

# **HUTCHESONS' HOSPITAL TRANSFER AND DISSOLUTION (SCOTLAND) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by Brodies LLP on behalf of the promoter, the Patrons of The Royal Incorporation of Hutchesons' Hospital in the City of Glasgow, in order to assist the reader of the Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation, none is given.

3. The following other accompanying documents are published separately by the Parliament:

- statements on legislative competence by the Presiding Officer and the promoter (SP Bill 36–LC);
- a Promoter's Memorandum (SP Bill 36–PM);
- a Promoter's Statement (SP Bill 36–PS).

4. The Promoter's Statement includes information about where these documents and other documents that are relevant to the Bill (but are not accompanying documents) can be inspected or purchased.

### **SUMMARY AND BACKGROUND TO THE BILL**

5. The purposes of the Bill are to transfer the property, rights, interests and liabilities of The Royal Incorporation of Hutchesons' Hospital in the City of Glasgow, a registered Scottish Charity with the charity number SC001470 (the "Incorporation"), to a new Scottish Charitable Incorporated Organisation established by the current Patrons (i.e. trustees) of the Incorporation and called The Royal Incorporation of Hutchesons' Hospital in the City of Glasgow SCIO ("the SCIO"), and to dissolve the Incorporation. The SCIO was registered with the Office of the Scottish Charity Regulator ("OSCR") on 29 December 2017 and has the charity number SC048030.

6. The original Hutchesons' Hospital charity was established by Mr George Hutcheson of Lambhill under his Deed of Mortification dated 16 December 1639, in terms of which he bequeathed land on which a hospital was to be built in Glasgow for the relief of poor and aged men, funds with which to construct that hospital, and funds to provide clothing, sustenance and lodging to those within the hospital. George Hutcheson's brother, Thomas Hutcheson, made further bequests to the charity and, separately, provided funds for the maintenance and education of indigent orphans who were sons of burgesses of Glasgow. Thomas Hutcheson also entered into a contract with the original Patrons (the Provost, three Baillies, Dean of Guild, Convener and ordinary Ministers of Glasgow, and their successors in office) to fulfil the terms of George's Deed of Mortification and administer the charity assets and funds. The first pensions were paid out of the charity funds in 1643, with the Hutchesons' Hospital building being completed in 1650. Over time, and with further bequests from Thomas Hutcheson and others, both the charity funds and the numbers and categories of people eligible for Hutchesons' Hospital pensions gradually expanded.

7. In 1821, in order to give more legal certainty to the administration and management of the charity's funds and affairs, the Patrons sought and were granted a Royal Charter, with the charity becoming The Royal Incorporation of Hutchesons' Hospital in the City of Glasgow. This allowed the Patrons to "make such bye laws and rules as they may think expedient for their own government and the management and distribution of the funds of [Hutchesons' Hospital] for relieving the poor and the education of boys".

8. The Incorporation in its current form was incorporated by the Hutchesons' Hospital Act 1872 (the "1872 Act"), partly in order to make provision for improved governance and administration of the charity, and the application of its property and revenues, and partly in light of changes that had taken place since the original bequests and which, as stated in the preamble to the 1872 Act, rendered "the exact observance" of many of the bequests "disconsonant with the intention of the donors". The 1872 Act was required because certain changes to the Incorporation could not be made without an Act of Parliament. The 1872 Act currently regulates the management of the Incorporation and the application of its revenues. The Bill will repeal the 1872 Act, which will be redundant following the dissolution of the Incorporation and the transfer of its property etc. to the SCIO.

9. The objectives of the SCIO are essentially the same as the objectives of the Incorporation. It will continue to provide funding, for those with sufficiently close connections to Greater Glasgow, for the advancement of education of young people and adults, and the relief of those in need by reason of age, significant change in personal circumstances or other disadvantage. However, compared to the Incorporation the SCIO has a modernised and simplified structure and governance, with a constitution that has been updated (relative to that of the Incorporation) to ensure the proper regulation and administration of the charitable assets and activities in compliance with modern charity law.

## **COMMENTARY ON SECTIONS**

### **Section 1**

10. Subsection (1) transfers the property, rights, interests and liabilities of the Incorporation to the SCIO. This means that the cash, shares and any other assets of the Incorporation will be transferred to the SCIO. Similarly, any liabilities of the Incorporation will transfer to the SCIO.

11. Subsection (2) expressly provides, for the avoidance of any doubt, that the transfer provided for under subsection (1) supersedes any provision in existence which might prohibit that transfer. This is to reflect the fact that the charity was initially built up in the seventeenth century by way of multiple deeds of mortification and similar deeds, some of which are written in old Scots or otherwise archaic language, and in particular the possibility that there may be still-valid documents of which the current Patrons are unaware. Subsection (2) is intended to remove any doubt as to what the position would be in the event that any historic documents relating to the charity were discovered to contain provisions purporting to prohibit the transfer provided for under subsection (1).

12. Subsection (3) makes the SCIO a party to any contract entered into by the Incorporation. This ensures that the other party or parties to any such contract are not prejudiced by the transfer of the Incorporation's property etc. to the SCIO, nor by the Incorporation's dissolution under section 2.

13. Subsection (4) ensures that the transfer of any particular property, right, interest or liability of the Incorporation is not precluded or prejudiced because of the absence of any delivery, possession or intimation of assignation that would otherwise be required for such a transfer to be valid.

14. Subsection (5) ensures that the transfer of any property, right, interest or liability is not precluded or prejudiced because of the absence of a disposition, conveyance or assignation that would otherwise be required.

15. Subsection (6) makes clear that any current legal proceedings brought by or against the Incorporation can continue and are to be unaffected by the transfer of assets and liabilities from the Incorporation and the subsequent dissolution of the Incorporation. This ensures that any such proceedings are not frustrated because of the transfer of the Incorporation's property, rights, interests and liabilities to the SCIO, nor by the Incorporation's dissolution under section 2.

### **Section 2**

16. Section 2 dissolves the Incorporation and repeals the 1872 Act.

### **Section 4**

17. Section 4 provides that the Bill will come into force four weeks after it has received Royal Assent.

*This document relates to the Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill (SP Bill 36) as introduced in the Scottish Parliament on 25 June 2018*

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