Local Government and Communities Committee

Common Good Property and Funds

Submission from South Lanarkshire Council

**Question 1:** Are the common law rules which define common good property adequate?

**Response:** On balance, yes. There have been a number of judicial decisions relating to the definition of Common Good property most of which are in the 1800s and early 1900s. From these can be drawn a number of specific questions to be asked in considering whether or not an asset is Common Good. An attempt to set out a comprehensive statutory definition at this time when the definition seems to be fairly settled and understood could risk opening up further debate in this area.

**Question 2:** Do you think the record keeping of common good property and assets held by local authorities could be improved?

**Response:** This Council has reasonably good records having carried out an exercise about 10 years ago to investigate the existing registers. That is not to say that there may be areas of land that the public believe are “Common Good”.

If any property is being sold which is in a Common Good area but is not recorded as a Common Good asset then further research on the title is carried out to establish whether it is correctly recorded. This good practice could be replicated elsewhere.

Part 6 of the Community Empowerment (Scotland) Act 2015 places a responsibility upon Local Authorities to establish, maintain and publish information on Common Good assets. This supports the Council’s existing practices.

**Question 3:** Is there enough openness and direct engagement with local communities on common good property and funds and the use to which common good property and assets are put?

**Response:** Yes. This Council currently engages with Community Councils that have expressed an interest in the relevant Common Good Fund.

The terms of the Community Empowerment (Scotland) Act 2015 set out a fresh basis for dialogue between communities and Local Authorities regarding Common Good assets. It would seem unnecessary to implement further changes to the statutory framework for Common Good until such times as the effectiveness of these new arrangements has been established.

**Question 4:** Are details of common good property and assets and income generated by their sale clear and transparent?
Response: Yes. This Council separately identifies Common Good property and holds them on the balance sheet of each Common Good Fund. Any income generated by a sale is credited to the relevant Common Good Fund.

Part 6 of the Community Empowerment (Scotland) Act 2015 places a responsibility upon Local Authorities to consult with Community Council’s and other community bodies before common good property is disposed of or its use changed.

Question 5: Any other issues relating to common good property, assets and funds which you wish to bring to the attention of the Committee?

Response: The Community Empowerment (Scotland) Act 2015 is intended to improve the transparency of the common good account and encourage consultation but as the regulations are not in force yet the Act has not had time to take effect.

The relevant provisions of the 2015 Act are not yet in force and the Council awaits Guidance being issued by the Scottish Ministers in relation to those duties.

The 2015 Act requires councils to establish a Common Good register and prior to this, to publish a list of property that it proposes to include on the register and to notify community groups of the published list and to invite representations in respect of the list.

Representations may in particular be made in relation to whether property included on the list is Common Good and the identification of other property which the community group believe should be Common Good.

Researching and investigating titles and the history of assets that the community believe should be added to the Common Good Register could be resource intensive. Where available, such resources are being directed towards the programme of registration of public sector titles for the Registers of Scotland initiative. It should be recognised that funds are not readily available to develop a Common Good register beyond what currently exists. A pragmatic approach to Common Good has served well to date.

Alasdair MacKenzie
Finance Adviser (Treasury Management)
Finance and Corporate Resources