SUMMARY OF RESPONSES AND CONCLUSIONS

CREATION OF A REGISTER FOR TARTAN CONSULTATION

General

There were 62 responses to the consultation paper, from the tartan and weaving industry, local authorities and those organisations and individuals with a general interest in tartan. Responses came from Scotland, England, Northern Ireland, North America, Australia, Holland and France.

Of the total responses: 77.4% (48) were supportive of the proposal to create a national register of tartan; 8.1% (5) were not in support of the proposal; and 14.5% (9) chose either not to adopt a position or merely offered no comment.

While the responses indicate considerable overall support for the proposal they also provide insights into a number of perceived difficulties. Where possible these difficulties have been expressed under the responses to questions, however those that do not fit easily within the parameters of a question are covered at the end.

Responses to questions

Tartan definition: “A woven textile design whereby the warp and the weft repeat the sequence and dimension of the various colours employed throughout so as to produce a distinctive rectangular pattern.”

Question 1: Your views on the above definition and any difficulties it may cause would be welcome

In many cases the second part of the question has been interpreted as seeking views on difficulties that could be caused by the proposal. These matters are discussed either at the appropriate question or at the end of the paper.

Of those that responded to this question 22.6% (14) agreed with the definition of tartan as provided in the consultation document.

Many made minor suggestions to the wording of the definition, suggesting for example that the word ‘chequered’ replaces ‘rectangular’ or that ‘square’ is added after ‘rectangular’. Another response suggested that the definition should begin with the words ‘woven in Scotland’. Others suggested that tartan patterns are not acceptable until they are woven while others believe that using the term woven is misleading as tartan is the design and not the woven article and that the definition should be changed to reflect that some designs appear only in printed form or are computer generated rather than woven. It was also stated that although tartans are conventionally woven they do not need to be to qualify as a tartan.

There were suggestions that more detail was required on the warp and weft.
There were concerns that the definition would restrict creativity and development of new designs and that by putting a definition into legislation it would imply that any other definition was not authoritative. While other responses felt that it was too wide ranging and vague and required to be more prescriptive and one felt that the definition and various terminology related to tartan should be set in legislation to ensure continuity.

One response stated they believed the definition to be inadequate and that there was grave doubt whether a pattern constructed to its rules would bear any resemblance to a tartan.

Several industry responses stated that it would be very difficult to find a definition that wouldn’t be criticised by somebody and suggested that the job of providing a definition should be given to certain named individuals in the industry. One of these individuals suggests the definition provided would describe any check and that they themselves have struggled so long to come up with a definition of tartan that they have now given up trying.

**Question 2: What should happen to the existing registers?**

There were a variety of views on what should happen to the existing registers. The consultation document was drafted with the recognition that the creation of a register with a statutory basis could have no control over the existing registers, either to stop them operating or to demand they pass over the data that they currently hold.

Several of the responses believed that the STA should be appointed to manage the new national register of tartan as they have invested considerable time and money in their own register.

Another stated that: “We support the proposal to have a single authoritative register but do not consider that it is necessary to create a new register to achieve this. Existing registers such as that maintained by the STA are well known, accessible and comprehensive. We therefore suggest that the recognition and regulation of an existing system by a competent authority as the official register would therefore accomplish your [the member’s] objective effectively”.

It was suggested by several of the responses that any existing registers, including those held by the STWR and the STA should be incorporated into the new register, one response indicated that these bodies should receive payment for this in recognition of the time, effort and finances they have already committed to the creation and maintenance of the registers.

The current registrar of the STWR stated in his response that current registers should continue to exist but lose the word ‘register’ from their title and that they should also stop offering a registration service. He also believes that they should make their databases available to the new national register free of charge.
The response from the STA, who operate the International Tartan Index (ITI), believe that since the ITI is so well established as the industry standard that it’s continued existence is not in doubt. They believe that the STA should be appointed to administer the new national register, based on the ITI, and that any other registers should then cease to exist.

Some responses suggested that the current registers should remain as they are for archive purposes and any new tartans should be entered on to the new national register. It was also suggested by some respondents that the current registers should be left to determine their own future, and others stated they believed that all other registers should recognise the authority of the new register whether they continue to operate themselves or not and that the current registers should no longer produce certificates of registration.

**Question 3; What information should be registered for each tartan?**

A suggested list of information to be registered for each tartan was included in the consultation paper and 29% (18) respondents believed this information to be satisfactory.

Several of the responses noted that the STWR and the STA had good recording systems in place and these should be replicated and or adapted. Other responses added suggestions of other data that they felt it would be useful to include in the register, these are listed below:

- Country of origin,
- The position of the sett for the bottom edge of the kilt to ensure uniformity,
- Both cloth and computer specimens as cloth fades over time,
- Name of weaver / firm that first made the tartan
- If the Clan Chief has recognised / authorised the tartan (for Clan Tartans)
- Addition of ‘Category’ to describe the tartan i.e. district/fashion/family/clan/special event,
- A registration code and records of the research carried out to verify the pattern
- Information on copyright and availability of design along with the name of the copyright holder and contact details,
- The name of the tartan plus any alternatives (some tartans have more than one name).

One response provided a detailed specification for the computer recording of tartan.

One response suggested that there should be no limits to the information that’s registered.

One response stated that information on thread count should not be shown on the register as this is privileged information for the designer and weaver. If it’s
published then others could produce the tartan and there would be no redress.

**Question 4: Are there any other duties that the Keeper should undertake?**

The consultation document outlined the perceived duties of the Keeper of Tartan should undertake. In responding to this question some respondents outlined the skills, qualifications that they felt the Keeper should have, this information is more relevant to question 8 which deals with the appointment of the Keeper and has been discussed there.

There was a general consensus that the Keeper should be working to preserve tartan as a Scottish asset. He should also be actively promoting tartan overseas, lecturing and officiating at presentations and events relating to tartan. There was also the suggestion that the Keeper should have a form of regalia.

It was also suggested by two respondents that the Keeper could provide a ‘tartan finder’ service for public and trade enquiries and provide an information back up service to those seeking information on tartan.

The STA believe that if there is a national register then it will be them that is administering it so the duties of the Keeper will be symbolic only. Others suggested that the Keeper will require support from a competent organisation, that day to day management should be delegated to handling agents. It was further expressed that the Keepers role would be an honorary position backed by experts with the suggestion that the work of the Keeper could be carried out by a University.

One response said that the classification of back tartans by the Keeper was essential to the register.

Other suggested duties for the Keeper include:

- Liaison with the Lord Lyon,
- Liaison with Clan Chiefs,
- Maintaining a hard copy of the register
- Control over the use or production of tartans
- Charging for the use of certain tartans

**Question 5: In what areas would costs be incurred and how much would they be?**

The consultation document states that there will be some basic costs that will be incurred with the establishment of a national register and the payment of the Keeper. The consultation states that the fees charged for registration should be enough to cover the administration costs and the costs of payment to the Keeper.
There were some varied views on costs, ranging from £12K to £100K to around £270K for administration and payment to the Keeper.

Others suggested that the payment to the Keeper should be an honorarium of between £3K and £5K.

It was also highlighted that the handling of enquiries could be time consuming and costly although no cost was specified. Another response indicated that there could be research costs and that legal costs could be incurred if there are any disputes in foreign jurisdictions.

On a more practical level there were further suggestions that the register and the samples of tartan should be held in a climate controlled fire proof cabinet which would incur costs. It was also highlighted that there would be costs related to computer hardware and software, specifically the designing of a new database.

Question 6: What would be a reasonable fee for registration of a new tartan?

The responses contained a variety of views although some declined or did not comment on the financial elements.

Two responses believed that the costs should be sufficient to make the register self funding whilst not being so high they became a deterrent to people registering new tartans. There was also a concern that the fee was not set so high that it excluded smaller organisations. Another suggested that organisations should pay £200 and private individuals should pay £50.

One response suggested that the fee should be the costs involved in registration (contribution to Keeper, postage, housing etc) plus 10%.

Four responses believed that £100 was a suitable fee, while 2 suggested that the £75-£120 charges currently charged by the STA were appropriate. Other figures given were £10, £50, £60 £250 and £1000.

One response suggested the fees should be decided by Parliament.

Question 7: What would be a reasonable fee for registration of existing tartans?

There are clearly thousands of existing tartans that may or may not wish to be included in the new national register. The consultation document sought views on what would be a reasonable fee for registering existing tartans.

Three responses asked who would be responsible for paying the registration fees as many existing tartans belong to districts, towns, families etc and as such have no direct sponsor. It was also pointed out that some of the very old tartans that are included on existing registers will have no sponsor either.
One response stated that weavers would not wish to pay to register an existing tartan that could then be woven by others.

Five responses believed there should be no fee as fees would already have been paid for them to be included on other register and that the information from those registers should be passed across to the new register. Others thought that a fee should not be paid for registering existing tartans but a fee of £50 would be appropriate if a certificate was required to be issued.

Some other suggested fees included £15- £20, £25, £50, £100 and £200.

One response suggested the fees should be decided by Parliament.

**Question 8: Who would be the most appropriate body to appoint the Keeper?**

The consultation sought views on how the Keeper should be appointed. Many responded to this question by suggesting not who should appoint the Keeper but who the Keeper should be. These have been addressed separately below.

The most popular suggestions were the Scottish Parliament or the Lord Lyon; both were put forward by 17.7% of responses (11) as the most appropriate body to appoint the Keeper.

Other suggestions include:

- Commissioner for Public Appointments (4 responses),
- Scottish Ministers / Executive (4 responses),
- Royal Appointment (3 responses),
- Relevant Academics (1 response),
- Scottish Executive consulting with STA (1 response),
- National Archives (1 response),
- First Minister (1 response).

It should be noted however that the Commissioner for Public Appointments monitors the appointments that have been made by the Scottish Ministers and that they have no power to make appointments themselves.

In answer to this question some responses indicated who they believed should be appointed as Keeper. These suggestions included the Lord Lyon or his department, Keith Lumsden of the SWTR or someone with experience of the Scottish Museums Council.

One response indicated that whoever was appointed Keeper should be free from any links to the trade / industry.
**Question 9: Please add any further comments you would like to make about this proposal.**

The following summarises points and issues raised in answer to the question that were not covered under the earlier questions.

Three of the responses were supportive of the creation of a register with views ranging from it being an excellent to worthwhile idea, one response believed that it would be worth the cost it entailed.

One response stated that they believed that if tartan was properly regulated then there may be support for a tax exemption on tartan products imported into the United States of America.

One response stated they believed the success of the register would depend on the inclusion of all existing records and patterns, while another response indicated that there may be problems in getting information on existing tartans from private databases.

One response believed that funding for the register may be required. It was also suggested that the amount of research that would be required will incur significant costs and that even using an experienced research team it will take several years before the register becomes authoritative. One response noted that they believed that there would be ‘income generating issues’ and that the business case for a register requires to be developed.

It was suggested that the register should not be politically or commercially ‘tainted’ and that it would be best if the Keeper didn’t have a political or tartan ‘village’ background. One response stated that the register and the Keeper should not have any commercial links to selling. Another response suggested that an independent body was required to run the register and that the register itself requires to be open, public and non commercial.

From the opposite viewpoint one response highlighted their fears over the potential bureaucracy of the register and how it would be hampering what is essentially a commercial matter. They felt that the registration of tartan is something that should be left to commercial parties.

A concern about how you distinguish between tartans that have been registered or not registered was raised. A further comment included in another response was that you couldn’t reject tartan or tartan like patterns that were already in existence.

A recurrent theme throughout a good number of the responses and in answer to question 9 is that of the role of the STA, often as not this being compared favourable or otherwise with that of the STWR. Evidently the world of tartan can be a partisan environment and one that has experienced a degree of controversy and schism in recent years.
Three responses to question 9 indicated that the Keeper should be supported by an advisory Committee. This was also touched upon in the responses to the other questions on the appointment and duties of the Keeper and is discussed further above.

Even those respondents opposed to or sceptical about the proposal concurred with the significance of tartan, for example: "Tartan is undoubtedly a key component of Scottish national identity as well as a significant contributor to Scotland’s economy. We acknowledge therefore that it may be helpful to those with cultural or economic interests in tartan to have clarity on issues that affect their current or future position".

**General**

*Intellectual property*

There were several views expressed throughout the responses on intellectual property matters, specifically, design, trademarks and copyright. For example some responses suggested that the register should give protection to tartans that are under copyright by preventing use or that the Keeper should issue licenses for intellectual property, effectively conferring copyright. However the consultation document does make it clear that the register will not be able to do this.

Intellectual property is a matter that is reserved to Westminster under Part II, Head C4 of Schedule 5 to the Scotland Act 1998 (the 1998 Act). In effect this means that any bill following from the proposal would not be able to legislate for anything to do with intellectual property, and for example it would not be able to brand tartans as Scottish Registered Tartans. At best it would be able to record if any intellectual property rights applied to tartans, for the information of those using the register.

One response did indicate that this information, along with the contact details of the person holding the copyright should be included in the register.

In addition it is likely that any bill would not be able to prohibit a person saying that a tartan is registered if it is not, or from designing a tartan and giving it the same name as a different tartan as consumer protection and product standard issues are also reserved matters under Head C7 and C8 of Schedule 5 to the 1998 Act.

*The naming of tartans twice*

The consultation document states that the current convention is that tartan designs are unique and cannot be named twice. The consultation paper goes on to say that the register will formalise this arrangement.

One response supplied information indicating that in practice many tartans do actually pass under several names or that they have changed their names over time along with examples of tartans that this applies to. Another
response spoke of where two clans from different areas of Scotland have the same name resulting in different tartans also having the same name (a distinction between the two clans was made by the Lord Lyon in 1988)

**Assistance for the Keeper**

It was suggested by a number of consultees that there should be some sort of assistance made available to the Keeper by the forming of an Advisory Committee. Some felt that this Committee should be made up of experts including academics, weavers, designers and the industry.

While some felt the Committee should provide support and advice to the Keeper, others felt that there was a role for a Committee to act as an appeals mechanism for those who wished to appeal decisions made by the Keeper in respect of whether or not a design was eligible for registration.

**Conclusions**

- A clear majority of respondents considered a national register of tartan would be a positive step in someway whether in terms of safeguarding or promoting tartan and its status;
- Definition – a variety of views were expressed and the point made that it would be difficult to produce a definition that wasn’t criticised in some way by somebody;
- Fate of existing registers – again a number of differing views were expressed. That a number of bodies, most notably the STA and STWR, have their own register evidently make this a contentious issue for some parties;
- Information to be registered – there was a degree of consensus here in respect that just under a third of respondents agreed with what was outlined. whilst several others suggested the merit in adhering to the approach of existing registers;
- Keeper’s role – there was a general consensus that the Keeper should be working to preserve tartan as a Scottish asset;
- Likely costs – views were wide ranging;
- Fees for an existing tartan – views ranged from £10 to £1000;
- Fees for a new tartan – views ranged from £15 to £200; and
- Appointment by….? – Scottish Parliament or the Lord Lyon were the most popular suggestions.

**Non Executive Bills Unit**

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