



EDUCATION AND CULTURE COMMITTEE

AGENDA

21st Meeting, 2012 (Session 4)

Tuesday 4 September 2012

The Committee will meet at 10.00 am in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.
2. **How the establishment of cultural trusts by local authorities has impacted on cultural services and delivery:** The Committee will take evidence from—
 - Douglas Black, Regional Organiser, UNISON;
 - Mark Bramah, Assistant Chief Executive, Association for Public Service Excellence (APSE);
 - Gerry Campbell, General Manager, South Lanarkshire Leisure and Culture;
 - Heather Stuart, Chair, The Voice of Chief Officers of Cultural and Leisure Services in Scotland (VOCAL).
3. **Subordinate legislation:** The Committee will consider the following negative instrument—
 - Individual Learning Account (Scotland) Amendment Regulations 2012 (SSI 2012/172)
4. **Draft Budget Scrutiny 2013-14:** The Committee will consider its approach to the scrutiny of the Scottish Government's Draft Budget 2013-14.
5. **Differences in cultural participation across Scotland - witness expenses:** The Committee will consider a claim under the witness expenses scheme.

EC/S4/12/21/A

Terry Shevlin
Clerk to the Education and Culture Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5204
Email: terry.shevlin@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda Item 2

SPICe briefing

EC/S4/12/21/1

Written Evidence Received

EC/S4/12/21/2

PRIVATE PAPER

EC/S4/12/21/3 (P)

Agenda item 3

Paper by the clerk

EC/S4/12/21/4

Agenda item 4

PRIVATE PAPER

EC/S4/12/21/5 (P)



Education and Culture Committee

21st Meeting, 2012 (Session 4), Tuesday, 4 September 2012

How the establishment of cultural trusts by local authorities has impacted on cultural services and delivery: SPICe briefing

SPICe has prepared the following briefing for the Education and Culture Committee's one-off evidence session.

LOCAL AUTHORITIES AND CULTURAL SERVICES

Local authorities provide support for a broad range of cultural services. The only statutory requirement on them is that:

“a local authority shall ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities”.

[\(Local Government and Planning \(Scotland\) Act 1982, s14\)](#)

Of the fifty National Indicators, which the Scottish Government use to track progress towards the achievement of its [National Outcomes](#), there are only two indicators which relate directly to culture. They are:

- Increase cultural engagement: measured by the percentage of adults who have either participated in a cultural activity or who have attended or visited a cultural event or place in the last 12 months.
- Improve the state of Scotland's historic sites: measured by the Percentage of A-listed buildings on the Buildings at Risk Register (BARR).

These are the only indicators for which local authorities are obliged to collect information. With no other central performance measures for cultural services the information gathered by local authorities on their cultural services tends to vary across the country.

ARM'S-LENGTH EXTERNAL ORGANISATIONS

Councils' use of arm's-length external organisations to provide cultural services

In 2011 Audit Scotland produced a [report](#), for the Accounts Commission, on how councils are utilising arm's-length external organisations (ALEOs). In that report Audit Scotland

identified 130 major arm's-length external organisations. ALEOs can be companies, trusts or other bodies that are separate from the local authority.

ALEOs deliver council services, but do not operate within traditional council structures. They are „external“ because they have a separate identity to the council, and are „arm's-length“ because the council retains some control or influence, usually through a funding agreement.

A 2009 report on [Culture and Sport in Scotland's Local Authorities](#), for [VOCAL](#) (the association for culture and leisure managers in Scotland), found that of the 22 councils which responded none of them were using trusts to provide cultural services.

In 2011 VOCAL carried out a follow-up [survey](#) of local authorities which found that, of the 16 respondents, 13 are now, or are considering, delivering their cultural services using an ALEO.

Governance of ALEOs

ALEOs are one step removed from council control so the governance and financial arrangements can be complex.

Audit Scotland noted that although an ALEO is a separate organisation from the council this may not be apparent to service users or taxpayers. It pointed out that one consequence of using more complex delivery structures involving ALEOs is that the public may be less clear about who is responsible for services and, for example, who they should complain to if they are unhappy with the services they receive. Audit Scotland highlighted that maintaining transparency is a key objective in good governance.

Performance measures

Audit Scotland suggested councils should set clear objectives for services delivered through ALEOs and put appropriate monitoring systems in place, including tailored performance indicators. The council should have an overview of how well ALEOs are meeting their objectives, while the ALEOs should also monitor more detailed day-to-day operational issues. Mechanisms should be in place to identify and act on under-performance including trigger points to review the delivery agreement.

Performance monitoring should be proportionate to the scale of the activity and the risks involved. Audit Scotland found that councils tended to focus on the financial position of ALEOs, often relying on annual audited accounts. However, these are often available long after a matter of interest to the council has emerged. Audit Scotland, therefore, recommended that councils do more to monitor performance, including regular financial reporting, and service outcomes.

Access to information on ALEOs

Supporters of expanding the coverage of the Freedom of Information (Scotland) Act 2002 have identified ALEOs as a category of organisation which needs to be included. At present anyone requesting information on such organisations relating to their work for councils can apply through the council. However councils are not statutorily required to supply the information. An FOI exercise, carried out jointly by the [STUC](#) and [Close the Gap](#) (Scottish Government funded project to close the gender pay gap), found that, in providing

FOI information, local authorities are not consistent in how they define what constitutes an ALEO when it comes to their service provision:

“One local authority submitted a response from its Corporate Procurement Unit stating that it did not contract any ALEOs to deliver services. Contrary to this, one ALEO lists on its website that local authority as a customer for which it delivers services. When this was communicated to the local authority contact, an alternative response was eventually received from the Corporate Procurement Unit confirming the contract with the ALEO. This clearly raises questions about the accuracy of the information contained within local authority responses to the FOI request, and more widely, in terms of trying to obtain a complete picture of the number ALEOs currently being contracted to deliver services on behalf of public bodies”.

Funding

Obtaining figures on local authority expenditure on culture has always been problematic. The Chartered Institute of Public Finance and Accountancy annually publish statistics, gathered from local authorities, on their expenditure on Cultural and Related Services. But this heading includes not only Cultural and Heritage and Library Services but also Recreation, Sport and Tourism.

Audit Scotland found that the funding relationship between councils and ALEOs is typically set out in a service or management agreement. These should set out what is expected from the arrangement, specifying the money and other resources the council will provide and what it expects from the ALEO in return. The agreement should include criteria for the council withholding its funding, or for terminating its relationship with the ALEO.

Francesca McGrath
Senior Researcher
29 August 2012

Education and Culture Committee

21st Meeting, 2012 (Session 4), Tuesday, 4 September 2012

How the establishment of cultural trusts by local authorities has impacted on cultural services and delivery: written evidence received

Clerk's note

1. The Education and Culture Committee will take oral evidence on how the establishment of cultural trusts by local authorities has impacted on cultural services and delivery on 4 September 2012. The following written submissions have been received:

Association for Public Service Excellence
UNISON

Page 2
Page 5

**Neil Stewart
Assistant Clerk
30 August 2012**

Association for Public Service Excellence (APSE)

1. Background

1.1 APSE is a local authority association specialising in the delivery of front-line local authority services including the provision of sports, recreation and cultural services. APSE represents 237 local authorities across the United Kingdom which includes all 32 local authorities in Scotland. In Scotland 23 of our member authorities have leisure trusts and they are entitled to access services from the Association through their host councils. Nine councils in Scotland still retain in-house sports and leisure services. In addition a number of leisure trusts are associate members of APSE in their own right.

1.2 APSE operates the largest voluntary local government benchmarking service in the U.K. performance networks. One of the services which APSE benchmarks is sport and leisure facility management and APSE holds performance data on over 500 local authority sports and leisure facilities. APSE produced a report for Audit Scotland in February 2010 as part of an audit of physical recreation facilities in local government, which considered performance data from performance networks on:

- Net revenue spend
- Net spend per head of population
- Facility attendance
- Adult participation
- Net cost per visit
- Customer satisfaction

2. Leisure Trusts

2.1 Leisure trusts are usually created by Councils to take over the management of leisure centres on the basis of a grant and lease arrangement. Most of them have charitable purposes and as a result, do not have to pay the national business rate. They cannot be owned or controlled by the Council and whilst they can and in some cases do, operate under contract, there is a risk of challenge where this is awarded without competition. The term „trust“, used in the context of a leisure trust, has no specific legal meaning. In fact, leisure trusts can take many legal forms but are usually either Industrial and Provident Societies or non-profit distributing companies that are registered charities. As such they are corporate bodies, whereas a true trust is unincorporated.

2.2 Leisure Trusts enjoy a relative advantage over direct provision as a result of mandatory and discretionary relief from national non-domestic rates (NNDR). A report for the Audit Commission published in 2007 identified that a major benefit of forming a trust for leisure and cultural services is savings that can be made on national no-domestic rates. This has effectively meant that local authorities have been able to reduce the public subsidy for sport and leisure provision. Indeed the Audit Scotland report on physical recreation services in local government published in October 2010 found that spending on physical recreation had increased at a lower rate than most other council services. So that in the five years from 2004/05 to 2008/09 spending on physical recreation grew by just 4%

compared with 18.6% for social work, 7.3% for housing and 6.2% for education “which indicates that local government priorities and pressures may lie elsewhere”.

2.3 It is also worthy of note that APSE performance networks has been able to show that there is no clear evidence that trust facilities achieve higher levels of performance than directly managed facilities, which is largely determined by the type of facility, its location and the levels of relative deprivation in the area which the facility serves. In analysis of benchmarking data undertaken by APSE in 2009 we found that the levels of subsidy for all facilities had continued to fall and that whilst for combined standard wet and dry facilities the level of subsidy to trusts was lower than their in-house equivalent, the difference disappeared when all types of facility were counted. Also the usage of in-house facilities runs slightly above those for trusts and in-house staff absence rates were lower.

3. APSE/Edge Hill University research on where next for local authority sport and recreation services 2012

3.1 APSE is just about to publish a major piece of research undertaken by Neil King of Edge Hill University on where next for local authority sport and recreation services in England. This research assesses the impact of and responses to the Coalition Government’s Comprehensive Spending Review 2010 and the subsequent local government finance settlement on sport and recreation services in England. However, many of the findings of the research are as relevant to Scottish local government.

3.2 A key finding is that trusts are now an established mechanism for service delivery across almost a quarter of authorities and this is set to increase as authorities seek to reduce financial commitments in the current economic and political climate. There is no evidence that private sector delivery of services is likely to increase significantly across the sector. However, the local sport sector is likely to experience increasing fragmentation in forms of provision which raises questions regarding service accountability, equity, quality and sustainability. Another important finding is that over the last decade across two thirds of local authorities the administrative and political status of sport and recreation services has weakened. The research attempts to set out a clear strategy for sports and recreation services based on 3 strong social policy objectives linked to the development of a solid business case and evidence base.

4. Conclusion

4.1 In APSE’s view sports, recreation and culture trusts are an increasingly important component of local service delivery and meeting social policy objectives for healthy communities and active participation and access to sport, recreation and culture. They are not however, the only mode of service delivery and local authority in-house services continue to be an important component of service provision, albeit in Scotland a diminishing one (9 authorities representing 28% of the sector).

4.2 Leisure and culture trusts face a number of very important challenges over the next few years which can be summarised as follows:

- The relative financial advantage of trusts in terms of available tax reliefs has

enabled local authorities to reduce the direct subsidy to leisure and achieve revenue savings, but in an increasingly difficult financial climate with local authorities seeking to reduce their spending still further, how will trusts and indeed in-house services, be able to retain a clear link between social policy objectives and the public subsidy for leisure, when the pressure will be either to become much more commercially focussed or to rationalise provision.

- It has become increasingly clear that the formation of local authority leisure and culture trusts cannot be used as a means of avoiding the implications of the EU procurement and state aid rules, so that the structure of existing and future arrangements needs to be carefully considered so as not to be in breach of binding legal requirements.
- Leisure trusts have by necessity, to be able to demonstrate their independence from local authorities in order to achieve charitable status amongst other things. However, there are important issues of governance, accountability and scrutiny which need to be properly exercised by local authorities and as the report by Audit Scotland in 2010 found, there are weaknesses in strategic planning and limited scrutiny of financial or service performance by council committees. This is also compounded by potential conflicts of interest faced by councillors serving on trust boards.
- Rather than being developed purely as a response to reducing financial resources, which can be seen as a short to medium term approach, local authorities need to consider carefully how leisure and culture trusts contribute to wider social policy and community objectives in relation to sport, recreation and culture.

Mark Bramah
Assistant Chief Executive
APSE

UNISON

Introduction

1. UNISON Scotland welcomes the opportunity to respond to the call for evidence from the Education and Culture Committee. We are the largest union in local government representing over a hundred thousand people. UNISON members pay taxes as well as delivering and using public services and are therefore in a unique position to comment on public service delivery in Scotland.

General Comments

2. UNISON Scotland welcomes the education and culture committee's decision to take evidence on the role of culture trusts. There has been a rapid expansion of the use of arms length bodies (ALEOs) to deliver local authority services and little scrutiny of their impact. Our experience across the UK is that there is little evidence of service improvements and the driving force behind setting up trusts is to save money via the avoiding VAT through obtaining charitable status.
3. Museums Galleries Scotland conducted a literature review: Delivering Public Services in the 21st Century (Heather Doherty June 2010) which found that not enough research has been done on alternative models. UNISON is concerned there is, if anything a speeding up of moves to use ALEOs, despite the lack of evidence on which to base this decision. What research there is has highlighted a range of issues.
4. No matter what statements are made in papers proposing moves to trusts the key driver is costs savings. This was highlighted in research into museum trusts in England and Wales published in 2006 which highlighted a range of concerns (Moving to museums trusts Adrian Babbidge, Rosemary Ewles and Julian Smith MLA 2006). Trusts were set up mainly a response to funding difficulties: pressure from the Arts Council, a Best Value Review or rationalisation of services' branch museums.
5. In terms of Gershon they found that the process of moving the service to trusts does not generate substantial financial benefits: there tended to be "non cashable" efficiencies. Museums are not particularly well funded so there is little scope to make savings. The economies of scale involved in being part of a large organisation particularly in terms of maintenance and procurement can also lead to higher operating costs once bodies stand on their own. The report found no evidence that that devolution leads to better management of museums. There was also no evidence that museums are getting more private money as hoped. Most additional funding had come from public funding sources available to museums in general. Where there have been savings it is through exemptions for non domestic rates and VAT. There is no guarantee that the Treasury will not move to close this loophole in future or that an independent Scotland will continue with a similar exemption. There is also the moral question as to whether public bodies should indulge in tax avoidance.

6. One of the reasons given for the creation of trusts is that they will have access to alternative funding streams not available to bodies under local authority control. So far this has not materialised. Audit Scotland's report on Physical Recreation Services in Local Government (2010) also raised concerns about the reliance of ALEOs on council funding and the ongoing impact of cuts in local government finance on their future funding. Trusts are heavily reliant on local authority funding. Other funding streams which have been utilised have so far been ones which would have been available under LA control for example joint working with the NHS re health promotion strategies.
7. Public spending is under severe pressure. There will undoubtedly be cuts in LA funding to leisure trusts in future unless the current governments at Westminster and Holyrood change their plans. UNISON has concerns that the experience of our members in England will be repeated here. In response to funding cuts our members in leisure trusts have experienced cuts in wages and other terms and conditions and increased casualisation of the workforce (The Case Against Leisure Trusts ESSU 2006).
8. Some trusts have found that their costs have increased as they can no longer benefit from the economies of scale provided by being in a local authority. Other such as Glasgow life found they had to create new jobs because of work previously done in other departments in the council, for example marketing posts. Some trusts have begun to expand across LA boundaries in order to regain these savings. Fifty per cent of leisure trusts have two or more contract and Greenwich Leisure Trust has eleven
9. We have serious concerns about democratic accountability. Trusts spend public money and are delivering services to communities and therefore need to be directly accountable to local people. Our museums and galleries hold priceless artefacts owned by us all. Even as is currently the place in Scotland where they do not work across council boundaries, accountability is weak. Placing councillors on ALEO boards is the suggested route but in order to meet the rules required to get the essential tax exemptions the number of councillors is limited. As Audit Scotland point out: Councillors sitting on ALEO boards face a potential conflict of interest which can limit their ability to perform effective scrutiny or hold the ALEOs to account for their use of public money. The Companies Acts of 1989 and 2006 place a personal responsibility on all board members of a company to always act in the interests of the company and to abide by commercial confidentiality. This could clearly come into conflict with their role as councillors, either in their direct responsibility to the council or the community they were elected to represent.
10. The use of a range of ALEOs to deliver services also has an impact on the way services are integrated. We have increasing concerns that the use of culture and leisure facilities as part of a range of local authority strategies for healthier living and improved mental health for example will be hindered as they become increasingly separate for other public services.
11. Finally, despite losing control over the services councils are not free from risk. When things go wrong the council has to step back in. This is either because it is a statutory service like libraries or because of political pressure as local people

demand the service continues. Annandale and Eskdale Trust had to ask Dumfries and Galloway Council for handout of £40,000 for its financial crisis. They were not prepared for the rise in fuel costs. Aspire Trust, which had a contract to run East Hertfordshire's Leisure services, was £500,000 in the red within its first year.

Conclusion

12. UNISON is concerned that large sections of public service delivery are being shifted off to arms length bodies with very little research into the effectiveness of such change. UNISON Scotland therefore welcomes the committee's decision to take evidence on local authority cultural trusts.

Mike J Kirby
Scottish Secretary
UNISON Scotland

Education and Culture Committee

21st Meeting, 2012 (Session 4), Tuesday, 4 September 2012

Subordinate legislation

Introduction

1. This paper seeks to inform members' consideration of the Individual Learning Account (Scotland) Amendment Regulations 2012 (SSI 2012/172).
2. A copy of the instrument is annexed to this paper.

Background

3. The instrument was laid on 31 May 2012 and the Education and Culture Committee was designated the lead committee. It is subject to negative procedure and no motion to annul has been lodged.
4. The Subordinate Legislation Committee considered the instrument at its meeting on 12 June 2012 and determined that it did not need to draw the attention of the Parliament to the instrument.
5. If the Education and Culture Committee wishes to report on the instrument it must do so by 10 September 2012.
6. Further information on the policy intent of the instrument is provided in the executive note provided by the Scottish Government, which is annexed to the instrument (page 5).

Action

7. The Committee is invited to consider whether it is content with the instrument.

Neil Stewart
30 August 2012

 SCOTTISH STATUTORY INSTRUMENTS

2012 No. 172**EDUCATION**
**The Individual Learning Account (Scotland) Amendment
Regulations 2012**

<i>Made</i> - - - -	<i>30th May 2012</i>
<i>Laid before the Scottish Parliament</i>	<i>31st May 2012</i>
<i>Coming into force</i> - -	<i>1st July 2012</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 1, 2 and 3(2) of the Education and Training (Scotland) Act 2000⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Individual Learning Account (Scotland) Amendment Regulations 2012 and come into force on 1st July 2012.

Amendment of the Individual Learning Account (Scotland) Regulations 2011

2.—(1) The Individual Learning Account (Scotland) Regulations 2011⁽²⁾ are amended as follows.

(2) In regulation 3 (qualifying persons (learning account holders))—

(a) in paragraph (1)(b), for “(2) to (4) and (6)” substitute “(2), (3), (4), (5A), (5B), (5C), (5D) and (6)”; and

(b) after paragraph (5) insert—

“(5A) The condition in this paragraph is that the person is not undertaking secondary education within the meaning of section 135(2)(b) of the Education (Scotland) Act 1980⁽³⁾.

(5B) The condition in this paragraph is that the person does not hold a first degree or a postgraduate qualification from an educational institution in the United Kingdom or a qualification comparable to a first degree or a postgraduate qualification from an educational institution outside the United Kingdom.

(5C) The condition in this paragraph is that the person is not undertaking—

⁽¹⁾ 2000 asp 8. Section 1 was amended by regulation 10 of the Education and Training (Scotland) Regulations 2000 (S.S.I. 2000/292).

⁽²⁾ S.S.I. 2011/107.

⁽³⁾ 1980 c.44. Section 135(2)(b) was amended by paragraph 3(13)(b) of schedule 3 to the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4).

- (a) a course of further education (that is to say education provided by means of a course of any description mentioned in section 6(1) of the Further and Higher Education (Scotland) Act 1992⁽⁴⁾); or
- (b) a course of higher education (that is to say education provided by means of a course of any description mentioned in section 38(2) of that Act).

(5D) The condition in this paragraph is that the person is not participating in a national training programme secured by The Skills Development Scotland Co. Limited.”.

(3) In regulation 4(6)(a) (registration (learning account holders)), for “(2) to (4) and (6)” substitute “(2), (3), (4), (5A), (5B), (5C), (5D) and (6)”.

(4) In regulation 10(2) (education and training for which grant can be paid), sub-paragraphs (a) and (b) are deleted.

(5) In regulation 12(3)(b)(ii) (grant: supplementary provision), for “(2) to (4) and (6)” substitute “(2), (3), (4), (5A), (5B), (5C), (5D) and (6)”.

Savings and transitional provision

3. Any payments which are due to a Learning Account Holder in terms of the Individual Learning Account (Scotland) Regulations 2011 immediately prior to the coming into force of these Regulations continue to be payable for the remainder of the Account Holder’s Year.

ANGELA CONSTANCE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
30th May 2012

⁽⁴⁾ 1992 c.37. Section 6(1) was amended by paragraph 8 of Schedule 5 to the Education (Scotland) Act 1996 (c.43).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Individual Learning Account (Scotland) Regulations 2011 (“the 2011 Regulations”). The amendments have the effect of changing requirements for Qualifying Persons within the meaning of the 2011 Regulations so that those in secondary education, further education or higher education, those participating in certain national training programmes, as well as those already qualified to degree level, will no longer be eligible for grant. These Regulations also make certain savings and transitional provision for those currently in receipt of grant (regulation 3).

ANNEXE B

EXECUTIVE NOTE

**THE INDIVIDUAL LEARNING ACCOUNT (SCOTLAND) AMENDMENT
REGULATIONS 2012**

SSI 2012/172

The above instrument was made in exercise of the powers conferred by sections 1, 2 and 3(2) of the Education and Training (Scotland) Act 2000. The instrument is subject to negative procedure.

Policy Objectives

There is currently no public sector investment targeted exclusively at meeting the skills needs of low paid, low skilled individuals. Given current levels of unemployment this group remains key. We are making changes to the Individual Learning Account (ILA) programme to focus on this issue. The intention is that, on implementation of these changes, the ILA programme will be fully focussed on low paid, low skilled and unemployed individuals.

Consultation

ILA eligibility criteria has been reviewed following the Making Training Work Better consultation undertaken to ensure that training in Scotland best meets the needs of trainees and businesses and contributes to both employment and business growth ambitions. The Scottish Government, in partnership with Skills Development Scotland, undertook face to face consultation sessions with interested parties between September and November 2011 and also invited responses via an online consultation.

Impact Assessments

An equality impact assessment has been completed. There are no equality impact issues.

Financial Effects

The Minister for Youth Employment, Angela Constance, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.