

CITY OF EDINBURGH COUNCIL (PORTOBELLO PARK) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1

11. Subsection (1) provides that the Park is deemed to be alienable common good land for the purposes of Part VI of the 1973 Act. This enables the Council to rely on section 73(1) of that Act, read with section 75(1), to appropriate the Park for functions other than the recreation purposes for which the Park was vested in the Council.
12. Subsection (2) limits subsection (1) so that the Park may only be appropriated for the purposes of the Council's education authority functions. The Park otherwise remains inalienable, and so the Council may not appropriate it under section 73(1) of the 1973 Act for any other purpose. Section 17 of the Education (Scotland) Act 1980 confers on the Council a duty to provide for its area sufficient accommodation in public schools, and a power to provide, alter, improve, enlarge, equip and maintain schools for that purpose.

Section 2

13. In its September 2012 decision, the Inner House questioned whether the terms of the 1898 disposition might have given rise to a title condition preventing a change in the use of the Park, separate from the restrictions placed on the Council by the 1973 Act. Subsection (1) confirms that nothing in the disposition prevents the Council from relying on Part VI of the 1973 Act in respect of the Park.
14. Subsection (2) confirms that the Council may continue to use the land for the provision of recreational, sporting, cultural and social facilities and activities. This includes using any school facilities constructed on the land for those purposes. These are the purposes for which the land was originally dedicated, and will continue to be given effect insofar as the construction and operation of any school constructed on the land allows.

Section 3

15. The Council's intention in drafting the Act was to limit the power of appropriation so that the Park could only be appropriated for the Council's education functions, and to ensure that the Park's legal status was otherwise unchanged. Section 3 is intended to safeguard the future use of the land and to ensure the protection given by its inalienable common good status would continue to apply in circumstances where it was no longer to be used for an educational purpose.
16. Subsection (2) reapplies the previous legal and title restrictions if, after appropriation, one of two trigger events takes place. Those two trigger events are set out in subsection (1) and are:

*These notes relate to the City of Edinburgh Council (Portobello Park)
Act 2014 (asp 15) which received Royal Assent on 1 August 2014*

- a) the expiry of an “opportunity period” (defined in section 3(3)) of 10 years from the date of appropriation without the Park having been used during that period for the purposes of the Council’s education authority functions; or
 - b) the Park, having been used for educational purposes, ceasing to be so used.
17. “Previous legal and title restrictions” is defined in subsection (3) to mean the law and terms of the disposition as would have applied to the Park immediately before the occurrence of one of the trigger events, on the assumption that the appropriation had never occurred in the first place.
18. The effect of these provisions would be to ‘reset’ the Park’s legal status and put it back in the position it would have been in the day before the relevant trigger event had it never been appropriated. Any changes in the law applying generally to common good land, and which were made after the Park’s appropriation, would therefore apply to the Park.

Section 4

19. Portobello Park is defined to exclude that part of the land disposed in 1898 that currently forms Portobello Golf Course.