLs and in particular the duties of RSLs to be open and accountable. The SHR stated that RSLs must comply with its regulatory standards, one of which requires RSLs to be open and accountable, which includes providing information to "tenants, service users and other stakeholders".
13. The petitioner seeks more detail on the Scottish Government's planned consultation on extending the scope of FOISA and challenges the Scottish Government's view that factoring services are not of a public nature; she believes that they can and should come under FOISA. The petitioner highlighted the Scottish Information Commissioner's offer, made in her submission to the Committee, to give oral evidence.

Action

14. The Committee is invited to consider what action it wishes to take in respect of the petition. Options include either:
 - (1) To close the petition on the basis that the Scottish Government plans to consult on extending the scope of FOISA of this year. In doing so, the Committee may wish to request that the Scottish Government notifies the petitioner of the timing of the consultation and seeks her input. Or
 - (2) To refer the petition to the Infrastructure and Capital Investment Committee to consider. It is responsible for the scrutiny of policy matters in relation to housing.

¹ See paragraph 5(ii) of the Scottish Information Commissioner's submission of 16 January 2015 (www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1539_C_Scottish_Information_Commissioner_16.01.15.pdf)

² A new duty under section 7A of FOISA (as amended).

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1542 on Human Rights for Dairy Farmers****Note by the Clerk****PE1542 – Lodged 10 November 2014**

Petition by Evelyn Mundell on behalf of Ben Mundell and Malcolm and Caroline Smith calling on the Scottish Parliament to urge the Scottish Government to accept that individual dairy farmers have human rights and that these have been breached by the operating rules of the Scottish ring fencing mechanism attached to the management of milk quotas which should have been carried out in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and avoid market and competition distortion.

[Link to petition webpage](#)

Purpose

1. The Committee last considered this petition on [17 March 2015](#). At that meeting, the Committee agreed to postpone further consideration of the petition until the Rural Affairs, Climate Change and Environment (RACCE) Committee's debate on the Scottish dairy industry and until the petitioner had presented further information. The debate took place on [31 March 2015](#) and the petitioner has written enclosing a number of papers. The Committee is invited to consider what action to take on the petition.

Rural Affairs, Climate Change and Environment Committee Action

2. Following a short inquiry earlier this year, the Rural Affairs, Climate Change and Environment Committee [wrote](#) to the Cabinet Secretary detailing the action needed to address the challenges facing the dairy industry in Scotland. In his response of 24 March 2015, the Cabinet Secretary brought forward a [Scottish Dairy Plan](#), which takes account of the Committee's recommendations. On 31 March 2015, motion [S4M-12849](#) on the RACCE Committee's dairy industry inquiry was debated.
3. During that debate, David Stewart MSP made reference to the petition, noting that the petitioner's circumstances '...illustrate the difficulties that many dairy farmers face daily'.¹
4. Jamie McGrigor MSP also raised the petitioner's concerns.²
5. Joan McAlpine MSP drew attention to the action taken by the Irish Government to enable Irish dairy farmers 'to move forward now that milk quotas are gone', citing a €150 million joint venture investment in a new manufacturing facility.

¹ Official Report, 31 March 2015, pp. 41-42.

² Official Report, 31 March 2015, p. 56.

6. In his speech, the Cabinet Secretary for Rural Affairs, Climate Change and the Environment (the Cabinet Secretary) did not address the petition specifically. However, he drew attention to the [Scottish Dairy Plan](#) and the actions to be taken on the back of that, whilst acknowledging: ‘...there are other issues facing those in the industry, particularly those based on the islands or in remote areas’.³

Committee Consideration

7. This petition is a resubmission of an earlier petition, [PE1263](#) lodged in August 2009, which the Committee closed, last session, at its meeting on [8 March 2011](#).
8. At its last consideration of this petition on 17 March 2015, it noted the submissions from the [Scottish Human Rights Commission](#) (the Commission) and the [Cabinet Secretary](#). As advised by the Commission ‘it is ultimately for the courts to consider whether a fair balance has been struck or whether Scottish Ministers acted incompatibly with Convention rights.’
9. The Cabinet Secretary advised that an independent review of the Scottish milk quota ring fence provisions was undertaken in 2011 and the EU milk quota regime was abolished on 1 April 2015.
10. The petitioner’s complaint is that she was not personally consulted during the independent review and she argues that the report contains factual inaccuracies. The petitioner requests that the Scottish Government acknowledge and rectify alleged factually inaccurate statements made and accept fault for the negative consequences of ring fencing experienced by some dairy farmers. In her most recent letter of [27 March 2015](#) the petitioner provides her further information and encloses a number of papers documenting some of the background to ring fencing/quotas. These have been provided in hard copy to members.

Summary and Action

11. The petition is seeking a specific remedy, namely that the Scottish Government acknowledge that the petitioner’s human rights were breached when the ring fencing mechanism was introduced. The Scottish Government does not accept this and the Committee cannot make a ruling. The Scottish Human Rights Commission has advised that this is something that only a court could rule on. On this basis, the Committee may wish to consider closing the petition but, in doing so, make written representations to the Scottish Government, which may include:
- (i) Expressing disappointment that the Petitioner was not consulted as part of the independent review into the Scottish milk quota ring fence provisions;
 - (ii) Noting the measures being taken by the Irish Government, mentioned by Joan McAlpine MSP during the RACCE Committee debate, to provide assistance to Irish dairy farmers in response to the abolition of milk quotas, and to recommend that the Scottish Government consider what support it will give to Scottish dairy farmers in the circumstances.

³ Official Report, 31 March 2015, p. 18.

12. Alternatively, the Committee may wish to refer the petition to the Rural Affairs, Climate Change and Environment Committee to consider in the context of any future work it undertakes on the dairy industry.

Public Petitions Committee**10th Meeting, 2015 (Session 4), Tuesday 12 May 2015****PE1552 on choice of treatment for cancer patients****Note by the Clerk****PE1552 – Lodged 3 December 2014**

Calling on the Scottish Parliament to urge the Scottish Government to reform cancer treatment to ensure there is a choice of treatments including electromedicine.

[Link to petition webpage](#)

Purpose

1. The Committee considered this petition for the first time at its meeting on [3 March 2015](#) and took evidence from the petitioner. The Committee agreed to seek views from the Scottish Government / Scottish Cancer Taskforce, Cancer Research and the General Medical Council. Responses have been received and the Committee is invited to consider what action to take on the petition.

Background – the following is taken from the [SPICe briefing](#)*Electromedicine?*

2. Electromedicine is a broad term which generally refers to the application of electrical currents to the body in order to treat various medical conditions. Electromedical devices are already used in medicine and examples include heart pacemakers, cochlear implants, vagal nerve stimulation, TENS machines and electro convulsive therapy (ECT). The NHS does not have a position on the use of electromedicine in cancer generally because each device requires to be assessed on its own merits.

Choice of treatment

3. Patients have a right to be involved in decisions about their treatment and to be given information to help choose the correct treatment for them. Such practice is seen as central to producing informed consent, the necessity of which is well established in common law. Patients also have the right to refuse a treatment and this too is recognised in common law. Implementing a treatment without informed consent or against the patient's wishes could constitute an assault. In relation to choosing to have a particular treatment, a patient's rights are less absolute and must be weighed against other considerations, for example, the evidence base on the clinical and cost effectiveness of a treatment.
4. The [Patient Rights \(Scotland\) Act 2011](#) set out the following specific rights for patients:

“s3(2) Health care is to—

(a) be patient focused: that is to say, anything done in relation to the patient must take into account the patient’s needs,

(b) have regard to the importance of providing the optimum benefit to the patient’s health and wellbeing,

(c) allow and encourage the patient to participate as fully as possible in decisions relating to the patient’s health and wellbeing,

(d) have regard to the importance of providing such information and support as is necessary to enable the patient to participate in accordance with paragraph (c) and in relation to any related processes, taking all reasonable steps to ensure that the patient is supplied with information and support in a form that is appropriate to the patient’s needs.”

5. These provisions recognise the importance of encouraging a patient’s involvement in their treatment and respecting their wishes. However, the Act qualifies these rights with other provisions (s4) which state that the rights of other patients must be taken in to account, that the healthcare must be proportionate and appropriate to the circumstances of each case and that nothing in the Act prejudices the exercising of clinical judgment and the effective and efficient use of health service resources.
6. The [Scottish Health Technologies Group](#) (part of Healthcare Improvement Scotland) provides advice on the evidence of the clinical and cost effectiveness of existing and new technologies likely to have significant implications for patient care in Scotland. Anyone can suggest a topic for the SHTG to review so long as it meets certain [criteria](#).

Scottish Government / Scottish Parliament Action

7. In 2008 the Scottish Government published “[Better Cancer Care: An Action Plan](#)”. This includes a section on treatment which discusses the adoption of new techniques for treating cancer. Within this it states that there are few clear mechanisms for horizon-scanning new techniques and technologies which may be used in diagnosis or treatment and so, “their introduction can be irregular with no coherent assessment of effectiveness once they have been adopted”. The action plan went on to commit to “work[ing] with NHS Boards and other stakeholders to further develop improved mechanisms for the assessment and introduction of new techniques and technologies”.
8. In February 2011, the Scottish Parliament passed the Patient Rights (Scotland) Act 2011.

Committee consideration

13. The response from the Scottish Government/Scottish Cancer Taskforce points out that any new devices or treatments require evaluation. The treatments highlighted by the petitioner have not been approved for NHS use as they have not been evaluated. The Scottish Government/Scottish Cancer Taskforce suggests that the petitioner be invited to follow existing protocols for the consideration of new treatments for use in the NHS.
14. Cancer Research UK points out that cancer treatment needs to be underpinned by evidence. It states that chemotherapy, radiotherapy and surgery are all proven treatments. In relation to the alternative treatments proposed by the petitioner, Cancer Research UK states that there is no credible evidence that the Photon Genie is of any benefit to cancer patients. In its view it is not a credible treatment. With reference to the Oasis of Hope Cancer Hospital referred to by the petitioner, Cancer Research UK suggests that the treatments offered there lack evidence of efficacy.
15. In its [submission](#) the General Medical Council explains its role and the standard of care expected of doctors. It is unable to offer guidance on clinical treatments or decisions.
16. In his [submission](#), the petitioner contends that in Scotland a more holistic approach to treating cancer is required and that more should be done to research and evaluate what is done elsewhere with a view to widening available options on the NHS in Scotland.

Action

17. The Committee is invited to consider what action it wishes to take in relation to the petition. Options include:
 - (1) To close the petition on the basis that the particular treatments highlighted by the petitioner have not been evaluated for use by the NHS in Scotland. In doing so, the Committee may wish to provide appropriate signposting to the petitioner to enable him to consider whether he would wish to complete a “topic referral” to suggest to the Scottish Health Technologies Group this as a topic of interest.
 - (2) To take any other action that the Committee considers appropriate.