Local Government and Communities Committee

Common Good Property and Funds

Submission from Malcolm Combe

In terms of specific responses to the questions asked by the Committee, I offer these responses:

1. Are the common law rules which define common good property adequate?

In the sense that there are some rules that recourse can be made to, it seems fair to say common good property is not a “free for all” or completely chaotic. As such, it could quite properly be argued rules are “adequate”, but there is little doubt aspects of it could be improved. The Law Society of Scotland have offered some means by which this could be done and I associate myself with their remarks. I might add that the differentiation between inalienable common good property and (general) common good property is something that could be clarified and better terminology could be useful here.

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

Yes. The Law Society of Scotland have offered some means by which this could be done and I once again associate myself with their remarks. There are also some steps towards improvement already as a result of the Community Empowerment (Scotland) Act 2015.

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?

Part 4 of the Land Reform (Scotland) Act 2016 should improve such matters for significant decisions by all landowners. There are also relevant provisions in the Community Empowerment (Scotland) Act 2015 for common good property. Whilst I would counsel against making this too multi-layered I would, like the Law Society of Scotland noted in its response, note that openness and effective engagement between all relevant parties when it comes to dealing with all aspects of law and policy is important.

4. Are details of common good property and assets and income generated by their sale clear and transparent?

I have never found such details not to be clear and transparent, but then again I have not had cause to rummage too deeply into, for example, income generated from such
assets and I fear I can offer no expert opinion here. Like the Law Society of Scotland, I believe these details should be clear and transparent.

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

As noted in 1, the status of inalienable common good property should be considered alongside any review of the rule of common good property, in particular to allow for clarity about such assets.

Kind regards,

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