This document relates to The National Trust for Scotland (Governance etc.) Bill (SP Bill 21) as introduced in the Scottish Parliament on 7 January 2013

THE NATIONAL TRUST FOR SCOTLAND (GOVERNANCE ETC.) BILL

PROMOTER’S MEMORANDUM

INTRODUCTION

1. This document relates to The National Trust for Scotland (Governance etc.) Bill introduced in the Scottish Parliament on 7 January 2013. It has been prepared by Turcan Connell on behalf of The National Trust for Scotland for Places of Historic Interest or Natural Beauty (also known as The National Trust for Scotland) to satisfy Rule 9A.2.3(b) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.

2. Explanatory Notes and other accompanying documents are available separately as SP Bill 21–EN.

OBJECTIVES OF THE BILL

3. The policy objective of the Bill is to complete a series of changes in the way that The National Trust for Scotland for Places of Historic Interest or Natural Beauty (“the Trust”) is governed on behalf of its members and for the public benefit. These changes are based on the recommendations made following a strategic review in 2009/10 led by the Rt Hon Sir George Reid (“the Reid review”).

4. The Bill will continue the process of reforming the Trust’s governance in line with modern charitable practice and will complete governance reforms that have been taking place since the end of 2010. Prior to its governance review, the Trust’s structure was not fit for purpose in the modern era, and the Trust’s governance was criticised by the Office of the Scottish Charity Regulator (OSCR). OSCR’s guidance to charities entitled “Who’s In Charge: Control and Independence in Scottish Charities”1 cited the Trust as an example both of a poor governance structure and an organisation that was being proactive in its efforts to modernise its out-of-date constitution. The Bill will implement the final changes in the review which have not yet been made due to the necessity of obtaining a new Act of the Scottish Parliament. The Bill is concerned predominantly with the internal governance and structure of the Trust, but also deals with the name by which the Trust is known.

5. The National Trust for Scotland Order 1935 (as confirmed by the National Trust for Scotland Order Confirmation Act 1935) (“the 1935 Order”) stipulated that the president and vice-presidents of the Trust should be members of the council of the Trust, which is its management body. The president and vice-presidents are, therefore, charity trustees for the purpose of the Charities and Trustee Investment (Scotland) Act 2005. However, the Reid review recommended that neither the president nor vice-presidents should be members of the council (recommendations 16 and 17).

6. The rationale behind recommendation 16 was that the president should no longer be party to board decisions so that the post-holder could have an impartial role in the Trust’s affairs. The Reid review proposed that the primary role of the president should be to act as ambassador for the Trust, and also to chair the Trust’s Annual General Meeting (AGM). Following on from the Reid review, the president has adopted the impartial role recommended by it and does not take part in council meetings. As a result, the president remains a charity trustee by virtue of the 1935 Order but does not exercise any control or management over the Trust in practice and is not involved in decision making. To fully implement the recommendation of the review, the president, therefore, requires to be formally removed from the council and the post holder’s status as a charity trustee needs to be removed so that the president has no liability as a charity trustee.

7. The review’s intention in recommendation 17 was that the vice-presidents should also not have the status of charity trustees but should act purely in an honorary capacity to carry out ambassadorial functions.

8. In its implementation of the recommendations of the review, the Bill therefore seeks to establish the roles of president and vice-president as being suitably distinct from the role of the trustees (council members). It is not, therefore, appropriate to allow one individual to seek and gain appointment to both roles at the same time: this would create an unwelcome overlap between the two positions. Section 1 of the Bill thus consolidates all of the existing provisions relating to the president and vice-presidents, and adopts new provisions which implement the recommendations of the review.

Section 2 – Co-opted members of council

9. Section 18(1) of the 1935 Order provided that the governing council was to be made up of a president, up to six vice-presidents, 50 elected members (unless varied under section 18(8)), various representatives of public or scientific bodies, and such co-opted members as are provided for by section 20. Section 20 permits and provides for the appointment of up to four co-opted members (known as co-opted trustees).

10. The Reid review at recommendation 15 endorsed the concept of co-opted trustees and indeed recommended that the present power to co-opt up to four trustees be maintained to ensure a due balance between specific skills and experience of corporate governance among trustees. However, at present, section 20 limits co-options to a period of one year. The Reid review pointed out that renewals for a further year or years were not specifically ruled out and indicated that renewals might be a route which the Trust wished to follow.
11. It is thought by the Trust that it may increase the likelihood of securing suitable candidates for co-option if the council is able to appoint individuals for a longer period rather than just one year. It also considers that this is better practice in terms of charity governance as it ensures that the individuals who are being co-opted in this way are involved with the charity for sufficient time to allow them to make a meaningful difference and become properly involved in the governance of the charity without the need for repeated reappointments.

12. Section 2 of the Bill, therefore, extends the maximum permitted period of office but caps this at four years, which is the same as the term that elected members of council serve at present. Below this level, the length of the term in any case is to be decided by the council. However, the length of term or the way in which it is to be decided and recorded will be set out by the council in the Regulations which the council intends to make under section 21(2) of the 1935 Order to ensure that this information is sufficiently public and available to anyone who wishes to know it.

Section 3 – Abolition of representative membership of the council

13. The 1935 Order at present provides for the governing council to include various representatives of public or scientific bodies. A list of the organisations having such a right of nomination was originally contained in section 18(2) of the 1935 Order and was later amended by the Trust. However, the Reid review recommended at recommendation 3 that there should be no representative members on the council. The rationale for this recommendation was that there are now more appropriate mechanisms for ensuring co-ordination, expert advice and policy development at a national level. This was endorsed by OSCR which referred to and welcomed this recommendation at page 19 of its guidance, “Who’s In Charge: Control and Independence in Scottish Charities”.

14. The enabling provisions in section 18(4) of the 1935 Order permit the members of the Trust to amend the list of organisations entitled to nominate representatives by either adding or removing bodies from that list. At the 2010 AGM the members of the Trust used that power to remove all current bodies from the list and, therefore, representative members effectively ceased to exist at that point. However, the provisions of the 1935 Order do still allow for the existence of representative membership. The repeals made by section 3 of the Bill remove all references to representative members from the 1935 Order, while also re-stating section 14(f) as section 14(e) to allow the lettering to remain sequential.

Section 4 – Name of the Trust

15. The official name of the Trust has caused some confusion over the years. For almost all purposes the Trust is known as ‘The National Trust for Scotland’. However, although the original legislation which incorporated the Trust under statute (namely the 1935 Order) used that name and also referred to the Trust by that name throughout, it does in fact state that the official name of the Trust is ‘the National Trust for Scotland for Places of Historic Interest or Natural Beauty’.

16. The formal name is complicated and might be thought to encourage confusion with the similarly named body operating in the remainder of the UK. The distinguishing words, namely

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2 See note 1 above
“for Scotland”, are more prominent when used within the shorter name, and the Trust would prefer to be able to use this shorter name more widely.

17. Doubts have also been expressed as to whether it is legally competent for the Trust to enter into contracts or otherwise operate using its shorter name, despite it being a customary and universally recognised abbreviation. The Bill, therefore, confirms that use of the abbreviated name alone is a valid and legally adequate reference to the Trust for all purposes. However, the Trust is already commonly known by this name and the majority of its members and members of the public are unaware of its official name. OSCR also only knows the Trust by its abbreviated name. It is not, therefore, thought by the Trust that this will be considered to be a change in any real sense from the status quo. Rather, this section merely seeks to formalise the current position.

Section 5 – Transitional provisions

18. The Trust does not wish its current president or any currently co-opted trustees to be removed from office by the Bill, as this would leave the Trust with a vacancy in the office of president until its first Annual General Meeting following the Bill being enacted and coming into force, and would require the council to reappoint their co-opted trustees. Section 5(1), therefore, ensures that those currently holding such positions remain in office despite the Bill being enacted and coming into force. Vice-presidents are included here as well for the sake of completeness, although there are currently no vice-presidents appointed under the 1935 Order.

19. Section 5(2) of the Bill allows the president the immediate benefit of the loss of charity trustee status, rather than only applying this to any new president appointed under the amended provisions introduced by this Bill. As noted in paragraph 6 above, the current president has already ceased to exercise any control or management over the Trust in practice, and it is, therefore, thought proper that the formal removal of charity trustee status should occur immediately upon the Bill being enacted and coming into force.

ALTERNATIVE APPROACHES

20. The Reid review recommended the establishment of a new Board of Trustees and this Board was elected in 2011. That Board has implemented the majority of the review’s recommendations, and has been as innovative as possible in doing so, within the confines of the legislation. As part of the review, the Trust appointed a Governance Issues Group which examined the extent to which the reforms could be implemented without the need for amended legislation. Wherever it was possible to implement the recommendations without legislative change, the Trust has done so and numerous changes have been made taking this approach.

21. However, the recommendations proposed some changes which can only be implemented by modifications being made to the primary legislation which established the Trust - the 1935 Order. This can only be achieved by an Act of the Scottish Parliament.

22. Although the Trust is a Scottish charity, it is unable to benefit from sections 39 to 43 of the Charities and Trustee Investment (Scotland) Act 2005 which granted OSCR jurisdiction to authorise reorganisation schemes, which include making amendments to the constitutions of
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charities. Section 42(5) of the 2005 Act is quite clear that the reorganisation provisions “do not apply to any charity constituted under a Royal charter or warrant or under any enactment”. Although an exception is made for charities constituted under enactments which are educational endowments, there is no exemption from which the Trust can benefit.

CONSULTATION

23. The Trust considers that the proper consultees are its own members, who number approximately 312,000. The Bill does not seek to authorise the construction or alteration of work or to authorise the compulsory acquisition or use of any land or buildings. Accordingly, there are no mandatory consultees in terms of Rule 9A.1.4A and Rule 9A.1.1A of the Standing Orders.

24. The Trust has consulted extensively throughout both the review process and the process of implementing the recommendations. During the Reid review, several hundred meetings were held by the chair of the review, The Rt Hon Sir George Reid. Sir George Reid also made 32 presentations across Scotland between October 2009 and June 2010, while over 140 meetings were held by the review team with various groups and individuals. The consultation has been open and accessible, and has facilitated a constructive dialogue with all interested parties which has informed the process throughout.

Consultation with members

25. The Trust advised its members at the Trust’s AGM on 26th September 2009 that a review of its governance had been launched. Notice of the review was available on the Trust’s website, and the review also received attention in the national press. The Reid review itself involved comprehensive consultation with the Trust’s members before conclusions were reached as to the recommendations that should be made on changes to the Trust’s governance. Members were involved directly in a number of the meetings which Sir George Reid held (specifically the Public Focus Group meetings) and, in addition to the meetings which were held, a consultative forum was established on the Trust’s website. Members of the Trust were also invited to respond to a questionnaire issued by the review, with 9,061 responses being received.

26. Details of the process and conclusions of the Reid review were published in a report entitled “Fit for Purpose” in autumn 2010.³ The Trust notified all of its members of the completion of the review and provided them with a summary of the recommendations in the Trust’s magazine entitled “Scotland in Trust”. In addition, all members of the Trust were issued with a copy of the summary of the review’s recommendations.⁴ Members were also able to download a copy of the full review on the Trust’s website or purchase a copy for a nominal charge.

27. Notice was given to all members of the Trust that its 2010 AGM would invite the members to consider and approve the recommendations of the review, and the recommendations

³ Fit for Purpose: Report of the Strategic Review of the National Trust for Scotland – available at www.nts.org.uk/legislation
⁴ The Strategic Review: Recommendations for the National Trust for Scotland, August 2012 – available at www.nts.org.uk/legislation
were issued separately to all members prior to the date of the meeting. All of the Trust’s members were invited to attend the AGM, and were also offered the option of appointing a proxy to vote in their place.

28. The AGM was held on 25th September 2010 and, after adjournment (to allow election of new elected trustees in accordance with the approved Reid review recommendations), concluded on 11th February 2011. The Trust’s members voted overwhelmingly at the initial meeting to adopt the recommendations of the review, with 424 votes in favour, 2 votes against, and 6 abstentions.5

29. Following the meeting, notice of the outcome was publicised by the Trust on its website. In addition, the Trust and the issue received further publicity through press articles and by the Trust’s inclusion as a case study in guidance issued by OSCR in March 2011.6

30. More recently, the Trust’s magazine, which is issued to all of the Trust’s members and which is also made available on the Trust’s website, addressed the matter of the proposed introduction of the Bill in relation to the final recommendations of the review which still required to be implemented. The summer 2012 publication of the magazine explained explicitly to members that in order to implement the final recommendations which were approved at the Trust’s 2010 AGM the Trust required to have a new Act of the Scottish Parliament passed. The Trust’s members were advised of the proposed legislative changes in the magazine article. The Trust also had a webpage allowing online comments to be posted responding to the proposed legislative changes. The Trust received just five responses as a result of the consultation process carried out in the newsletter, all of them positive and in support of the proposed Bill.

31. Following the outcome of the further consultation carried out in summer 2012 as set out above, the proposals constituted an agenda item and were put before the members once more at the Trust’s AGM on 22nd September 2012. Notice of this meeting and the proposed resolution was again issued to all the members of the Trust and the proposals were discussed fully at the meeting. The meeting approved the proposals by a show of hands.

**Broader consultation**

32. In addition to consulting its own members, the Trust also involved a number of other organisations in the Reid review. The consultation process and presentations made by Sir George Reid included several meetings with the Scottish Government Minister with responsibility for Culture, and discussions with senior figures from Historic Scotland, Scottish Natural Heritage, the Royal Commission on the Ancient and Historical Monuments of Scotland, OSCR, and VisitScotland. There were also three separate presentations to the Public Focus Group at the Scottish Parliament (on 25th January, 26th February and 26th June 2010) which were not restricted to members of the Trust. Staff and volunteers of the Trust were also the focus of a number of meetings. The more recent consultation which involved the use of the Trust’s webpage following the notice that appeared in the Trust’s magazine was not restricted to members as the relevant webpage was directly accessible to anyone browsing the Trust’s

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5 Extract Minute of the Trust’s 2010 AGM – available at www.nts.org.uk/legislation
6 See note 1 above
website. In addition, it was not a requirement that an individual had to be a member of the Trust in order to respond.

**Outcome of consultation**

33. The consultation process has been a meaningful and effective one throughout, and, in particular, the Reid review took on board comments and feedback received during the review process when determining what recommendations to make at the conclusion of the process. However, there has been no policy departure from the recommendations that were proposed following the conclusion of the Reid review. The Reid review recommendations were adopted by an overwhelming majority of the Trust’s members and the responses received to the recent summer 2012 consultation were all responses in favour of the proposals. In addition, at the 2012 AGM, the members endorsed the changes by a very large majority show of hands. Accordingly, it was neither necessary nor appropriate to make any changes to the proposals as a result of these consultations.

**Continued engagement**

34. The Trust will advise its members of the introduction of the Bill in its magazine which is due to be published in March 2013. It will also in the interim announce the news on its website, in addition to the formal advertisements that have been placed nationwide as required by the Parliament’s Standing Orders. It has formally advised the Scottish Government and Historic Scotland of the introduction of the Bill. The Trust has also, as required by the Parliament, published notification of the intention to introduce a Bill in two newspapers circulating within Scotland (on two separate occasions) prior to the introduction of the Bill to the Scottish Parliament.

35. Engagement with members will continue beyond the introduction of the Bill (including forming part of the Trust’s agenda for its next AGM) and will include magazine or website updates and announcements.
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PROMOTER’S MEMORANDUM


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