PUBLIC PETITIONS COMMITTEE

AGENDA

7th Meeting, 2012 (Session 4)

Tuesday 1 May 2012

The Committee will meet at 2.00 pm in Committee Room 2.

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—

   **PE1425** by Maureen Harkness on the adverse impact of DVLA local office closures

   and take evidence from—

   Maureen Harkness, William Telfer and Finn Mackenzie.

   and will then consider—

   **PE1426** by Donna Scott on a national donor milk bank service

   and take evidence from—

   Donna Scott;

   Jase Kelly, Chairman, ScotsERVS.

   and will then consider—

   **PE1427** by Rob Kirkwood, on behalf of Leith Links Residents Association, on access to justice for non-corporate multi-party groups

   and take evidence from—

   Rob Kirkwood, Professor Rob Jackson and Allan Smith, Leith Links Residents Association.
3. **Consideration of current petitions:** The Committee will consider—

- [PE1285](#) by Caroline Mockford on free calls to NHS 24 for mobile phones;
- [PE1364](#) by Phyllis McBain on clarifying guidelines on Gypsy/Traveller encampments;
- [PE1395](#) by Jan Culik on targeted funding for lesser taught languages and cultures at universities; and
- [PE1400](#) by Libby Anderson, on behalf of OneKind, on a ban on the use of wild animals in circuses.

4. **Work programme:** The Committee will consider its work programme.

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The following papers are attached for this meeting—

**Agenda item 2**

<table>
<thead>
<tr>
<th>PE1425</th>
<th>Note by the Clerk</th>
<th>PPC/S4/12/7/1</th>
</tr>
</thead>
<tbody>
<tr>
<td>PE1426</td>
<td>Note by the Clerk</td>
<td>PPC/S4/12/7/2</td>
</tr>
<tr>
<td>PE1427</td>
<td>Note by the Clerk</td>
<td>PPC/S4/12/7/3</td>
</tr>
</tbody>
</table>

**Agenda item 3**

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<thead>
<tr>
<th>PE1285</th>
<th>Note by the Clerk</th>
<th>PPC/S4/12/7/4</th>
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<tr>
<td>PE1364</td>
<td>Note by the Clerk</td>
<td>PPC/S4/12/7/5</td>
</tr>
</tbody>
</table>

Scottish Government Letter of 22 March 2012  PE1364/DD
Petitioner Letter of 19 April 2012  PE1364/EE

<table>
<thead>
<tr>
<th>PE1395</th>
<th>Note by the Clerk</th>
<th>PPC/S4/12/7/6</th>
</tr>
</thead>
</table>

Scottish Government Letter of 20 March 2012  PE1395/H
Scottish Funding Council Letter of 21 March 2012  PE1395/I
Petitioner Letter of 16 April 2012  PE1395/J

<table>
<thead>
<tr>
<th>PE1400</th>
<th>Note by the Clerk</th>
<th>PPC/S4/12/7/7</th>
</tr>
</thead>
</table>

Scottish Government Letter of 15 March 2012  PE1400/F
Petitioner Letter of 19 April 2012  PE1400/G

**Agenda item 4**

Private Paper  PPC/S4/12/7/8 (P)
Public Petitions Committee
7th Meeting, 2012 (Session 4), Tuesday 1 May 2012

PE1425 on the adverse impact of DVLA local office closures

Note by the Clerk

PE1425 – Lodged 13 March 2012
Petition by Maureen Harkness, Jane McIntyre, Duncan McGrouther, Brian Fraser, Ryan MacDonald, Scott Robertson and Joy MacKenzie calling on the Scottish Parliament to urge the Scottish Government to make representations to the UK Government in relation to the future of all five DVLA local offices in Scotland given the adverse impact that the closure of any or all the offices would have on the economy, safety and customer service to all Scottish residents.

Link to petition webpage

Purpose

1. This is a new petition which the Committee is asked to consider and decide what action it wishes to take. The Committee has invited the petitioner to speak to the petition.

Background – the following information is taken from the SPICe briefing

2. The UK Department for Transport (DfT) launched a consultation exercise on the 13th December 2011, Transforming DVLA services, in which it set out proposals to move the Driver and Vehicle Licensing Agency (DVLA) away from ‘a largely paper based organisation to a modern, highly efficient electronic business which provides online services to motorists and businesses’. Central to the consultation are plans to close all 39 local DVLA offices in the UK, five of which are in Scotland. The intention is to centralise all services, with customers either accessing services online or through call-centre operatives in the DVLA Swansea offices, where an estimated 300 new jobs will be created. Local office closures are likely to take place by the end of 2013.

3. Approximately 2.5 million customers use over-the-counter services provided by local DVLA offices in the UK each year, primarily for vehicle registration and licensing, tax disc distribution (to motor dealers), trade licensing, vehicle inspections and personalised registrations. According to the DVLA’s 2010-11 Annual Report, the amount of Vehicle Excise Duty (VED) collected through local offices for 2010-11 was £345 million. This compares to £2,846 million collected through post offices, and £2,792 million collected through electronic channels. (DVLA, 2011, p.98)

4. The DFT set out its justification for closing local offices in its consultation document: ‘(Local office) services are expensive to operate with 23.3% of overall Agency headcount delivering only 5.7% of the overall Agency workload. Therefore, the DVLA needs to identify different ways of delivering these services to increase efficiency and value for money. The DVLA will look at rationalising
activities and then centralising remaining functions at its Headquarters in Swansea. The DVLA believe this is a necessary step in the journey to deliver savings.' The proposals could deliver significant efficiencies with an estimated £28 million year on year saving (DFT, 2011).

5. The consultation closed on the 20 March 2012. According to the DVLA there were 919 responses. More than half of these were submitted by private individuals, and another third came from car dealers.

Expected impact

6. No impact assessment has yet been published of the proposals. According to Mike Penning, Parliamentary Under-Secretary of State for Transport, ‘impact assessments and full business cases, where appropriate, are being undertaken on specific elements of the proposals’ (PQ). It is not clear when these will be published.

Job losses

7. The most obvious impact will be felt by those employed in local offices. According to the Public and Commercial Services Union (PCS), if implemented local office closures could lead to the loss of 119 jobs in Scotland:

- Aberdeen: Greyfriars House, Gallow Gate (9 jobs)
- Dundee, Caledonian House, Greenmarket, (11 jobs);
- Edinburgh, 1 Lochside Avenue, (25 jobs);
- Glasgow, 46 West Campbell Street, (67 jobs);
- Inverness, 28 Longman Road, (7 jobs);

8. PCS responded to the proposals by claiming ‘the closures would wipe out the high quality face-to-face services these offices provide to the public and motor traders, whose often complex enquiries could not be handled by telephone or online. This would also be a further blow to local economies and retail areas already struggling as a result of rising unemployment and wage cuts’ (PCS, DVLA office fight moves to Parliament, 21 February 2012).

Impact on the motor trade

9. The concerns of some in the motor trade were voiced by MPs during a recent House of Commons debate, suggesting that the closure of local DVLA offices will make it more difficult for car dealers to register newly sold cars. Frank Doran, Labour MP for Aberdeen North claims: ‘A significant number of objections or letters of complaint from the motor trade have been sent to the DVLA as part of the consultation. The motor trade will be damaged substantially by the local closures’ (Hansard, 7 March 2012, Column 296WH). Similar concerns are echoed in an e-petition submitted by vehicle convertor, Richard Penning, to the UK Government, which received over 3,500 signatories: ‘Closure would require us to register all of our vehicles by post adding days to the process, delaying delivery of cars and resulting in huge cash flow issues and dissatisfied
customers’ (HM Government, Reverse the proposal to close 39 Regional DVLA offices e-petition, 2012)

10. In response, Mike Penning, Parliamentary Under-Secretary of State for Transport, argued that: ‘What we are proposing will be more efficient. It will not be a case of putting documents in the post and losing blank tax discs. We will use a secure system, and speed will be subject to a contract. Delivery will be the following day, and it may sometimes be possible to offer same-day delivery’ (Hansard, 7 March 2012, Column 299WH). His belief that opinion within the motor trade is ‘split’ appears to be supported by remarks made by Paul Everitt, Chief executive of the Society of Motor Manufacturers and Traders (SMMT), in a recent interview with Car Dealer Magazine. Mr Everitt regards the proposals as presenting ‘great opportunities’ to car traders as they will allow dealers to ‘offer customers the option to re-tax their vehicle or change their cherished number plate in their showrooms’ (Car Dealer Magazine, December 2011).

Scottish Government Action

11. As the DVLA is a reserved agency of the UK’s Department of Transport, the Scottish Government has no powers to legislate in this area.

Scottish Parliament Action

Motion: Proposed DVLA Closures

Motion S4M-01574: Kevin Stewart, Aberdeen Central, Scottish National Party, Date Lodged: 13/12/2011
That the Parliament condemns the UK Government’s proposals to close Scotland’s five Driver and Vehicle Licensing Agency (DVLA) regional offices; disagrees with the opinion that centralising services in Swansea will mean a quicker turnaround time that will meet customer needs, and calls on the UK Government to retain the offices in Aberdeen, Dundee, Edinburgh, Glasgow and Inverness.

House of Commons Action

House of Commons Debate, Westminster Hall: DVLA closures (Scotland), 7 March 2012:

Early Day Motion 2736: DVLA office network closures

EDM 2376: John McDonnell, Hayes and Harlington, Labour Party, Date Lodged: 20/02/2012

That this House notes with concern the announcement made by the Parliamentary Under-Secretary of State for Transport on 13 December 2011 on closure of the DVLA Office Network which, if implemented, will result in the closure of 39 local offices, 10 enforcement centres and three process units; further notes that these proposed closures will result in the loss of over 1,200 jobs at a time of growing national unemployment; further notes the detrimental effect these closures will have on local communities and the motor trade,
which relies on the Local Office Network; and calls on the Government to reconsider the proposed closures and extend the public consultation for a further 12 weeks to allow sufficient participation from both members of the public and stakeholders alike.

House of Commons Parliamentary Questions and Written Answers:

Graeme Morrice: To ask the Secretary of State for Transport what the staffing costs were of running the local office network of the DVLA in each calendar year since 2005. (http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120227/text/120227w0006.htm#12022814000027)

Graeme Morrice: To ask the Secretary of State for Transport how much revenue the local office network of the DVLA generated in each calendar year since 2005. (http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120306/text/120306w0000.htm#12030661000008)

Action

12. The Committee is invited to consider what action it wishes to take in respect of this petition. There are a number of possible options, including—

(1) To continue the petition in order to seek any information. For example, the Committee may wish to ask:

The Scottish Government—

- Have you had any discussions with the UK Government about the proposals? What is your response to what the petition seeks?

(2) To refer the petition under Rule 15.6.2 to the Infrastructure and Capital Investment Committee, for further consideration of the issues raised.

(3) To take any other action which the Committee considers appropriate.

(4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so.
Public Petitions Committee  
7th Meeting, 2012 (Session 4), Tuesday 1 May 2012  
PE1426 on the establishment of a National Donor Milk Bank Service  

Note by the Clerk  

PE1426 – Lodged 21 March 2012  
Petition by Donna Scott calling on the Scottish Parliament to urge the Scottish Government to ensure equal access to donor breast milk for all premature and sick babies, irrespective of geographical location, by establishing a national donor milk bank service.  
Link to petition webpage  

Purpose  

1. This is a new petition which the Committee is asked to consider and decide what action it wishes to take. The Committee has invited the petitioner to speak to the petition.  

Background – the following information is taken from the SPICe briefing  

2. There is considerable evidence to demonstrate the short and long term benefits of breastfeeding for both for mothers and infants\(^1\). The World Health Organisation recommends exclusive breastfeeding up to 6 months of age. For pre-term babies the recognised benefits of breast milk include reduced time on parenteral nutrition (the intravenous administration of nutrients), reduced risk of infection, and reduced risk of necrotising entercolitis (NEC\(^2\))\(^3\).  

Milk banks  

3. Milk banks collect and store expressed breast milk. Breast milk is expressed by donors, with babies under 6 months old, who are pre-screened using health and lifestyle questionnaire and blood virology screening. The donated milk is pasteurised before being used. Donated breast milk is often used for unwell or premature babies whose own mothers cannot breast feed them\(^4\). There are 17 milk banks across the UK, one is in Scotland. All milk banks are members of the United Kingdom Association for Milk Banking.  

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\(^2\) NEC is a serious illness in which tissues in the intestine become inflamed and start to die. This can lead to a perforation developing which allows the contents of the intestine to leak into the abdomen and can cause a very dangerous infection. *Great Ormond Street Hospital for Children* (2002).  
\(^4\) BabyCentre (2011) *Milk Banking*
4. The National Institute for Clinical Excellence (NICE) has published guidelines on donor breast milk banks. However, clinical guidelines published by NICE have no formal status in Scotland and are for information only. In Scotland the Scottish Intercollegiate Guidelines Network develops guidelines that contain recommendations for effective practice in the NHS in Scotland based on current evidence. It is not intending to publish guidelines on milk banks.

**NHS Greater Glasgow and Clyde Donor Milk Bank**

5. The NHS Greater Glasgow and Clyde Donor Milk Bank was established in 1978. The milk bank provides donor breast milk for infants within its neonatal services. It also provides donor milk, on request, for neighbouring health boards. The service has expanded significantly in the past 2-3 years both in the processing of donor milk and the number of babies who receive milk:

<table>
<thead>
<tr>
<th></th>
<th>Pasteurised litres</th>
<th>Donors</th>
<th>Recipients</th>
</tr>
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<tbody>
<tr>
<td>2008</td>
<td>102.8</td>
<td>35</td>
<td>32</td>
</tr>
<tr>
<td>2009</td>
<td>317.15</td>
<td>42</td>
<td>84</td>
</tr>
<tr>
<td>2010</td>
<td>263.5</td>
<td>45</td>
<td>89</td>
</tr>
<tr>
<td>2011</td>
<td>427.35</td>
<td>64</td>
<td>104</td>
</tr>
</tbody>
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Source: NHS Greater Glasgow and Clyde (2012).

**Donor milk across Scotland**

6. Information received from NHS Greater Glasgow and Clyde notes that there has been an increasing and significant level of interest in donor milk across Scotland. The NHS Greater Glasgow and Clyde Donor Milk Bank has been able to meet the informal demand from neighbouring health boards to access donor milk for the most vulnerable infants. In 2011/12 Greater Glasgow and Clyde used 150.8 litres of donor milk, NHS Lanarkshire used 14 litres, NHS Ayrshire and Arran used 2 litres and NHS Lothian used 14.6 litres. In 2011 40.6% of donors came from outwith the NHS Greater Glasgow and Clyde board area. The Scottish Emergency Rider Volunteer Service (ScotsERVS) currently transports donor milk to requesting units and collects milk from donor’s homes.

**Proposed service models**

7. Information received from NHS Greater Glasgow and Clyde notes that, an equitable, national service cannot be provided without some degree of reorganisation and further funding. In an unpublished paper different service models are considered. These are:

- to continue with the current service with or without adaptations
• to develop a centralised National Milk Bank coordinated and run on one site only
• to develop a National Milk Bank using a hub and spokes (depot) model

Scottish Government Action


Scottish Parliament Action

9. There have been a number of recent motions and questions on this subject. Most recently S4O-00877 was answered by Michael Matheson, Minister for Public Health, on 29 March 2012.

Mark McDonald: To ask the Scottish Executive what steps it is taking to increase the availability of donated breast milk in neo-natal units

Michael Matheson: The Scottish Government is aware that breast milk is the recommended form of enteral nutrition for all infants, especially those born pre-term and we recognise the valuable service that donor milk banks provide. The Scottish Emergency Rider Volunteer Service (ScotsERVS) now supports the transportation of processed donor milk to requesting units and provides a local ongoing and sustainable service across the NHS Greater Glasgow and Clyde Board area and into neighbouring health boards. NHS Greater Glasgow and Clyde is currently exploring options to provide equitable access to donor breast milk across all of Scotland.

10. On 2 February 2012 the issue was also raised by Elaine Smith MSP.

Elaine Smith: In her discussions with NHS Greater Glasgow and Clyde, has the cabinet secretary discussed the positive contribution made by Scotland's only breast milk bank, which is based at Yorkhill, to the health of sick and premature babies? Will she urge other health boards to consider providing such a service?

Nicola Sturgeon: I thank Elaine Smith for her question and for her on-going interest in that issue. As she said, Glasgow hosts the only breast milk bank in Scotland. I recently attended an event in Glasgow to mark the fact that NHS Greater Glasgow and Clyde has become the first health authority in the whole United Kingdom to achieve the United Nations baby-friendly accreditation, which is a great credit to all those who work there. I assure Elaine Smith that I will discuss the issue with officials in NHS Greater Glasgow and Clyde, and involve officials in other health boards to see whether further steps require to be taken.
11. Motion S3M-7435 was lodged in November 2010 congratulating NHS Greater Glasgow and Clyde Milk Bank for its work on improving the health of some of Scotland’s most vulnerable infants and asked ministers, members and NHS boards across Scotland to further explore the benefits of this approach for high-risk infants.

**Action**

12. The Committee is invited to consider what action it wishes to take in respect of this petition. There are a number of possible options, including—

   (1) To seek any information. For example, the Committee may wish to ask:

   The Scottish Government—

   • What is your response to what the petition seeks?
   • In an answer to a question by Mark McDonald in March 2012 the Minister for Public Health stated that “NHS Greater Glasgow and Clyde is currently exploring options to provide equitable access to donor breast milk across all of Scotland”. The Committee would be interested to hear why a local health board, rather than the Scottish Government, is investigating how a national service can be provided.

   NHS Greater Glasgow and Clyde—
   • What is your response to what the petition seeks?
   • The Committee would be interested to hear of your experiences and of the work that you do in relation to the donor breast milk service that you provide.

   ScotsERVS—
   United Kingdom Association for Milk Banking—
   • What is your response to what the petition seeks?

   (2) To refer the petition under Rule 15.6.2 to the Health and Sport Committee, for further consideration of the issues raised.

   (3) To take any other action which the Committee considers appropriate.

   (4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so.
Public Petitions Committee

7th Meeting, 2012 (Session 4), Tuesday 1 May 2012

PE1427 on access to justice for non-corporate multi-party groups

Note by the Clerk

PE1427 – Lodged 23 March 2012
Petition by Robert Kirkwood, on behalf of Leith Links Residents' Association (LLRA), calling on the Scottish Parliament to urge the Scottish Government to implement the Scottish Civil Courts Review recommendations on multi-party actions by making changes to existing protocols that will (1) encourage the Rules Council to use rule of court 2.2 for multi-party actions; (2) modify court fees to a single payment; (3) encourage the Rules Council to introduce a protocol on recovery of documents; (4) clarify the common law right of nuisance, and (5) introduce compulsory insurance.

Link to petition webpage

Purpose

1. This is a new petition which the Committee is asked to consider and decide what action it wishes to take. The Committee has invited the petitioner to speak to the petition.

Background – the following information is taken from the SPICe briefing

2. Leith Links Residents' Association (LLRA) has, for a number of years, campaigned against the unpleasant smells released by Seafield Sewage Treatment Works. This has included attempting to take legal action against the owners (Scottish Water) and operators of the plant. In doing so, LLRA has experienced various procedural difficulties in raising a court action on behalf of numerous residents. This led the association to raise a previous petition (PE1234, see below) calling for the introduction of a class/multi-party action court procedure in Scotland. The current petition deals with on-going issues in relation to raising multi-party actions in Scotland.

3. The term "multi-party action" can be used to describe a court action where a number of people have the same or similar rights. There are several different types of multi-party action. The most relevant for the current petition is an action where one (or several) pursuers are appointed as typical cases to pursue a court action reflecting the interests of a wider group of people. It is not currently possible to raise a multi-party action in the Scottish courts.

Use of Rule 2.2 for Multi-party Actions

4. The Scottish Government set up the Scottish Civil Courts Review in 2007, under the auspices of Lord Gill, with a remit to improve the efficiency and effectiveness of the civil courts. Its final report (2009) made recommendations for the introduction of a procedure for dealing with multi-party actions in the Scottish courts. In response, the Scottish Government has, broadly, accepted the
recommendations. It states\(^1\) that those relating to multi-party actions will require primary legislation.

5. In the meantime, LLRA propose that Rule 2.2 of the Rules of the Court of Session could be used to allow multi-party actions to be raised until a bespoke procedure is in place. Rule 2.2 states:

―2.2(1) Subparagraph (2) applies where, for any reason, the Lord President is of the opinion that an aspect of the procedure which would otherwise apply to particular proceedings, or proceedings of a particular description, is unsuitable for the efficient disposal of those proceedings.

(2) The Lord President may direct that that aspect of the procedure is not to apply in respect of those proceedings and that such other procedure as he directs is to apply instead.

(3) Before making such a direction the Lord President must consult—
   (a) in the case of particular proceedings, the parties;
   (b) in the case of proceedings of a particular description, the parties of any proceedings falling within the description which have already been raised.‖

6. The Lord President is the head of the judiciary in Scotland. In principle, Rule 2.2 could allow for new procedures to be introduced which support multi-party actions. However, in practice, this would very much depend on the willingness of the judiciary to develop what may be complex procedures in advance of Scottish Government action in the same area.

7. The petitioners suggest that the Court of Session Rules Council (responsible for drafting procedural rules for the conduct of Court of Session business) could use Rule 2.2 to develop procedures for multi-party actions. However, Rule 2.2 gives the power to vary current court rules to the Lord President, as described above. The Court of Session Rules Council could, separately, draft rules in relation to multi-party actions, but these would take time to develop and would not affect cases currently being considered by the court. In addition, the Court of Session Rules Council may also not want to act in advance of Scottish Government proposals in this area.

Modify court fees so only a single payment is required

8. The fee for initiating court action in the Court of Session is currently £180 (although other fees are likely to be required depending on the course the case takes). According to LLRA, this means that, if 500 residents participate in an action, each would be required to pay the initial £180 fee.

9. The Court of Session etc. Fees Order 1997 (SI no. 688) lays down the fees which must be paid in relation to different stages of court action. Where a number of people participate in the same action (i.e. they present one case to the court,

which is taken forward by one solicitor), they only pay one set of court fees. If a
number of people initiate court actions separately on similar issues (and each
presents a slightly different case), then each individual would have to pay court
fees related to their case.

10. It is unclear how these rules may impact in practice on LLRA. It appears that it is
not possible for them to take the matter forward as one action (as, in this
situation, they would not need to utilise a multi-party action procedure).
Therefore, under the current rules, it is possible that separate fees would be
required.

11. The petitioners suggest that Scottish Ministers use their powers under the Court
of Law Fees (Scotland) Act 1895 to modify court fees in the case of multi-party
actions so that only one fee is payable. Such a power is exercised by order,
subject to annulment by the Scottish Parliament and is the usual way of altering
or updating court fees.

12. The issue of court fees in relation to multi-party actions is not discussed
specifically in either the Gill Review or a 1996 Scottish Law Commission paper
dealing with multi-party actions (discussed below). However, it is likely that the
intention is that only one court fee would be payable – although this may be at an
increased rate to reflect the complexity of multi-party procedures.

Encourage the Rules Council to introduce a protocol on recovery of documents

13. Recovery of documents refers to the process by which a party to a court action
in Scotland can require the other party (or a third party) to produce documents
relevant to the case. The scope for recovering documents in Scotland is limited in
comparison to the situation in England.

14. In Scotland, only documents specifically relevant to a case as stated to the court
can be recovered. Recovery requires a court order, and the court has the
discretion to refuse to grant it. The usual stage at which a request for recovery is
made is after the case the parties intend to make to the court has been finalised.
It is possible to recover documents in advance of this stage\(^2\), with a view to
making a party's case more specific. However, as a leading textbook on the law
of evidence states\(^3\):

\[\text{―It has been said that a party must first have set forth a case in general terms}
\text{and not be merely trying to discover whether he or she has a case.‖}\]

15. In England, the process of —disclosure— requires that any party to a court action
list and make available for inspection any documents on which their case relies;
which adversely affect their case; which adversely affect another party's case; or
which support another party's case. Disclosure generally takes place after an

\(^2\) Special court rules for commercial actions set out different requirements in relation to the recovery of
documents. In addition, it is possible, under the Administration of Justice (Scotland) Act 1972, to
require the recovery of documents in advance of any court proceedings being initiated. However, the
courts use this power narrowly in practice.

initial case has been made to the court. However, it is possible for disclosure to take place earlier than this. Parties have an obligation to conduct a reasonable search for documents, given the nature and complexity of the case. The court can also require specific disclosure of certain documents or classes of documents.

16. Lord Gill considered the issue of disclosure in his civil courts review (chapter 9, paragraphs 18 to 38). He accepted that existing Scottish procedure did not encourage early settlement of a case. He also highlighted that the English system can be costly and cumbersome. He therefore recommended that wider and earlier disclosure should be possible: however, this would be under the control and at the discretion of the judge (who, under the general reforms proposed by Lord Gill would take a much more active role in managing a case’s progress).

17. ‘Pre-action protocols’ are used in England to set out what steps parties should have taken before coming to court. They are intended to encourage parties to resolve their disputes without involving the courts, where this is possible. Most include only general references to a requirement to disclose documents. A notable exception is the pre-action protocol in relation to personal injury claims, which details a number of categories of documents which should be disclosed to the parties, depending on the context of the incident. There is, at present, no pre-action protocol for environmental claims in England.

18. Pre-action protocols also exist in Scotland. However, they take the form of voluntary agreements between the Law Society of Scotland and the Forum of Scottish Claims Managers (with the exception of a pre-action protocol for commercial actions in the Court of Session, which is part of formal court procedure and is mandatory).

19. The Gill Review considered the issue of pre-action protocols (chapter 8, paragraphs 2 to 53). It recommended greater use of compulsory, subject-specific pre-action protocols, which should be developed by a Scottish Civil Justice Council (which, the review recommends, should replace the current Court of Session and Sheriff Court Rules Councils).

Clarify the common law of nuisance

20. The law of nuisance places certain restrictions on what landowners/occupiers may do on their land. The law generally recognises that a landowner or tenant has the right to the free and absolute use of his property, but only to the extent that such use does not disturb his neighbour’s comfortable enjoyment of their land. The law of nuisance therefore requires that a fair balance is struck between the competing rights of neighbours. In Scotland, it is generally held that, for a nuisance to be created, some sort of fault is required on the part of the neighbour, whether it be deliberate, negligent or reckless conduct.

21. The petitioner is concerned that the effect of the court’s decision in the case of Marcic v. Thames Water Utilities Ltd. [2003] UKHL 66 is that, where a public utility is required to operate under a specific statutory regime, the possibility of raising an action based on common law nuisance is removed. The petition calls
for a statement from the Scottish Government on the effect of Scotland’s statutory regime governing sewage on any common law action in nuisance.

22. Marcic is an English case. There are many similarities between the law of nuisance in Scotland and England, but there are also important differences. For example, fault on the part of the neighbour is not required in England: indeed, no fault by Thames Water was alleged in the Marcic case. In addition, functions in relation to water and sewerage management are devolved to the Scottish Parliament and a very different statutory regime is in place. It is therefore not clear how influential the decision in the Marcic case would be in determining whether a common law action of nuisance exists in particular circumstances in Scotland.

*Introduce compulsory pollution liability insurance*

23. The petitioner is concerned that, where a multi-party action in relation to environmental damage has been successful, a business may not have sufficient resources to meet the claim. In addition, the business’s owners may be tempted to asset-strip in order to minimise the resources from which damages can be paid. The petition calls for compulsory environmental damage/pollution liability insurance to be introduced for businesses working in high risk areas such as sewage.

24. It is currently a requirement, under the Employers’ Liability (Compulsory Insurance) Act 1969, for organisations with employees to have employers’ liability insurance to cover injuries and illness caused by an employer’s negligence. Many organisations also choose to have public liability insurance to protect them in the case of injury to the person or property of a member of the public. It is common for public liability insurance policies to include coverage for pollution liability in certain circumstances. Bespoke policies which provide more extensive cover against environmental damage are also available commercially.

25. It is not clear that introducing such a requirement would be within the devolved competency of the Scottish Parliament. The regulation of any entity set up to run a business is a reserved issue (under schedule 5, head C1 of the Scotland Act 1998), as is insurance (schedule 5, head A3).

*Scottish Government Action*

26. The Scottish Government commissioned the Scottish Civil Justice Review, headed by Lord Gill, which reported in 2009. It made several recommendations which impact on the subject matter of the petition. These are discussed in more detail under the relevant headings above. The Scottish Government has agreed, broadly, to implement the review’s recommendations (Scottish Government Response to the Report and Recommendations of the Scottish Civil Courts Review 2010).

27. In its publication Renewing Scotland: The Government’s Programme for Scotland 2011-12 (2011), the Scottish Government committed itself to implementing the Gill Review in the longer term. It is likely that a number of
proposals will not be brought forward until at least the second half of this parliamentary session.

28. Legislation creating a Scottish Civil Justice Council is expected to be introduced to the Scottish Parliament imminently. The precise role of the Council will not become clear until the Bill is before the Scottish Parliament. However, in a consultation on the subject (2011), the Scottish Government proposed that it would be responsible for implementing the aspects of the Gill Review that can be taken forward as court rules. This is likely to include pre-action protocols as well as some aspects of a multi-party action procedure.

29. In addition, the Scottish Law Commission produced a report on “Multi-party Actions” in 1996. This considered various policy options and included, as an annex, draft rules of court which could be used to implement its recommendations.

Scottish Parliament Action

30. The Scottish Parliament’s Petitions Committee considered a previous petition from LLRA (PE1234) calling for a multi-party action procedure to be introduced in the Scottish courts. The petition was closed on the basis that the Gill Review had brought forward recommendations on the issue.

31. The Scottish Parliament’s Justice Committee looked at implementation of the Gill Review as part of its scrutiny of the 2012-13 Draft Budget on 1 November 2011 (see cols 395 and 248). In addition, Question SW4-00777 from John Lamont MSP (answered 24 June 2011) asked about the Scottish Government’s implementation plans for the Gill Review.

Action

32. The Committee is invited to consider what action it wishes to take in respect of this petition. There are a number of possible options, including—

(1) To continue the petition in order to seek any information. For example, the Committee may wish to ask:

The Scottish Government—
The Lord President—
Court of Session Rules Council—
Scottish Law Commission—

• What is your response to what the petition seeks?

(2) To refer the petition under Rule 15.6.2 to the Justice Committee, for further consideration of the issues raised.

(3) To take any other action which the Committee considers appropriate.
(4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so.
PPC/S4/12/7/4

Public Petitions Committee
7th Meeting, 2012 (Session 4), Tuesday 1 May 2012

PE1285 on free calls to NHS 24 for mobile phones

Note by the Clerk

PE1285 – lodged October 2009
Petition by Caroline Mockford calling on the Scottish Parliament to urge the Scottish Government to make arrangement for all calls from mobile phones to NHS 24 to be free of charge to users.

Link to petition webpage for written submissions, written questions asked, SPICe briefing and previous consideration.

Purpose

1. This is a current petition last considered by the Session 3 Committee at its meeting on 7 February 2012. At that meeting the Committee agreed to await an update from the Scottish Government on when it expects to make a decision on the adoption of the 111 number. The issue remains under consideration by the Scottish Government. The Committee is invited to consider what action it wishes to take.

Background (taken from 2009 SPICe briefing)

Landline calls to NHS 24 using 084 prefix

2. NHS 24 currently charges all landline calls at a local rate using the 084 prefix. This prefix is a non-geographic number used by businesses and organisations to provide a wide range of services such as sales lines, customer service/enquiry functions and recorded information services. Businesses or organisations using 084 numbers may receive a share of the call charge. Ofcom\(^1\) notes that these numbers are generally more expensive to call than ordinary geographic numbers. However, calls to NHS 24 are charged at a local call rate.

Mobile calls to NHS 24

3. In terms of mobile calls, NHS 24 has advised\(^2\) that charges for calls from mobiles and other networks may vary and the service provider may charge a minimum cost per call. However, in order to safeguard patient safety, NHS 24 does have a policy of calling mobile phone users back if they have insufficient credit on their phones for their call to the service.

4. NHS 24 has also noted that it does not receive income from call charges which telecom providers charge customers for the use of the 084 number. It pays BT approximately £1,000 rental per quarter for the 084 number and the platform used for call delivery to NHS 24.

UK Government action

\(^1\) [http://www.ofcom.org.uk/consumeradvice/landline/costofcalls/08faq/](http://www.ofcom.org.uk/consumeradvice/landline/costofcalls/08faq/)

\(^2\) Personal communication 6 October 2009
5. There has been no UK Government action specifically in relation to mobile phone calls for NHS bodies. However, on 14 September 2009 the UK Department of Health (DoH) announced that the use of phone numbers that charge the public or patients a premium rate to contact the NHS were to be banned in England. This followed a consultation on the issue. The ban means that GPs and other NHS organisations remain free to use 084 numbers, providing patients are not charged more than the local rate number.

**Scottish Government Action**

6. The Scottish Government has advised that it is seeking to take action similar to that announced by the UK DoH. However, it noted that NHS 24 is not affected by this as it already charges a local rate for calls. The Scottish Government accepted that there would have to be further discussions with the medical profession concerning GP practices. In answer to a Parliamentary Question, the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon MSP, stated:

“We will be considering, in partnership with the medical profession in Scotland, how best to prevent any new arrangements of this nature being entered into by GP practices. In addition, we will issue guidance to NHS boards which will require them to press practices currently using premium rate numbers to reopen negotiations with service providers in a bid to drive down the costs to callers.”

**Scottish Parliament Action**

7. There has been no action undertaken by the Scottish Parliament in relation to the issues raised by the petition.

**Further consideration by NHS 24**

8. NHS 24 was asked if it had considered any concessions for mobile phone calls. It reiterated the view, expressed above, that the cost of calls to NHS 24 from mobile phones is dependent on the call tariff levied by the caller’s specific network operator.

9. NHS 24 was also asked if it had considered making landline calls free. It responded advising that it had considered this in 2007 but projected costs of changing to a 0800 number were more than £300,000 p.a. based on around 1 million callers per year at that time. NHS 24 also noted that Ofcom was conducting a consultation exercise on the possible deployment of a three digit non-emergency health number, which would potentially apply to NHS 24. However, as any change to the NHS 24 number would require considerable public information and an awareness raising campaign, NHS 24 believed that any decision to change existing arrangements should only be considered once the result of the Ofcom consultation, and subsequent pilot projects have reported.

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4. Personal communication 2 October 2009

5. S3W-27499
Public Petitions Committee Consideration

10. This petition came before the previous Committee twice. Following the first consideration, the Committee wrote to mobile phone companies and the Scottish Government seeking their views on the issues raised in the petition and asking specifically whether some arrangement could be reached to enable calls to NHS 24 from mobiles to be free. Mobile phone companies responded to the effect that there were costs associated with making any call and that NHS 24 had taken the decision to use the 0845 prefix instead of the potentially cheaper 01, 02 or 03 prefixes.

11. The Scottish Government referred to the Ofcom consultation on the release of a new 3-digit number for access to non-emergency healthcare services. This had been piloted in a number of Strategic Health Authorities in England during 2011. The Scottish Government is considering using the 3-digit number in Scotland to serve the same function as the current NHS 24 number but a final decision would depend on a range of factors, including the outcome of the pilots in England.

12. In September 2011 the Scottish Government advised that the four pilot areas in England would be independently evaluated by the University of Sheffield over the course of a live year of operation. The Scottish Government stated “informed by the evaluation and experience of the 111 number sites as they are rolled-out, the Department of Health intends to fully implement the NHS 111 service across England by April 2013”.

13. The Scottish Government’s view was that it was still too early to take a decision on adopting the number in Scotland and that it wished look at the monitoring information and formal evaluation (due to be published in early 2012) to inform its deliberations. Notwithstanding that no final decision has been taken, the Scottish Government was looking at the potential technical, financial and service delivery implications of adopting the 111 number.

14. The petitioner was disappointed that the Scottish Government sought more time to consider whether to proceed, when the UK Government had made the decision to roll-out. The petitioner suggested that the facility for call-back should be more widely publicised, requested that a text-based call-back service be investigated and asked that a deadline be given to the Scottish Government for making a final decision on whether to adopt the 111 number.

17. In response, the Scottish Government set out the process for dealing with calls to NHS 24 and advised that the necessary safeguards to enable calls to be managed safely and effectively were in place. It advised that NHS 24 “is committed to developing access to its range of services, for example by text, email, social networking…” The Scottish Government undertook to keep the Committee updated in relation to its consideration of whether to adopt the 111 number.

18. It is understood that the adoption of the 111 number is still under active consideration but as yet no decision has been taken.
Action

19. The Committee is invited to consider what action it wishes to take. There are a number of possible options, including:

(1) To keep the petition open and write to the Scottish Government asking when it expects to make a decision on the use of the 111 number and requesting a written update on the present position in time for the next consideration.

(2) To refer the petition under Rule 15.6 to the Health and Sport Committee. It should be noted however that this is not an issue that forms part of the Health and Sport Committee’s work programme.

(3) To take any other action which the Committee considers appropriate,

(4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so.
Public Petitions Committee

7th Meeting, 2012 (Session 4), Tuesday 1 May 2012

PE1364 on clarifying guidelines on Gypsy/Traveller encampments

Note by the Clerk

PE1364 – Lodged 6 October 2010 (3 signatures)
Petition by Phyllis McBain calling on the Scottish Parliament to urge the Scottish Government to review all guidelines relating to trespass and encampments for Gypsies and Travellers to ensure their intent is clear and that they are being applied. Link to petition webpage for written submissions, written questions asked, SPICe briefing and previous consideration.

Purpose

1. This is a current petition last considered by the Committee at its meeting on 21 February 2012. At that meeting the Committee agreed to write to the Scottish Government seeking responses to the points raised by the petitioner, seeking clarity of the terms of reference of the review and to request that the petitioner is brought into that process. The Scottish Government’s response has been received and the petitioner has also responded. The Committee is asked to decide what action it wishes to take.

Background

2. This petition relates to the Scottish Government’s guidelines on the management of unauthorised Gypsy/Traveller encampments (2004). The petitioner’s view is that these “lack information addressing the concerns of settled communities who are dealing with Gypsy/Traveller encampments”. The petitioner is calling for the publication of a “Charter of Conduct” for all members of the community in relation to unauthorised encampments.

3. The Scottish Government’s guidelines set out best practice for local authorities and police forces. The basic principles are:

“Policies should seek to manage unauthorised encampments to minimise disruption for all concerned and ensure that any anti-social behaviour is tackled firmly, regardless of who the perpetrators are. The same standards of behaviour should be expected from all members of the community whether Gypsies/Travellers or the settled population, based on mutual respect and with equal rights, responsibilities, entitlements and obligations.” (Para 3).

4. Stakeholders were consulted on the draft guidelines in 2004. The consultation analysis reported a diverse range of views. The Scottish Government undertook an evaluation of the use of the guidelines in 2007. That review report concluded that most local authorities had found the guidelines to be useful in managing unauthorised encampments. The Association of Chief Police Officers in Scotland also published guidance on the management of unauthorised Gypsies/Travellers
sites. The Scottish Government has advised that many local authorities now have strategies/protocols in place for managing unauthorised encampments.

5. The unauthorised encampment guidance states that these strategies should be developed with the involvement of all key stakeholders and must seek to balance the rights and responsibilities of the Gypsy/Traveller and settled communities. In 2010/11, £1 million of funding for Gypsy/Traveller sites was rolled up into the local government settlements.

Public Petitions Committee consideration

6. The petition has been considered on six previous occasions.

7. The Scottish Government has advised that “the management of unauthorised encampments is primarily an issue for the relevant local authority” and refers to the 2004 guidelines issued to local authorities. The Scottish Government does not intend to bring forward any new legislation but will progress a review of the guidelines.

8. The petitioner was disappointed with the Scottish Government’s stance, stating “private landowners have yet again been ignored”. At the meeting of 29 November 2011 the Committee agreed to write to the Scottish Government seeking more clarity on how the review of the guidelines would be taken forward, to what timescale, the terms of reference and how individuals would be able to input.

9. The Scottish Government responded advising that the review commenced in October 2011. A group involving housing, equalities and the police division had undertaken a desk-based review to identify areas for amendment and update. The group had agreed that the existing guidance was out-dated and the intention was to meet with COSLA to agree an approach to updating the guidance and thereafter liaise with stakeholders, including the petitioner.

10. The petitioner asked what the terms of reference for the review were, suggested that the review be opened up to public debate and questioned how productive a review of guidance would be without taking into account the shortfalls in general presumption and current legislation. The petitioner concluded that the “lack of transparency of discussions and stakeholder participation in this review gives me no confidence in its outcome” and hoped the Committee will make its own recommendation to the review.

11. The Committee then wrote to the Scottish Government seeking responses to the points raised by the petitioner. The following written submissions, received since the last meeting, are attached—

- PE1364/DD: Scottish Government response of 22 March 2012
- PE 1364/EE: Petitioner letter of 19 April 2012

12. The Scottish Government now indicates that a project brief has been drafted for discussion with stakeholders and a meeting to consider the role of the national
guidance and its relationship with other guidance was planned. The petitioner will be invited to that meeting. Scottish Government officials have also met with Grampian police and Aberdeenshire Council to seek views on the national guidance and discuss the concerns raised by the petitioner.

13. In her most recent letter the petitioner states that the Scottish Government’s response is “confusing, unfocussed and lacks a sense of urgency” but has accepted the invitation to attend the interim meeting of the Stakeholder Working Group.

Action

14. The Committee is invited to consider what action it wishes to take. There are a number of options including—

(1) To continue the petition in order to seek any further information it considers necessary and / or to await the outcome of the Stakeholder Working Group’s review.

(2) To refer the petition under Rule 15.6.2 to the Local Government and Regeneration Committee for further consideration of the issues;

(3) To take any other action which the Committee considers appropriate; or

(4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so. In this case, the Committee may consider reasons to be that the petition calls for a review of the guidelines and the Scottish Government has:

- commenced a review of the guidelines.
- confirmed that the guidance requires change.
- met with Grampian police and Aberdeenshire Council.
- invited the petitioner to attend the Stakeholder Working Group meeting.
Public Petitions Committee

7th Meeting, 2012 (Session 4), Tuesday 1 May 2012

PE1395 on targeted funding for lesser taught languages and cultures at universities.

Note by the Clerk

**PE1395** – Lodged 31 July 2011 (3368 signatures)
Petition by Jan Culik calling on the Scottish Parliament to urge the Scottish Government to instruct the Scottish Funding Council to provide targeted funding for lesser taught languages and cultures at Scottish universities.

[Link to petition webpage for written submissions, written questions, SPICe briefing and previous consideration]

**Purpose**

1. This is a current petition last considered by the Committee at its meeting on 21 February 2012. At that meeting the Committee agreed to write to the Scottish Government and Scottish Funding Council regarding the recent announcement of additional funds and the ending of support for the University of Glasgow’s Centre for Russian, Central and East European Studies (CRCEES) by the Higher Education Funding Council for England (HEFCE). Responses have been received from the Scottish Government and Scottish Funding Council and the Committee is asked to decide what action it wishes to take.

**Background - the following information is taken from the Spice Briefing**

2. Universities in Scotland receive funding from the government, via the Scottish Funding Council, for teaching, research, capital and other miscellaneous strategic issues. Each year the Scottish Government sets out broad priorities for how public resources should be spent and the SFC then allocate resources to individual institutions taking into account the government priorities.

3. Overall, SFC funding accounts for around 40% of universities income, although this proportion will vary between institutions. How the funding is allocated to each university is a fairly complex process (see SPICe Briefing Higher Education Institutions: Finance for further detail). In allocating funding for teaching SFC allocates each HEI a full-time equivalent number of funded student places in each of 12 funding subject groups.

4. A formula is then used to derive SFC allocations for teaching. Institutions have some flexibility in how they use their funded places and do not have to fill the specific funded place to each funding subject group, apart from funded places allocated to “controlled” subjects e.g. dentistry and medicine, which institutions are expected to fill. Institutions can transfer some of their “non-controlled” funded places between subject groups to obtain a better fit between their own priorities and patterns of recruitment. Therefore, in general universities have a large
degree of freedom to decide on what courses to provide from the funding that is provided to them.

5. Under the Further and Higher Education (Scotland) Act 2005 the SFC has a duty to secure coherent provision by the fundable bodies and it and keeps the matter under review.

England

6. The petitioner argues that targeted support should be given to lesser taught languages in the way that exists in England. In England, the Higher Education Funding Council for England (HEFCE) provides support for strategically important and vulnerable subjects (SIVS). An advisory group informs the scope and direction of this programme. Currently, the following subjects are identified as strategically important and vulnerable:

- **science, technology, engineering and mathematics (STEM)**
- **area studies and related minority languages**, including:
  - Arabic and Turkish language studies and other Middle Eastern area studies, former Soviet Union Caucasus and central Asian area studies
  - Japanese, Chinese and other far eastern languages and area studies
  - courses relating to recent EU accession countries, especially those in Eastern Europe and the Baltic
- **quantitative social science**
- **modern foreign languages**.

7. In May 2011, an evaluation of HEFCE’s programme of support for SIVS was published. The evaluation found (amongst a range of findings) that the SIVS has had an important symbolic role and contributed strongly to sustained provision in SIVS. This achieved a lasting difference in areas such as partnership working and approach to interventions. While demand for SIVS subjects has risen, the extent to which the programme interventions were responsible could not be ascertained. The evaluation found that the SIVS programme was not equally well-received across the sector, for example, some interviewees said that the programme favoured Russell Group institutions, in which a large proportion of SIVS provision is located. An area where the SIVS programme has not made a lasting impact is that, with one minor exception, no SIVS subjects have lost their vulnerable status. That is, it does not appear to have solved the root causes of vulnerability in these subjects.

8. The evaluation concluded that interventions undertaken through the SIVS programme had: been successful in avoiding heavy-handed market interference; enabled the programme to show leadership while remaining responsive to developments and initiatives by the sector and sustained provision.

9. On publication of the report the Chief Executive of HEFCE said that, in light of the current reductions in funding for higher education, “…difficult choices now have to be made”.
Public Petition Committee consideration

10. The Committee previously considered this petition at its meetings on 20 September 2011, 29 November 2011 and 21 February 2012. The Committee heard evidence from the petitioner and Sir Tom Stoppard.

11. The Committee asked the Scottish Government about giving controlled funding status for lesser taught languages and cultures, the Scottish Government advised that this was a matter for the SFC. There is currently no mechanism for controlling funded student places for lesser taught languages and cultures and the “SCF does not consider that there is any need to change this.” The Cabinet Secretary wrote to the SFC asking that it keep under review the provision of Russian, Polish, Czech and Slavonic studies. The Scottish Government advised that the Minister for Energy, Enterprise and Tourism was satisfied that the SFC has taken account of the economic, social and cultural needs of Scotland and he advised there are “no plans to make funding available from the Enterprise or Tourism budgets for this purpose.”

12. The petitioner pointed out that the concern is specifically about Central and East European languages and cultures (Russian, Czech, Polish), not modern languages in general. He queried why the SFC had no mechanism for controlled funding for student places. The petitioner noted that the review referred to was carried out at least five years previously and believes that the Scottish Government and SFC are “not facing up to the seriousness of the situation” for strategic and vulnerable languages and to modern language provision.

13. At the meeting on 21 February 2012 the Committee agreed to write to the Scottish Government and Scottish Funding Council regarding the use of the additional funding provided for Scottish universities. The following written submissions, received since the last meeting, are attached—

- PE1395/I: Scottish Funding Council Letter of 21 March 2012
- PE1395/J: Petitioner Letter of 16 April 2012

14. In its latest response the Scottish Government advises that the freeing up of £27.8m due the de-regulation of tuition fees is being “reallocated to restore cuts to the Main Teaching Grant in academic year 2011-12 and to support higher cost subjects and expensive controlled clinical subjects.” The Cabinet Secretary for Education and Lifelong Learning set out the priorities for investment in his letter of guidance to the SFC on 21 September 2011. This was later supplemented by his letter to SFC requesting that “the provision of Slavonic languages be kept under review. The Cabinet Secretary is satisfied that the Council has taken into account Scotland’s economic, social and cultural needs in making its funding allocations”.

15. SFC has provided a briefing to the Cabinet Secretary on the current provision of languages and confirms that the sector continues to support a range of languages and cultures, including Russian. The Cabinet Secretary is supportive of SFC’s view that it “does not consider there is a need for targeted funding for
languages at this time” but it should continue to monitor modern language provision.

16. The petitioner “notes with disappointment the SFC’s complacency” towards the study of Polish, Czech and Slavonic Studies and raises a number of issues and questions.

Action

17. The Committee is invited to consider what action it wishes to take in respect of this petition. There are a number of possible options including—

(1) To continue the petition in order to seek any further information, for example the Committee may wish to write to the SFC asking what case assessment was carried out, what were the conclusions and requesting a copy of the findings of the investigation.

(2) To refer the petition under Rule 15.6.2 to the Education and Culture Committee, for further consideration of the issues.

(3) To take any other action which the Committee considers appropriate, or

(4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so. In this case, it may be that:

• the Scottish Government is satisfied that the SFC has taken into account the economic, social and cultural needs in making its funding allocations.
• the SFC does not consider there is a need for targeted funding for languages at this time and the Cabinet Secretary is supportive of this view.
• the SFC believes that a case by case basis is a more effective than a targeted approach.
Public Petitions Committee

7th Meeting, 2012 (Session 4), Tuesday 1 May 2012

PE1400 on wild animals in circuses

Note by the Clerk

**PE1400**– Lodged 2 September 2011 (1671 signatures)
Libby Anderson on behalf of OneKind calling on the Scottish Parliament to urge the Scottish Government to introduce a ban on the use of wild animals in circuses immediately.

Link to petition webpage, for written submissions, written questions asked, SPICe briefing and previous consideration

**Purpose**

1. The Committee last considered this petition at its meeting on 29 November 2011. At that time, the Committee noted that the Scottish Government would be consulting on the use of wild animals in circuses and expected to be clearer on the issues by January 2012. The Scottish Government has now provided an update and the Committee is invited to consider what action it wishes to take.

**Background - the following information is taken from the SPICe briefing**

2. Wild animals are used to a limited extent in circuses in the UK. The RSPCA estimates that 150-200 animals are currently used and 37 of these are wild animals including zebras, lions, snakes, tigers, camels, a kangaroo and crocodiles. No Scottish circuses use wild animals but circuses with wild animals perform in Scotland.

3. Research into the effects of circus life on animals is limited. In 2007, the Radford Report, an academic review commissioned by the UK Government to look into a ban, concluded that the present knowledge about the welfare of animals in circuses is such that scientific evidence could not steer what was essentially a policy decision. In 2009, *lossa et al.* found that the wild animals suitable for circus life, should exhibit “low space requirements, simple social structures, low cognitive function, non-specialist ecological requirements and an ability to be transported without adverse welfare effects”.

**Current Legislation**

4. Animal welfare is a devolved matter. The Animal Health and Welfare (Scotland) Act 2006 introduced new protections for animals, the main one being for animal keepers to ensure an animal’s basic welfare needs are met. There are no specific provisions for circus animals under the Act, but Section 24 provides a statutory basis for licensing activities involving animals.

5. Circuses that currently use animals throughout the UK must register with a local
authority under the Performing Animals (Regulation) Act 1925 (as amended). The registering authority will be where the exhibitor resides and not necessarily where the circus is performing.

6. The movement of performing animals between EU Member States is also controlled under EU Commission Regulation 1739/2005 and the Animals and Animal Products (Import and Export) (Scotland) Regulations 2007. Registration must be made with Competent Authorities in the country of residence and country of destination, and relevant passports and Animal Health Certificates are required. In the UK, the Animal Health and Veterinary Laboratories Agency is the responsible Competent Authority.

UK Government
7. The UK Government consulted on a ban in early 2010. The summary of responses to a defra consultation on the use of wild animals in circuses suggests the majority of the public are against their use. 95.5% of respondents thought that there are no species of wild animal which it is acceptable to use in travelling circuses. The main reason given was that the welfare of wild animals in travelling circuses is compromised by the travelling circus environment.

8. Respondents from the circus industry were unanimously opposed to a ban but supported compulsory statutory regulation. They argued that there was no evidence that the circus environment was detrimental to an animal's welfare. An argument was also made that removing animals used to a circus environment from the circus and could be detrimental to their welfare.

9. In May 2011, the UK Government announced a decision to introduce a licensing system, rather than a ban on wild animals in circuses. In a written statement accompanying the announcement, the Secretary of State for Environment, Food and Rural Affairs stated “The Austrian Government have recently been taken to court for their attempt to ban wild animals in circuses. This Government want to take action as soon as possible to protect wild animals in circuses without waiting for the outcome of that judgment. For this reason we propose to introduce a strict licensing regime using powers provided under the 2006 Act.”

10. The details of the licensing system are under development but are likely to include rules for transport, types of quarters provided for the animals and treatment of the animals by trainers and keepers.

Austrian Case
11. The Austrian Animal Protection Law which entered into force 1 January 2005 prohibits the keeping of wild animals in circuses. A complaint was made to the European Commission by the General Manager of a circus association. On 12 October 2005, the Commission opened infringement proceedings against Austria by sending a letter of formal notice to the Austrian authorities. Since then, the Commission changed its mind about the necessity of action at the European level and in September 2009 set out its final opinion that Austria could justify the ban on welfare grounds.
Scottish Parliament

12. A ban on circus animals was called for in 2006 when the Animal Health and Welfare (Scotland) Bill was debated. An amendment to ban circus animals was turned down. On 9th June 2011, the Scottish Parliament debated a motion lodged by Elaine Murray (MSP) on banning wild animals in circuses:

“That the Parliament notes the decision by the UK Government not to introduce a ban on the use of wild animals in travelling circuses; notes that in the recent past a travelling circus visiting locations including Dumfries included an elephant as one of its attractions; believes that there is sufficient evidence to support the view that life in a travelling circus does not allow for acceptable standards of welfare and quality of life for wild animals; notes the work done by animal rights activists and third sector organisations to argue for such a ban, and considers that action in this area is needed to prevent suffering to animals.”

13. The Minister for Environment and Climate Change concluded the debate stating that the Scottish Government would continue to look at this issue, informed by information coming from Westminster.

Public Petitions Committee consideration

14. Following an initial evidence session with the petitioner, the Scottish Government advised that its position on wild animals in traveling circuses was currently under review. It agreed “the status quo is not a tenable option” and confirmed that both the Minister and the Cabinet Secretary for Rural Affairs and the Environment remained sympathetic to a ban. The Scottish Government drew attention to the existing protections provided by legislation, noted the intention to consult on the use of wild animals in circuses and expected, by January 2012, to have a better understanding of all the issues that would feed into the drafting of the consultation.

17. The petitioner requested that the Committee keep the petition open until the Scottish Government makes clear how it intends to deal with the issue of wild animals in circuses. In her most recent letter the petitioner disagrees with the licensing approach taken in England and Wales on the grounds that it is “likely to cause undesirable delay to the proposed ban”. The petitioner draws attention to the motion lodged last month by Christine Graham MSP\(^1\) which “urges the Scottish Government to, as soon as possible, make a clear, timetabled commitment to ban from Scotland travelling circuses with wild animals”.

18. It its letter of 15 March 2012, the Scottish Government advises that it still awaits clarification of certain outstanding legal points and hopes to be able to provide an update before the summer recess.

Action

19. The Committee is invited to consider what action it wishes to take in respect of this petition. There are a number of possible options including—

\(^1\) Motion S4M-02233 lodged in the Scottish Parliament on 6 March 2012.
(1) To schedule the petition for consideration at the last meeting before summer recess and seek a timetabled commitment to taking this matter forward in time for that meeting.

(2) To refer the petition under Rule 15.6.2 to the Rural Affairs, Climate Change and Environment Committee, for further consideration of the issues.

(3) To take any other action which the Committee considers appropriate, or

(4) To close the petition under Rule 15.7. If the Committee decides to close the petition it must state publicly its reasons for doing so.