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The purpose of this briefing is to look at the key issues surrounding the Burrell Collection (Lending and Borrowing) (Scotland) Bill. The Bill seeks to relax the current restrictions on lending from, and borrowing into, the Burrell Collection put in place by Sir William Burrell when he made his donation.
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EXECUTIVE SUMMARY

The Burrell Collection (Lending and Borrowing) (Scotland) Bill was introduced in the Scottish Parliament on 29 May 2013. It is a private bill, being promoted by Glasgow City Council. Its purpose is to remove current restrictions on lending items from the Burrell Collection to other museums and to enable externally-borrowed items to be displayed alongside objects in the collection. The deadline for lodging objections to the Bill was Monday 29th July 2013. No objections were received.

The current restrictions on lending and borrowing come from the agreement under which Sir William Burrell gifted his art collection to City of Glasgow Corporation and from Sir William’s will. Under the provisions of the Bill, it is envisaged that the restrictions which exist at present will be removed, allowing international lending of items from the collection. However, lending and borrowing will only be permitted with the agreement of the trustees of the Sir William Burrell Trust under the terms of a lending code to be agreed between the trustees and Glasgow City Council.

The building housing the Burrell Collection requires renovation. It is expected that the items in the collection will be in storage for four years while this work is completed (possibly between 2016 and 2020). The Bill’s promoters argue that allowing lending from the collection (during this period and beyond) will improve understanding of the collection’s importance. In addition, the opportunity to show borrowed items may provide revenue-raising opportunities in the future.
INTRODUCTION

The *Burrell Collection (Lending and Borrowing) (Scotland) Bill* was introduced in the Scottish Parliament on 29 May 2013, under private bill procedures. It is being promoted by Glasgow City Council. *Explanatory Notes* and a *Promoter’s Memorandum* have been produced on behalf of the promoter. The deadline for registering an objection to the Bill was Monday 29 July at 5pm. No objections were received.

There are several other documents relevant to the Bill. These are:

- Sir William Burrell’s will
- the agreement under which Sir William donated the Burrell Collection to City of Glasgow Corporation
- various outputs from the consultation process, including correspondence with other museums and galleries, an exit survey of Burrell Collection visitors and an online survey

These are available on request (with a copying charge for printed versions) from Glasgow City Council and, in addition, can be viewed at the Mitchell Library, the Burrell Collection or Pollokshaws Library in Glasgow. Full details are available at paragraph 14 and Annex 1 to the Explanatory Notes.

PURPOSE

The Burrell Collection is a large collection of art and artefacts, gifted to City of Glasgow Corporation by Sir William Burrell in 1944. It is housed in a purpose-built building in Pollock Country Park in Glasgow. The building is in need of renovation. It is estimated that it will be closed for four years while work takes place (current projections suggest that this will be between 2016 and 2020 (BBC 2013). During this time, Glasgow City Council envisages that items from the collection would go on tour to international venues. This could increase awareness of the collection as well as providing fund-raising opportunities in the future (as a result of exhibitions based around reciprocal loans into the Burrell Collection).

However, the use of the Burrell Collection is currently restricted in a manner which would prevent such a tour. The restrictions appear in two places:

- the agreement between City of Glasgow Corporation (now Glasgow City Council) and Sir William covering the donation of the original items in the collection to the council
- Sir William’s will, which established the Sir William Burrell Trust (a registered Scottish charity) to purchase new items to be added to the Burrell Collection

Although the wording is slightly different depending on whether the restriction appears in the agreement or the will, there are three relevant restrictions:

- a restriction on any lending of certain fragile items, such as tapestries, carpets, lace and pastels
- a restriction on lending other items in the collection outside the UK
- a restriction on showing items which are not part of the Burrell Collection in the same building as the Burrell Collection is housed, effectively rendering pointless any arrangement to borrow items relevant to the collection from other institutions
The Bill seeks to remove these restrictions permanently so that items can be lent and borrowed more freely.

There is currently no single or comprehensive legal solution to enable the restrictions affecting the Burrell Collection to be altered in this manner, so it is necessary for the Bill’s promoter to take forward a private bill to achieve the desired outcome. The Scottish Parliament’s Standing Orders describe a private bill as follows (Rule 9A.1.1):

“A Private Bill is a bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons (‘the promoter’) particular powers or benefits in excess of, or in conflict with, the general law.”

PROCEDURE

Given that it is a private bill, the terminology and rules governing the passage of the Bill through the Scottish Parliament are different from those used for public bills. The procedural rules can be found in the Scottish Parliament’s Standing Orders (“Chapter 9A: Private Bill Procedure”) as augmented by the Scottish Parliament’s “Guidance on Private Bills”.

A private bill committee is established by the Scottish Parliament to look at a private bill. The Burrell Collection (Lending and Borrowing) (Scotland) Bill Committee held its first meeting on 18 June 2013.

It is possible for any person, group or body affected by its proposals to object to a private bill. The period in which objections must be lodged lasts for 60 days from the day after the day the bill was introduced. The requirements for an objection to be accepted include that it is in writing; contains the name and address of the objector; and is signed by the objector. There is a £20 fee for lodging an objection. Guidance for objectors to private bills (“Information for objectors to private bills”) is provided on the Scottish Parliament’s website.

There are three stages to the Scottish Parliament’s consideration of a private bill. These can be described, broadly, as follows:

- Preliminary Stage – consideration by the private bill committee of the general principles of the bill and preliminary consideration of any objections, followed by a parliamentary debate and vote on whether the bill should proceed
- Consideration Stage – consideration by the private bill committee of the bill’s proposals in detail, including any objections and/or amendments put forward
- Final Stage – consideration of any amendments, plus a parliamentary debate and vote on whether to pass the bill

KEY PLAYERS

Glasgow City Council

The Bill is being promoted by Glasgow City Council. Glasgow City Council is the statutory inheritor of the responsibilities of the City of Glasgow Corporation, the body to which Sir William Burrell donated his collection and concluded an agreement governing its use. The Bill and accompanying documents have been prepared by solicitors acting on behalf of the Council.

Glasgow City Council owns the Burrell Collection, although it is restricted in what it can do with the items by the terms of its agreement with Sir William. Glasgow City Council manages the
Burrell Collection through the company Culture and Sport Glasgow (also known as Glasgow Life).

**Glasgow Life**

Glasgow City Council runs its museums and other cultural interests through Culture and Sport Glasgow, a company which uses the name Glasgow Life and a number of sub-brands. Culture and Sport Glasgow is a charity registered with the Office of the Scottish Charity Regulator. It is a company limited by guarantee, with Glasgow City Council being the guarantor. The Council also appoints its trustees and directors. Culture and Sport Glasgow is responsible for the day to day management of the Burrell Collection. Glasgow Museums is a sub-brand used by Culture and Sport Glasgow.

**Burrell Renaissance**

Burrell Renaissance is an advisory group established by Glasgow Life to oversee the Burrell Collection’s immediate future, including advising on the renovation of the building in which it is housed and on options for touring the collection while it is without a home. One of the members of Glasgow Life’s board of directors is the chair of Burrell Renaissance (Glasgow Life 2013).

**Sir William Burrell Trust**

The Sir William Burrell Trust is a charity registered with the Office of the Scottish Charity Regulator. It was established under the will left by Sir William. The Trust’s primary purpose is to use its funds to purchase artworks or artefacts of a suitable nature to be added to the Burrell Collection (although it also had responsibility for funding the construction of a building to house the collection). The will contains similar restrictions affecting the use of items purchased through the Trust to those which appear in the agreement between Glasgow City Council and Sir William.

The Bill will give the Trust additional functions to oversee the lending of items from the Burrell Collection, including the approval of a “lending code” to be agreed with Glasgow City Council. Section 1(3) of the Bill gives the trustees the specific power to use trust income to carry out their prospective responsibilities in relation to lending and borrowing.

The Trust supports Glasgow City Council’s decision to promote a bill to allow lending and borrowing in relation to the Burrell Collection. The current trustees are:

- Sir Peter Craft Hutchison
- Lady Shaw Stewart
- Dr Frances Fowle
- Mr David MacLellan
THE LAW RELATING TO THE BURRELL COLLECTION

THE AGREEMENT

Sir William Burrell donated the items in his art collection to City of Glasgow Corporation (now Glasgow City Council). The conditions attaching to the gift were laid out in a formal contract between Sir William and the Corporation. The terms of a contract are binding on both parties.

It is possible to renegotiate a contract to make changes which are mutually acceptable. For example, Sir William Burrell’s original requirement that the collection be housed in a rural environment (at least 16 miles from Glasgow city centre and within four miles of Killearn) was altered. However, the Promoter’s Memorandum (paragraph 11) notes that this was only possible because the Burrell Trustees had been expressly authorised to deal with this matter by Sir William.

Sir William Burrell is now dead and the agreement makes no provision for anyone to stand in his shoes in relation to future negotiations. It is also possible to go to court (or to an arbitrator as envisaged in the agreement in question) to decide questions about what a contractual term mean or what the parties’ responsibilities are. However, the restrictions contained in the agreement are not unclear, so there is no dispute over their meaning or the parties’ responsibilities. Where the contract’s terms are clear and an accurate expression of the parties’ intentions at the time (and there is no suggestion of misrepresentation or illegality), then a court does not have the power to alter what the parties have freely agreed to.

THE WILL

Sir William’s will established a “trust” (the Sir William Burrell Trust) with responsibility both for funding the construction of a building to house the Burrell Collection and with purchasing more items to complement the collection. Items purchased by the Trust are subject to similar restrictions on lending and borrowing as those in the original collection. In addition, the will repeats and extends the restrictions on lending and borrowing contained in the agreement.

In law, a trust is an arrangement whereby one party (the “trustor”) passes ownership of assets to a trust to be used for the benefit of others (the “beneficiaries”). Trustees run the trust for the beneficiaries. Trustees are limited in what they can do with the property in the trust by the instructions of the trustor as set out in the trust documents.

It is possible for trustees to apply to the courts (or to the Office of the Scottish Charity Regulator where the trust is a charity) to alter terms in a trust document in certain circumstances. However, even if this route was successful, the restrictions on lending and borrowing exist in the agreement as well as the will and these would be unaffected. It would not therefore provide a comprehensive solution.

CURRENT POSITION

As there is no legal remedy which would allow all the restrictions on lending and borrowing to be relaxed, Glasgow City Council must pursue a private bill in order to achieve this end. In addition, the agreement and will do not lay out the restrictions Sir William intended to apply to the Burrell Collection in a clear and coherent manner. For example, the will extends the restrictions on lending to prevent the lending of textiles and pastels at all, but the legal effect of this is unclear. The Bill’s promoters therefore argue that the Bill will provide clarity in relation to their powers and duties in this respect (Promoter’s Memorandum paragraph 35).
RELATED LEGISLATION

Charities and Trustee Investment (Scotland) Act 2005

This legislation enables charities, in certain circumstances, to apply to the Office of the Scottish Charity Regulator (OSCR) or the courts to alter their constitutions. This can be done, for example, where a provision of the charity’s constitution is no longer desirable. It would notionally be possible for the William Burrell Trust to apply to have the conditions around lending and borrowing removed from its constitution. However, this would not affect the conditions attached to Sir William’s original donation, which forms the vast majority of the collection. It does not therefore provide a complete solution to the situation, as described above.

Museums and Galleries Act 1992

Under the provisions of the Museums and Galleries Act 1992, several galleries in London are able to lend artworks regardless of conditions to the contrary attached to the original bequest. They can do so where the restrictions are over 50 years old, or where the person making the bequest (or their representatives) agree in writing. Objects can also be transferred between certain named institutions despite conditions to the contrary where the person making the bequest or their representatives agree. However, these provisions do not apply to the Burrell Collection.

Burrell Collection (Lending) Draft Provisional Order

In 1997, Glasgow City Council promoted private legislation at Westminster with the aim of relaxing the lending restrictions applying to the Burrell Collection. The draft provisional order taking the legislation forward was approved (with amendments) by the Parliamentary Commissioners appointed to examine the proposal (Report by the Commissioners in Inquiry 1997). However, the legislation did not proceed further.

THE BILL

PROVISIONS

The Bill gives Glasgow City Council, with the agreement of the trustees of the Sir William Burrell Trust, a broad power to lend items from the Burrell Collection and to borrow items to be displayed with the collection. Under section 2 of the Bill, any provisions in the agreement between City of Glasgow Corporation and Sir William Burrell, or in Sir William Burrell’s will, which are inconsistent with these extended lending and borrowing powers would cease to have effect.

There are some checks on the Council’s proposed powers to lend and borrow in relation to the collection. Under section 1(2) of the Bill, Glasgow City Council would be required to publish a code setting out the basis upon which the powers of lending (including existing powers of lending) and borrowing will be exercised. The code must be agreed with the trustees of the Sir William Burrell Trust. The text of the proposed code should be available shortly. The trustees of the Sir William Burrell Trust are also required to agree – on the basis of the terms of the code discussed above – in writing to the lending and borrowing of particular items in relation to the collection.

In addition, Glasgow City Council would only be able to lend to a “borrower”. The term borrower is defined in section 3 of the Bill. Thus lending would only be possible to a museum or gallery
which is open to the public and participates in the Arts Council for England’s Accreditation Scheme\(^1\) or an equivalent standard.

Under section 1(3) of the Bill, the Burrell trustees are given additional powers to use income generated by the Sir William Burrell Trust to discharge their new responsibilities in relation to lending and borrowing\(^2\). This may include, for example, getting professional advice on an aspect of a particular proposal to lend or borrow items.

**CONSULTATION**

The Bill’s promoter has consulted with a number of museums and galleries about its proposals. In addition, an exit survey of visitors to the Burrell Collection and an online survey were carried out. The promoter reports broad support for its proposals. The consultation documents are available on request from Glasgow City Council or for inspection at The Mitchell Library, the Burrell Collection and Pollokshaws Library.

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\(^1\) The Accreditation Scheme provides a set of standards against which any organisation meeting the recognised definition of a museum can be assessed against. As of May 2013, there were 1,680 institutions in the UK (263 in Scotland) which met the required standard (Arts Council for England 2013).

\(^2\) The trust income is the income generated by the interests left to the Trust in Sir William’s will.
SOURCES


*Report by the Commissioners in Inquiry held at the Parish Hall, 266 George Street, Glasgow, From 30 September to 20 October 1997 (Burrell Collection (Lending) Draft Provisional Order)*. HINF 97/1459. Houses of Parliament: London.


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