National Trust for Scotland (Governance etc) Bill
Briefing for Bill Committee

1. Introduction

The Office of the Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

In your letter of 26 February you asked for our comments on various issues relating to the National Trust for Scotland (Governance etc) Bill.

This note is intended to clarify OSCR’s position. In forming our view we have considered our overall vision, which is for charities you can trust and that provide public benefit, underpinned by the effective delivery of our regulatory role.

2. The proposals in the Bill

You asked for our views on the following issues:

- The proposed changes to the governance structures of the National Trust for Scotland
- Whether and how the proposed changes will bring the NTS into line with best practice
- Any comments on the Bill and accompanying documents, particularly the policy matters set out in the Promoter’s memorandum

As the promoter’s Memorandum and Explanatory Notes make plain, OSCR has had some previous involvement in looking at the governance issues which came to a head in the National Trust for Scotland (NTS) in 2008-9. The Memorandum and Notes refer to our publication Who’s in Charge, which use NTS as a case study. In the case study, we identified the following key points which needed to be addressed by NTS:

- The existing governance arrangements were complex, and there was uncertainty about who the charity’s charity trustees (the people in general management and control of the charity)
- There was uncertainty as to the respective roles of the Board, the Council and the Audit and Risk Management committees
- These issues had impacted adversely on the charity’s ability to make decisions
As we acknowledged, the charity was already starting to address these issues through the Reid Review.

There are 4 main changes proposed by the Bill:

1. Clarify the role of the President and Vice-President to ensure that they are not members of the Council and are not therefore charity trustees – OSCR welcomes this proposal as likely to achieve clarity about the charity trustee body and streamline the governance of the charity

2. Address the length of tenure and allow eligibility criteria to be set for co-opted members of the Council – along with the measures taken elsewhere in respect of elected members of Council, OSCR welcomes these provisions as reflecting best practice, particularly in helping the charity to achieve the appropriate skills mix among its charity trustees

3. Abolition of representative membership of the Council – OSCR welcomes this proposal as likely to clarify the role of trustees and reduce potential for conflict of duties. While the scientific expertise may well be useful to the trustees, there are likely to be other ways of obtaining this without the complexity of representative trustees – for instance by co-opting trustees with the appropriate expertise. Input from public bodies can also be obtained in other ways.

4. Clarifying NTS’s name – it is not quite clear to OSCR just how problematic the issue of the legal name has been in practice, but it is clearly desirable as the opportunity has arisen to address any possibility of an issue arising.

The change to the charity’s name would require OSCR’s consent under section 11 of the Charities and Trustee Investment (Scotland) Act 2005. However, the promoters have already given us sufficient notice of the intended changes and we have given our consent.

In general, we welcome the provisions of the Bill and the intention behind it in completing NTS’s efforts to address the issues which both we and they had identified.

3. Appropriateness of the Private Bill process

Paragraph 22 of the Promoter’s memorandum addresses the question of whether these changes could be achieved through the reorganisation provisions in sections 39-43 of the 2005 Act. As they state, section 42(5) of the 2005 Act states that the reorganisation provisions ‘do not apply to any charity constituted under a Royal Charter or warrant or under any enactment’. Sections 42(6) and (7) do provide for an exception to this disapplication where such a charity’s property is an endowment.

However, the interpretation of these sections has proven difficult, and has not been tested in the courts. The Promoter’s view, that there is no exemption under which NTS can benefit and therefore that an Act of the Scottish Parliament is
necessary to make these changes, is therefore not an unreasonable one for them to take.

OSCR
6 March 2013