National Trust for Scotland (Governance etc.) Bill Committee

1st Report, 2013 (Session 4)

Preliminary Stage Report

Published by the Scottish Parliament on 28 March 2013
National Trust for Scotland (Governance etc.) Bill Committee

Remit and membership

Remit:

To consider matters relating to The National Trust for Scotland (Governance etc.) Bill.

Membership:

Jayne Baxter (Deputy Convener)
James Dornan
Jamie McGrigor
Fiona McLeod (Convener)

Committee Clerking Team:

Clerk to the Committee

Joanna Hardy
The Committee reports to the Parliament as follows—

INTRODUCTION

1. The National Trust for Scotland (Governance etc.) Bill (“the Bill”) was introduced to the Scottish Parliament on 7 January 2013. It is a Private Bill being promoted by The National Trust for Scotland (the promoter) under procedures set out in Rule 9A of the Parliament’s Standing Orders1 and the Guidance on Private Bills.2

2. The National Trust for Scotland for Places of Historic Interest or Natural Beauty (commonly referred to as the National Trust for Scotland) is a conservation charity. It was established in 1931 to protect and promote Scotland’s natural and cultural heritage, and its constitution was put on a statutory footing by the National Trust for Scotland Order Confirmation Act 1935 (an Act to confirm an Order of the same year).

OBJECTIVES OF THE BILL

3. The objective of the Bill is to permit a number of reforms that will modernise and streamline the governance of the Trust and complete a reform process that has been underway since a recent major strategic review of the organisation. It also aims to clarify the use of the abbreviated name – “The National Trust for Scotland” - by which the Trust is generally known.

President and vice-presidents

4. The Bill seeks to remove any liability as charity trustee from the roles of the president and vice-president of the Trust. It envisages that the president and vice-presidents should only hold ambassadorial roles, outside the decision-making structure of the Trust.

Co-opted members of the council
5. The 1935 Order provides for the council of the Trust (now known as the Board of Trustees) “from time to time to appoint a person being a member of the National Trust for Scotland as an additional member of the council”. These additional members are called co-opted members and may only hold their post for one year. The Bill aims to allow the Trust to co-opt members to the Board of Trustees for a period of up to four years, and allows eligibility criteria to be set for such members.

Abolition of representative membership of the council
6. The Bill seeks to remove the provision in the 1935 Order that provides for certain public or scientific bodies to nominate representatives on the council of the Trust.

Name of the trust
7. As noted above, the official name of the Trust, as set out in the 1935 Order, is the National Trust for Scotland for Places of Historic Interest or Natural Beauty. The Bill aims to confirm that the use of the abbreviated name - The National Trust for Scotland - is an equally valid and legally adequate reference to the Trust.

Transitional provisions
8. The Bill seeks to avoid a situation where the president and any co-opted trustees holding office at the time it comes into effect are removed from office by virtue of the legislation altering their terms of appointment. Under this provision therefore, any new terms of appointment would apply to those post holders appointed following the enactment of the legislation.

BACKGROUND TO THE BILL

The Reid Review
9. The Bill comes after a major strategic review of the Trust, which was led in 2009-10 by the Rt. Hon. Sir George Reid, former Presiding Officer of the Parliament, and culminated in a report entitled *Fit For Purpose, Report of the Strategic Review of the National Trust for Scotland*.4

10. The Office of the Scottish Charities Regulator (“OSCR”) had criticised the Trust in its report *Who’s In Charge: Control and Independence in Scottish Charities*5 for its “complex and unusual governance arrangements” and urged the Trust to bring forward a formal review of its governance structures.

11. The Reid review addressed the need to modernise the governance structure of the Trust in light of evidence that current structures were hampering decision-making. The report found that the existing structure resulted in “duplication and delay, uncertainty and friction”. As a result, a key reform has been to replace the dual governance structure of council and Board (which had 87 members between

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3 http://www.nts.org.uk/about/downloads/nts_constitution_v3_0711.pdf
5 OSCR. http://www.oscr.org.uk/media/2151/Whos%20in%20charge.pdf
them) with a single structure known as the Board of Trustees, which has a maximum 15 members.

12. Other key recommendations of the Reid review included—

- the President should remain a trustee until such time as the office is considered in new legislation, and vice presidents should be elected in an honorary capacity only;
- there should be no representative members on the Board of Trustees;
- the Board should continue to be able to co-opt up to four Trustees;
- a new five-year strategic plan should be prepared to ensure that the Trust works in future to specific, measurable, attainable, relevant and time-bound objectives; and
- there should be an audit of assets and, in particular, a full property portfolio review, in order to determine the scale, balance and cost of maintenance of the estate and its future management.

13. The Trust agreed to the Reid Review recommendations and OSCR welcomed the review findings.\(^6\)

**Implementing the Reid recommendations**

14. While it has been possible to implement most of the Reid reforms within the confines of the 1935 Order, a number require to be given legislative effect by means of amendments to the Order. The Promoter’s Memorandum\(^7\) sets out the rationale for each provision of the Bill.

**PARLIAMENTARY PROCEDURE**

**Standing Orders, Rule 9A.7: Stages of Private Bills**

15. The procedure for a Private Bill introduced in the Parliament is—

- (a) consideration of the general principles of the Bill and whether it should proceed as a Private Bill, preliminary consideration of objections and a decision whether to agree to those general principles and whether the Bill should proceed as a Private Bill (Preliminary Stage);
- (b) consideration and disposal of objections and consideration of the details of the Bill (Consideration Stage); and
- (c) final consideration of the Bill and a decision whether to pass or reject it (Final Stage).

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\(^7\) [http://www.scottish.parliament.uk/S4_Bills/National%20Trust%20for%20Scotland%20(Governance%20etc.)%20Bill/b21s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/National%20Trust%20for%20Scotland%20(Governance%20etc.)%20Bill/b21s4-introd-pm.pdf)
Preliminary Stage: function of the Committee

16. This Committee was established (under Rule 9A.5) to consider The National Trust for Scotland (Governance etc.) Bill at Preliminary Stage and at Consideration Stage. Since no objections were lodged, the Committee’s role at Preliminary Stage is to report on whether—

- the general principles of The National Trust for Scotland (Governance etc.) Bill should be agreed to; and
- the Bill should proceed as a Private Bill.

CONSIDERATION BY THE COMMITTEE

General Principles of the Bill

17. In considering the general principles of the Bill, the committee examined whether it should proceed as a Private Bill.

18. In order to inform its scrutiny, the Committee invited Sir George Reid and the Trust to give oral evidence. The Committee also invited and received written evidence from The Office of the Scottish Charity Regulator (OSCR) and from Prospect, the union representing many of the Trust’s staff.

Whole-bill issues

19. Sir George Reid briefly outlined his strategic review of the Trust and the reforms that had taken place since its conclusion. He described the Bill as “codifying the reform process and giving effect to recommendations that are inconsistent with current legislation”.  

20. Professor Sir Kenneth Calman reflected on the lengthy consultation processes leading to the reforms at the trust and noted the very high approval for the reforms among the trust’s members, which was recorded at the 2012 AGM. He said that it was “important that the changes are in law and are codified, because they could be reopened again”. He described the Bill as “vital”.

21. In its written evidence to the Committee, OSCR set out the key points highlighted by a case study on the Trust, set out in OSCR’s Who’s in Charge? Control and Independence in Scottish Charities, published in 2011. OSCR found that complex governance arrangements and uncertainty as to the respective roles

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13 OSCR. [http://www.oscr.org.uk/media/2151/Whos%20in%20charge.pdf](http://www.oscr.org.uk/media/2151/Whos%20in%20charge.pdf)
of the Board and the Council were impacting adversely on the charity’s ability to make decisions.\textsuperscript{14}

22. OSCR welcomed the provisions of the Bill\textsuperscript{15} and confirmed that it would not be possible to make the desired changes under the reorganisation provisions in sections 39-43 of the Charities and Trustee Investment (Scotland) Act 2005\textsuperscript{16}, which granted OSCR jurisdiction to authorise reorganisation schemes. It concluded that going down the route of an Act of the Scottish Parliament “is therefore not an unreasonable one for them to take”.\textsuperscript{17}

President and vice-presidents
23. Section 1 of the Bill aims to remove the roles of president and vice presidents from the council and end their status as charity trustees.

24. Sir George Reid endorsed the proposed new structures in oral evidence to the Committee stating “it would be quite wrong for the president to have due diligence as a trustee”\textsuperscript{18}. He emphasised the importance of separating management of the organisation from scrutiny and confirmed that “legislative change is required to give effect to the proposals”\textsuperscript{19}.

25. Sir Kenneth explained that the provisions would formally free up presidents and vice-presidents’ time (by removing the need to attend board meetings) as well as ensure that they perform an impartial role, which would avoid conflicts of interest.\textsuperscript{20} In practice, since the Reid Review, the president has adopted an impartial role and does not take part in council meetings.

26. The Trust provided further information to the Committee on honorary Vice Presidents, which clarified the position should the Bill succeed. It stated that the Trust “intends to dispense with the appointment of Honorary Vice-Presidents once it has the ability to appoint Vice-Presidents under the 1935 Order who do not become charity trustees by virtue of that appointment”.\textsuperscript{21} The Trust expanded—

“The current Honorary Vice-Presidents will not be removed from their posts by the Bill as no provision is made for this to occur. However, they have been appointed to this position only until the Trust’s next AGM as the offices of Honorary Vice-President are subject to election annually. At the first AGM of the Trust held after the Bill is passed and comes into force, the Trust will not appoint any new individuals as Honorary Vice-Presidents and will appoint Vice-Presidents as created in the 1935 Order, following adjustment in the Bill,

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\textsuperscript{14} OSCR. Written Evidence, paragraph 2.
\textsuperscript{15} OSCR. Written Evidence, paragraph 2.
\textsuperscript{17} OSCR. Written Evidence, paragraph 3.
\textsuperscript{21} The National Trust for Scotland. Supplementary written evidence, page 1.
\end{flushleft}
instead. The provisions relating to Honorary Vice-Presidents will then be removed from the Trust’s Second Schedule. In practice, as there will be no change in the role or functions carried out and it is simply a change in nomenclature, it is expected that the same people will seek election as Vice-Presidents as would otherwise have sought election as Honorary Vice-Presidents.  

27. OSCR welcomed the provisions relating to the roles of president and vice president in its written evidence as they were “likely to achieve clarity about the charity trustee body and streamline the governance of the charity”.

Co-opted members of the council
28. Section 2 of the Bill would allow eligibility criteria to be set for co-opted members of the trust’s council and alter their length of tenure to allow them to be in post for up to four years.

29. Sir George endorsed this provision of the Bill, asking “why would someone with significant skills, experience and reputation take a job on for only a year?” He added that it needed to be “possible for such people to be taken on...for up to four years at the Trust’s discretion to ensure that they can make a meaningful contribution” and concluded “such a move will add to the board’s strength and skills”.

30. Sir Kenneth agreed with Sir George’s points in favour of these provisions. He added that the role of chairman is a co-opted member of the council and took the view that “when I step down in a year and a half, it will be easier to find a chairman for four years, rather than one.”

31. Sir Kenneth also argued that, due to the size and geographical extent of the Trust, “people need a year to get into it”. He felt that this provision “would give a bit more certainty to the individuals who take on the task”.

32. OSCR welcomed the provisions as “reflecting best practice, particularly in helping the charity to achieve the appropriate skills mix among its charity trustees”.

Abolition of representative membership of the council
33. The 1935 Order provides for certain public or scientific bodies to nominate representatives on the council of the Trust (now known as the Board of Trustees). It originally included a lengthy list of external bodies although, as recommended by the Reid Review, all the entries in this list have already been removed (using a power in the 1935 Order allowing the Trust to amend the list from time to time).
Section 3 of the Bill would make this change permanent by abolishing the category of representative members of the council altogether. This would ensure that there was no option to appoint representative members in law, not just in practice and that, therefore, the practice could not be re-established.

34. Sir George felt that, notwithstanding the fact that the number of representative members had been reduced to zero following the Trust’s review, “it is important that that point is addressed in the legislation because it should be as clear a route map for the future as possible and set down in legislation”. He went on to outline a number of alternative ways by which the trust has gained the expertise of external individuals and bodies.

35. Sir Kenneth pointed out that these provisions of the Bill were “not about abolishing external specialist expertise” but “about abolishing the role of that expertise in the governance structure”. He reported that the measure had been “well received” by organisations that had previously nominated representative members. Sir Kenneth felt that the issue was “too important” to leave in the Schedules to the 1935 Order.

36. In its case study on the Trust, outlined in the Who’s in Charge? report OSCR had recommended that “none of these charity trustees should be representatives of other bodies”. Accordingly, OSCR welcomed the provisions at section 3 in its written evidence as “likely to clarify the role of trustees and reduce potential for conflict of duties”. OSCR agreed that “there are likely to be other ways” of obtaining scientific expertise.

37. Written evidence from Prospect expressed the organisation’s reservations about the removal of representative members from the council of the Trust. It argued that this measure “removed a degree of external scrutiny and diverse independent expertise”. It went on to express concerns with the new Board structure.

Name of the Trust

38. Keith Griffiths, Trustee, National Trust for Scotland, said that the need to legally refer to the Trust as “the National Trust for Scotland for Places of Historic Interest or Natural Beauty” could lead to confusion when money was left in wills and could result in bequests going, instead, to the National Trust (the equivalent

39. Gavin McEwan, Turcan Connell, pointed out that the full legal name was cumbersome and “it would be much simpler and easier if we could refer to ourselves as simply the National Trust for Scotland”.\footnote{Scottish Parliament. National Trust for Scotland (Governance etc) Bill Committee. \textit{Official Report 12 March 2013 Col 32.}}

**Interpretation**

40. The Committee notes that, under this section of the Bill, the Trust is defined partly by reference to its current address. The Trust may wish to consider whether this is prudent given the fact that the Trust may, in the future, relocate.

**Conclusion**

41. The Committee is supportive of the aims of the National Trust for Scotland for Places of Historic Interest or Natural Beauty to modernise its governance structures, in line with the Office of the Scottish Charities Regulator’s guidance on best practice and in line with the recommendations of the Reid review.

42. The Committee agrees that a Private Bill is necessary to enable the Trust to secure these governance changes for the future.

**Consideration of whether the Bill should proceed as a Private Bill**

43. In addition to considering the general principles of the Bill, the Committee is required to consider whether it is appropriate that the Bill proceeds as a Private Bill in accordance with Rule 9A.8.3 of \textit{Standing Orders}. This involves the Committee satisfying itself first, that the Bill is in accordance with Rule 9A.1.1, second, whether there was any other, non-statutory, alternative solution to achieve the promoter’s aims and, finally, that the accompanying documents conform to Rule 9A.2.3 in order to allow proper scrutiny of the Bill.

**Does the Bill meet the definition of a Private Bill?**

44. A Private Bill is a Bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons particular powers or benefits in excess of or in conflict with the general law, and includes a bill relating to the estate, property, status or style, or otherwise relating to the personal affairs, of the promoter.\footnote{Standing Orders, Rule 9A.1.1}

45. The promoter of the Bill is the National Trust for Scotland for Places of Historic Interest or Natural Beauty, which is a body corporate in terms of section 3 of the 1935 Order.\footnote{The National Trust for Scotland Order Confirmation acts 1935 to 1973. Available at: \url{http://www.nts.org.uk/about/downloads/nts_constitution_v3_0711.pdf} [Accessed 26 March 2013].}
46. The Trust has a statutory constitution which gives it a status in law that is different from other charities or conservation bodies. Amendments to this existing statutory regime therefore also consist of conferring powers or benefits in excess of or in conflict with the general law.

47. The Committee is therefore satisfied that the Bill conforms to the requirements of Rule 9A.1.1, the definition of a Private Bill.

Is a Private Bill appropriate?

48. A Bill should not proceed if the result sought would more appropriately be achieved by means of changes to the general law that would give the same powers or benefits to others in a similar position, without the need to single out the promoter. The Trust’s constitution is already governed by Private Act, and the changes required are particular to the circumstances of the Trust (and not to charities or conservation bodies more generally). This means that a Public Bill would be inappropriate to the circumstances and a Private Bill is therefore required.

49. Since the changes required are particular to the promoter’s circumstances, a Public Bill would not have been appropriate.

Was an alternative route available?

50. The evidence rehearsed in earlier passages of this report confirms that there is not a suitable non-statutory remedy available to the promoters. Again, this conforms to the requirements of Rule 9A.1.1.

51. The Committee agrees that there is no alternative remedy or process that would achieve the aims of the Bill and a statutory solution is therefore required.

Adequacy of accompanying documents

52. The Committee must consider the Bill’s accompanying documents and decide whether they conform to Rule 9A.2.3 and are adequate to allow proper scrutiny of the Bill (Rule 9A.8.3).

53. No issues were raised regarding the accompanying documents by those submitting written evidence to the inquiry.

54. The Committee agrees that the accompanying documents to the Bill conformed to Rule 9A.2.3 and were adequate to allow proper scrutiny of the Bill.

Consideration of objections

55. The objection period ran from 8 January to 8 March 2013. No objections to the Bill were received. The Committee is therefore not required to give consideration to objections.
CONCLUSION

56. The Committee recommends to the Parliament that the general principles of the Bill should be agreed to and that the Bill should proceed as a private Bill.
ANNEXE A: EXTRACTS FROM THE MINUTES OF THE NATIONAL TRUST FOR SCOTLAND (GOVERNANCE ETC.) BILL COMMITTEE

1st Meeting, 2013 (Session 4), Tuesday 26 February 2013

Declarations: Members of the Committee were invited to declare any relevant interests. Members had no relevant interests to declare. Each member made a declaration of impartiality under Standing Orders Rule 9A.5.4A.

Choice of Convener: The Committee chose Fiona McLeod as Convener.

Choice of Deputy Convener: The Committee chose Jayne Baxter as Deputy Convener.

Decision on taking business in private: The Committee agreed to take item 6 in private.

National Trust for Scotland (Governance etc.) Bill - witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses for witnesses during the scrutiny of the Bill.

National Trust for Scotland (Governance etc.) Bill (in private): The Committee agreed its future work programme and to take consideration of the Committee's preliminary stage report in private at future meetings. It agreed to invite representatives of the National Trust for Scotland and the Right Hon Sir George Reid to give oral evidence and to invite PROSPECT and OSCR to submit written evidence. It also agreed to issue a general call for evidence.

2nd Meeting, 2013 (Session 4), Tuesday 12 March 2013

Decision on taking business in private: The Committee agreed to take item 3 in private.

The National Trust for Scotland (Governance etc.) Bill: The Committee took oral evidence on the Bill at Preliminary Stage from the Rt. Hon. Sir George Reid, Author, Strategic Review of the National Trust for Scotland; Mr Keith Griffiths, Trustee, Prof. Sir Kenneth Calman, Chairman, and Mrs Nicola Whyte, Governance Manager and Solicitor for the National Trust for Scotland; Mr Gavin McEwan, Partner, Turcan Connell.

The National Trust for Scotland (Governance etc.) Bill: The Committee took oral evidence on the Bill at Preliminary Stage from—

Rt. Hon. Sir George Reid, Author, Strategic Review of the National Trust for Scotland;

Mr Keith Griffiths, Trustee, and Mrs Nicola Whyte, Governance Manager and Solicitor, National Trust for Scotland;
Mr Gavin McEwan, Partner, Turcan Connell;

Prof. Sir Kenneth Calman, Chairman, National Trust for Scotland.

The National Trust for Scotland (Governance etc.) Bill (in private): The Committee considered the evidence taken at item 2 and discussed the contents of its Preliminary Stage report.

3rd Meeting, 2013 (Session 4), Tuesday 26 March 2013

The National Trust for Scotland (Governance etc.) Bill (in private): The Committee agreed its draft Preliminary Stage report.
ANNEXE B: ORAL AND WRITTEN EVIDENCE

Please note that all oral evidence and associated written evidence is published electronically only, and can be accessed via the National Trust for Scotland (governance etc.) Bill Committee’s webpages, at:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/58981.aspx

2nd meeting, 2012 (Session 4), Tuesday 12 March 2013

Written Evidence

Memorandum by OSCR

Memorandum by PROSPECT

Oral Evidence

Rt. Hon. Sir George Reid, Author, Strategic Review of the National Trust for Scotland;

Prof. Sir Kenneth Calman, Chairman, National Trust for Scotland;

Mr Keith Griffiths, Trustee, National Trust for Scotland

Mrs Nicola Whyte, Governance Manager and Solicitor, National Trust for Scotland;

Mr Gavin McEwan, Partner, Turcan Connell.
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