Citizen Participation and Public Petitions Committee

1st Meeting, 2024 (Session 6), Wednesday 24 January 2024

PE2004: abolish the use of Public Private Partnerships in Scotland

Lodged on	20 February 2023
Petitioner	Line Kikkenborg Christensen on behalf of Jubilee Scotland
Petition summary	Calling on the Scottish Parliament to urge the Scottish Government to abolish the use of Public Private Partnerships (PPPs) and commit to a new model for financing and managing public infrastructure in Scotland which has safety, quality, value for money and accountability to the taxpayer at its heart.
Webpage	https://petitions.parliament.scot/petitions/PE2004

Introduction

1. The Committee last considered this petition at its meeting on 3 May 2023. At that meeting, the Committee agreed to write to the Scottish Government and the Scottish Futures Trust.

2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.

3. The Committee has received new responses from the Scottish Futures Trust (SFT), the Scottish Government and the Petitioner, which are set out in **Annexe C.**

4. Written submissions received prior to the Committee's last consideration can be found on the petition's webpage.

5. Further background information about this petition can be found in the SPICe briefing for this petition.

6. The Scottish Government's initial position on this petition can be found on the petition's webpage.

7. Every petition collects signatures while it remains under consideration. At the time of writing, 476 signatures have been received on this petition.

8. Members may wish to note that while Jubilee Scotland formally closed on 15 January 2024, the petitioner has provided an additional submission confirming their continued involvement with the issues raised by this petition. A copy of the submission is provided at **Annexe C**.

9. The Committee may also wish to note that the Public Audit Committee heard evidence from the Auditor General for Scotland in regards to the briefing paper "Investing in Scotland's Infrastructure" at its meeting on 2 November 2023. The Public Audit Committee have now invited the Director-General Scottish Exchequer to give evidence on this matter.

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE2004: Abolish the use of Public Private Partnerships in Scotland

Petitioner

Line Kikkenborg Christensen on behalf of Jubilee Scotland

Date Lodged:

20 February 2023

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to abolish the use of Public Private Partnerships (PPPs) and commit to a new model for financing and managing public infrastructure in Scotland which has safety, quality, value for money and accountability to the taxpayer at its heart.

Previous action

We met with Neil Findlay (MSP for Lothian at the time), who hosted the launch of our report “Rethinking Private Financing of Scottish Public Projects” at the Scottish Parliament.

We have also met with Ross Greer MSP, John Mason MSP, and staff from the Scottish Conservatives and Scottish Labour, as well as asking the Finance and Public Administration Committee to engage with the issue.

Background information

PPPs have saddled the Scottish public sector with high levels of debt, poor service provision, lack of accountability, and unsafe buildings.

Audit Scotland reviewed PPPs and found them expensive and in need of more oversight.

The UK Treasury has called the PPP model “inflexible and overly complex”, and the Office for Budget Responsibility has called the scheme a “source of significant fiscal risk to government”.

PPPs are not the right option for publicly financed projects because they result in:

1. Poor value for money: projects are highly lucrative for the private sector and limited public finances are poorly invested.
2. Declining service standards: taxpayers’ money is spent on assuring a profit for company shareholders rather than the best possible service and quality for the public.
3. A loss of accountability: details of PPP deals are protected by corporate confidentiality which hinders scrutiny of how corporations use taxpayers’ money.

It is for these reasons PPPs should be abolished.

Annexe B

Extract from Official Report of last consideration of PE2004 on 3 May 2023

The Convener: PE2004, which was lodged by Line Kikkenborg Christensen on behalf of Jubilee Scotland, calls on the Scottish Parliament to urge the Scottish Government to abolish the use of public-private partnerships—PPPs, as they are affectionately known—and to commit to a new model of financing and managing public infrastructure in Scotland that has safety, quality, value for money and accountability to the taxpayer at its heart. The petitioner argues that public-private partnerships have left Scotland’s public sector with high levels of debt, poor service provision, lack of accountability and unsafe buildings.

In responding to the petition, the Scottish Government acknowledges that the use of private finance for infrastructure projects is more expensive than conventional public borrowing, and it shares concerns about the flexibility and value for money that historical private finance initiative contracts have offered.

The Scottish Government has stated that, as part of its national infrastructure mission commitment, a new approach to revenue finance, which includes the mutual investment model, has been announced. That follows a decision in 2019 to stop using the non-profit distributing model that was originally adopted in 2010. The Government highlights its view that current borrowing powers are limited and insufficient to deliver the ambitions of the national infrastructure mission, but adds that, should additional powers become available, it will examine all options to ensure that the lowest-cost financing route is utilised.

We have also received a submission from the petitioner offering comment on the Scottish Government’s response, with reference to Audit Scotland’s 2020 report “Privately financed infrastructure investment: The Non-Profit Distributing (NPD) and hub models”. The petitioner calls on the Scottish Government to act on Audit Scotland’s recommendations and to rethink the way in which infrastructure is managed and financed in Scotland.

That is all quite technical but nonetheless important and of considerable financial consequence. Do colleagues have any comments or suggestions on how we might proceed?

Alexander Stewart: The petition makes some valid points in reference to where we are with regard to this whole situation, and it would be useful to write to the Scottish Government to seek clarity on its response to the points that the petitioner makes in her submission. We should also ask whether the Government has considered the Scotland against public private partnerships task force position paper “Financing

Public Scotland: A Proposal for an Alternative to Public Private Partnerships". If it has, what is its response to the recommendations?

As you say, convener, the matter is complicated, but, if we get some clarity from the Scottish Government, that might give us an opportunity to investigate and to get further information on it.

Fergus Ewing: I wonder whether, in addition to the action that Alexander Stewart suggests, with which I concur, we might wish to write to the Scottish Futures Trust to seeks its views, because, as I understand it, its remit very much falls into this area.

I would add that the petitioner wants to abolish PPPs and to create a new model, but it is simply not clear to me what that new model would be. The statement on the new model is very much couched in abstract terms that outline what it should achieve rather than describing exactly how it would operate in practice. SFT has great expertise in that area, so it would be useful to get its insights.

The Convener: I am happy to agree with that.

Foysol Choudhury: I agree that the petitioner makes a lot of valid points, but I also agree with Alexander Stewart and Fergus Ewing that the petitioner needs to come up with some proposals on how she wants to see us proceed.

The Convener: Okay. Do we agree to write to the organisations that Mr Stewart and Mr Ewing have identified?

Members *indicated agreement.*

The Convener: Thank you very much. We will keep the petition open and proceed accordingly.

Annexe C
Scottish Futures Trust (SFT) submission of 5 June 2023

PE2004/C: Abolish the use of Public Private Partnerships in Scotland

SFT has worked with partners to develop a range of delivery routes for public infrastructure, including public and privately funded and financed structures. This paper responds to the Committee’s request for our views on the above petition.

Definition of PPPs

Public Private Partnerships (‘PPP’) include many types of long-term arrangements between the public and private sector.

The detail suggests the petition’s focus is on a certain form of PPP, namely

> *PPPs for the design, build, **private financing,** and maintenance of **publicly funded** assets under long-term contracts between a public authority and a private sector partner*.

We use this definition of PPP throughout. We also use the terms “funding” and “financing” throughout. All infrastructure requires **funding** - ultimate payment for the asset by tax-payers (via public sector budgets) or private consumers, either as the infrastructure is built or as it is used. **Financing** represents borrowing from public or private sources to pay for construction that cannot be afforded as the asset is built, and must be repaid from one of the sources of funding as the asset is used.

In Scotland this type of PPP contract has been used to deliver **‘additionality’** – where this investment in assets is ‘in addition to’ the capital budget available to Scottish Government (SG). No capital budget is needed in the years that the asset is built, but resource budgets are used whilst the asset is being used.

The total amount paid for the asset over 25-30 years is significantly higher than its capital cost because it includes the cost of the finance and maintaining the asset to a specified condition, as well as its initial design and build.

Following changes in European accounting rules, the recent **privately financed PPPs** used by SG to deliver additionality known as the Non-Profit Distributing programme and hub DBFM (Design, Build, Finance, Maintain) were discontinued in 2015 and 2019 respectively. These arrangements were adopted following the global financial crisis and before the Scotland Acts gave Scottish Ministers limited borrowing powers.

Conditions for the model proposed in the petition

The petition recommends a new model based on public finance through prudential borrowing. Prudential borrowing is the regime under which Local Authorities may borrow to finance capital expenditure. It is not available to Scottish Ministers or their sponsored bodies.[1] We understand that to work for Scottish Ministers or sponsored bodies, the petitioner's suggestion requires a renegotiation of the Fiscal Framework. We make no further comment on that aspect and set out below our understanding of current arrangements for additionality for SG and Local Government relative to the petition.

Scottish Government infrastructure

SG asked SFT in 2019 to explore options to continue to deliver additionality of investment within current powers, technical rules and using private finance. SFT published its Options Appraisal recommending a PPP model based on the Welsh Government's Mutual Investment Model (MIM). SFT set out the relative costs of public and private finance and noted that "should greater borrowing powers be made available to the Scottish Government, this would provide a lower cost financing option to deliver additionality" as public financing is generally cheaper than private financing where the private financiers take some project-specific risks.

[1] Borrowing - SPFM

SG has included the Mutual Investment Model as an infrastructure investment approach available to central government bodies who cannot borrow since 2019. It is currently being explored, but there are no MIM projects in procurement / delivery.

Local Government infrastructure

For Local Government, which has access to public borrowing, since 2019 SG does not support the type of PPP that the petitioner is calling to abolish.

SFT, in conjunction with Scottish and Local Government, have collaborated designed and successfully delivered a number of publicly financed models to deliver additional infrastructure investment in Scotland. These include:

- **Outcomes Based Funding** model for the Learning Estate Investment Programme[2]
- **Growth Accelerator** – e.g., Dundee Waterfront, Stornoway Deep Water terminal, St James Quarter[3]
- **Housing models** such as National Housing Trust[4]

Conclusion

Significant investment in infrastructure is required to address challenges faced by society. Various approaches are likely to be required as current budgets may not be sufficient for investment needs.

In considering infrastructure investment SFT's understanding is:

a) All infrastructure investment must be paid for (funded), generally by taxpayers or consumers either from current resources as it is built, or future resources as it is used.
b) Any "financed" investment will be more expensive than one paid for from current resources as there is a return to be paid, generally in the form of interest, to the provider of finance.
c) Financing of investment provides additionality of capacity to invest now, over and above current capital budgets, to be paid for over the longer-term as an asset is used.

[2] Learning Estate Investment Programme
[3] Growth Accelerator
[4] Housing - NHT

d) Public financing – whether borrowing by Scottish Ministers or Local Authorities - will generally have a lower cost of finance than private financing of an asset where the private financier takes an element of project-specific risk.
e) Public financing by Local Authorities is governed by the prudential borrowing code and not specifically capped in quantum, whereas borrowing by Scottish Ministers is capped in the Fiscal Framework.
f) SG does not support privately financed PPPs by Local Authorities where public borrowing is available.
g) SFT has worked with Scottish and Local Government to develop and successfully deliver publicly financed approaches to deliver additional infrastructure investment in the Local Authority sector which operates under the prudential borrowing regime.
h) MIM is an available option for private financing to deliver additionality of infrastructure investment for SG and its bodies which are subject to Fiscal Framework borrowing limits.
i) SG would require a detailed business case on a case-by-case basis to determine the value for money and deliverability of any such MIM investment, taking into account the likely cost of finance and value delivered by the additionality.

We would be happy to discuss this in more detail with the Committee.

Scottish Government submission of 9 June 2023

PE2004/D: Abolish the use of Public Private Partnerships in Scotland

The Scottish Government welcomes the position paper set out by Jubilee Scotland and their response to our initial Committee letter. The petitioner response references the Audit Scotland recommendations that were set out in their 2020 report ‘Privately financed infrastructure investment: The Non-Profit Distributing (NPD) and hub models’. The Scottish Government has responded to these recommendations as outlined in the former Deputy First Ministers’ reply to a Parliamentary Question. Responses to the Jubilee Scotland recommendations are provided below.

Jubilee Scotland Recommendation (JSR) 1. Let public well-being drive Scottish infrastructure investment.

The Scottish Government agrees that public well-being should drive Scottish infrastructure investment. The purpose of our investment in a capital infrastructure project is to deliver a built asset to meet a defined public service need. The objective of such investment is to meet the defined public service need by delivering value for money to the taxpayer. The method for making such investments is to award a public contract which complies with relevant procurement legislation and policy.

Our procurement policy includes a Sustainable Procurement Duty which requires that we procure in a way which is: Good for business and employees; Good for society; Good for places and communities; and, Open and connected. Therefore, the well-being of the people of Scotland is at the heart of Scottish Government's infrastructure investment policy and procurement policy.

JSR 2. Do not allow the Mutual Investment Model (MIM) to be put into active use in Scotland.

The use of private finance has allowed for the delivery of much needed schools, NHS facilities and other key infrastructure that would otherwise have not happened. While we acknowledge that conventional capital borrowing is preferable, we can't exclude using new or alternative tools (such as the MIM) from our financing options due to our restricted borrowing powers and constrained capital allocation. The Scottish Government will be engaging with Audit Scotland when developing clear governance and decision-making processes in preparation for any future project being procured using the Mutual Investment Model.

We consider a range of approaches when deciding how to finance projects to ensure value for money. This includes capital grant, capital borrowing, financial transactions, MIM and other forms of finance. MIM can enable additionality of investment over the current public sector capital and borrowing sources and before being selected, analysis of building/facilities management markets and funding markets is undertaken to ensure this route is economically viable.

JSR 3. Act on the recommendations from Audit Scotland's review of the PPP scheme.

The Scottish Government welcomed Audit Scotland's report reviewing the Non-Profit Distributing (NPD) and hub models. Although both models have now ceased to be used to finance new infrastructure, the report provides useful lessons which have already been implemented through successor schemes. The use of private finance allowed the delivery of new infrastructure such as schools, new NHS facilities, new colleges and other key infrastructure. As the report highlights, the £3.3bn of additional investment in Scotland's infrastructure would not otherwise have happened. Please see the former Deputy First Minister's reply to a Parliamentary Question which details the Scottish Government's responses to each of the Audit Scotland recommendations.

JSR 4. Take the best parts of the LEIP scheme and expand these across sectors.

The Scottish Government continues to work to improve the financing models we have at our disposal. The Learning Estate Investment Programme's (LEIP) outcomes-based funding model was designed by Scottish Government, Local Government and the Scottish Futures Trust (SFT) to support the implementation of the Learning Estate Strategy. This was based on our Growth Accelerator Model, another outcomes-based funding model, used in a variety of sectors, and which has been used to finance several infrastructure projects including the Edinburgh St James Quarter and Dundee's waterfront.

JSR 5. Let the planned Infrastructure Company play a key role in moving towards public ownership of infrastructure and make it a centre of local government support.

The Scottish Government continues to work to improve the way infrastructure decisions are made, and to harness and best deploy existing public sector expertise in infrastructure delivery as part of wider work to deliver the Infrastructure Commission for Scotland's recommendations. As set out in the Infrastructure Investment Plan progress report 2021 to 2022, published on 15 June 2022, due to the recommendations set out in the Resource Spending Review regarding public sector reform, the Scottish Government do not expect to set up a new, independent body at this time.

JSR 6. Mandate SNIB to invest in public infrastructure projects.

The Bank has been established to invest in Scottish businesses, projects and communities to deliver positive environmental and social impacts for the people of Scotland. It makes investment decisions independently of Government, but in line with the three strategic missions (Net Zero, Place and People) set for it by Scottish Ministers. All projects in which the Bank invests must contribute to its missions and investments must be made on commercial terms.

Although guided by its missions and the legislation within the Scottish National Investment Bank Act (2020) the Bank operates independently. Therefore, any potential future investment roles or opportunities would be a matter for the Bank to decide.

JSR 7. Rethink the use of prudential borrowing powers and address the budgetary incentives for using PPPs.

The Prudential Code for Capital Finance in Local Authorities is developed and by the Chartered Institute of Public Finance and Accountancy (CIPFA). The Prudential Code requires local authorities to ensure that all capital investment decisions are prudent, affordable and sustainable and to consider the revenue costs of servicing external debt in developing capital plans.

The transparent reporting of all current and future financing costs will be considered as part of the Capital Accounting Review. This is a comprehensive review of capital financing and accounting arrangements for local authorities, utilising the expertise of CIPFA, LASAAC, COSLA, Audit Scotland and local authority Directors of Finance to develop improvements to capital financing and accounting by local authorities.

JSR 8. Rebuild public sector capability and capacity for managing infrastructure.

Assessing the future needs of places, in collaboration with communities, is a core part of the local development plan process and infrastructure needs should be considered early in the process as part of an evidence-based approach.

The Scottish Government continue to engage closely with COSLA and Heads of Planning Scotland to understand the pressures faced by the planning service, including skills shortages, and to promote a highly performing system.

Along with other key stakeholders, including Partners in Planning, the Scottish Government will develop a skills strategy which will identify the specialist skills required to address the requirements of National Planning Framework 4, and the wider skills required to ensure there are planners with the expertise to deliver on our ambitions for Scotland.

JSR 9. Let net zero be at the heart of Scottish infrastructure investment.

The Scottish Government agrees that Net Zero should be at the heart of Scottish infrastructure investment, that is why the Infrastructure Investment Plan (IIP) sets enabling the transition to net-zero emissions and environmental sustainability at the forefront of our investment priorities for the period to 2025-26. This commitment was further highlighted in the Policy Prospectus, which outlines that we will prioritise capital spend to move us towards achieving net zero and providing high-quality public infrastructure and services across Scotland, within the budget available.

Petitioner submission of 20 July 2023

PE2004/E: Abolish the use of Public Private Partnerships in Scotland

Jubilee Scotland’s responses to the Scottish Government’s and the Scottish Futures Trust’s (SFT) Committee request responses:

All-Party Support

A recent working group meeting at Parliament, co-hosted by SNP, Conservative, Green, and Labour MSPs, revealed cross-party support for the urgent need for alternatives to Public Private Partnerships (PPPs) in Scottish infrastructure. Support included other stakeholders (e.g., trade unions). **Our Scotland Against Public Private Partnerships (SAPPP) task force have since gained Liberal Democrat support, giving our mission all-party support**

PPPS’ Financial and Wider Costs

SAPPP’s draft proposal recommends that PPP schemes no longer be implemented. Evidence demonstrates financial dangers of PPPs (Annexes 1, 2), yet the Scottish Government’s response suggests that they are not adequately aware of the risks PPPs pose to their goals of achieving Net Zero by 2045 and of tackling inequality. To achieve these goals, it is *vital* to ground public infrastructure in design-led solutions that provide sustainable public services for taxpayers and the climate, not in profit-led solutions. Unfortunately, SFT’s response recognises certain financial costs but does not sufficiently recognise wider social and environmental costs.

Handing public assets to the private sector and incurring long-term operational and financial commitments to private companies is not in public interest. Despite this widely-accepted understanding, the brief the Scottish Government gave to the SFT suggests that the Government are only seeking private-finance alternatives.

SAPPP requests that this committee ensures that alternatives to create additionality are scrutinised by mandating the relevant cross-party committee to take this conversation forward. We request that the committee do this work before enacting further PPPs, namely the Mutual Investment Model (MIM). The Scottish Government’s response indicates their commitment to the MIM without recognising likely dangers (e.g., excess profits from secondary market transactions, companies profiting via tax havens) (Annex 2).

Despite governments’ varied approaches to reduce profits extracted by the private sector and the substantial debts incurred by local governments through PPPs, necessary scrutiny and monitoring to avert these issues are not in place for *any* PPP to achieve these goals.

Exploring Alternatives

The SFT’s response suggested that SAPPP proposed only one model involving a review of the Fiscal Framework; SAPPP outlined multiple PPP alternatives, which could be implemented under devolved powers. One is expansion on successful elements of the Learning Estate

Investment Programme, cited in the SFT's response as a successful PPP alternative. We are interested in project examples in SFT's response. We welcome these examples' use as case studies; each requires close review by experts to identify which aspects should be expanded and which risk replicating mistakes.

The Scottish National Investment Bank (SNIB)

SAPPP acknowledge that decisions to invest in specific projects are matters for the SNIB to determine as an independent body. However, a recent review demonstrated an absence of enquiries elicited from the public sector between the bank's inception in 2020 until February 2022[5.] Results indicate that local authorities are not sufficiently aware of, or perhaps unable to apply to, SNIB as a funding option despite public infrastructure projects' alignment with the Scottish Government's strategic mission for SNIB.

SNIB's missions:

- achieving a Just Transition to net zero by 2045,
- extending equality of opportunity through improving places by 2040,
- harnessing innovation to enable our people to flourish by 2040[6].

These are compatible with our aims of design-led, sustainable innovation, which promote equal opportunities for Scotland's population. Local authorities' ability to apply for SNIB funding for public infrastructure would help achieve SNIB's mission while providing viable and more financially sustainable options for councils; both outcomes benefit taxpayers.

SNIB may require legal dispensation from the UK Government to allow it to broaden its funding base and ability to invest in public infrastructure. The Scottish Government should campaign for this dispensation to be

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[5] Brown, R. (2022) *Mission Accomplished? Assessing the performance of the Scottish National Investment Bank,* Reform Scotland.

[6] The Scottish National Investment Bank (n.d.) *Our Missions*. Accessed June 30, 2023 at https://www.thebank.scot/about-us/our-missions

granted, clarify limits around investment restrictions, and explore options to allow investments to take place. Ministers should explore adjusting SNIB's mission parameters to better achieve their goal of achieving Net Zero and of reducing inequality, allowing investment on high-priority areas like permitted public infrastructure.

Public infrastructure investment is relatively low-risk compared to other investments; these investment opportunities offer significant advantages to SNIB by balancing their portfolio while achieving their missions.

The National Infrastructure Company (NIC)

The Scottish Government's response reveals their decision not to progress with the NIC featured in SNP's 2021 manifesto. However, a letter from Deputy First Minister and Cabinet Secretary for Finance Shona Robison suggested that she is willing to include the NIC as an option for improving public infrastructure processes:

> 'The Scottish Government continues to work to improve the way infrastructure decisions are made, and to harness and best deploy existing public sector expertise in infrastructure delivery. I will continue to explore options, including the creation of a national infrastructure company to enhance how our existing resources and agencies contribute towards these ends.' (Annex 3)

Removing the NIC from consideration is a missed opportunity to support local authorities (outlined above). If the NIC were dismissed, we believe that a properly-equipped existing body can still achieve the planned body's goals.

Conclusion

SAPPP, like the SFT, recognise that public infrastructure requires funding and multiple options to fulfil requirements.

However, our parliamentary support and public responses demonstrate urgent calls to remove PPPs from Scottish public infrastructure.

The MIM is another PPP with similar risks to previous PPP schemes; alternatives are available with or without revision of the fiscal framework and necessitate exploration. The issue's urgency is becoming more acute as:

1. local authorities will seek new funding options as their 25-to-30-year PPP contracts near their ends,
2. we countdown to Net Zero's 2045 target date,
3. we face increasing needs to address climate and public service crises.

We urge the committee to promote this discussion to the next stage, passing it to the relevant committee to scrutinise options, including SFT's highlighted case studies. This work will pre-empt explorations of alternatives and avoid past mistakes.

We are happy to discuss our response and proposals further.

Annex 1

Annex 2

Annex 3

Petitioner submission of 10 January 2024

PE2004/F: Abolish the use of Public Private Partnerships in Scotland

This submission is to inform the Committee that Jubilee Scotland is officially closing on the 15th of January 2024. This, however, will not affect the petition or the overall campaign. The campaign will continue through the work of the Scotland Against Public Private Partnerships Task Force, who were previously led by Jubilee Scotland. Dr Line Christensen is a member of the Task Force and will remain as the key contact for the petition. We look forward to the next review of our petition.

If you have any questions or need further details, please do not hesitate to contact Dr Line Christensen (the email address is noted with the Clerk of the Committee).

Thank you.