

Joanna Hardy
Clerk to the Committee
Non-Executive Bills Unit
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

15 August 2013

Dear Ms Hardy

**The Burrell Collection (Lending and Borrowing) (Scotland) Bill
Committee Consideration of the Bill's general principles and adequacy of
accompanying documents at Preliminary Stage**

1. Introduction

1.1 The Office of the Scottish Charity Regulator ("OSCR") welcomes the opportunity to submit evidence to the Committee in respect of The Burrell Collection (Lending and Borrowing) (Scotland) Bill ("the Bill").

1.2 OSCR is established under the Charities and Trustee Investment (Scotland) Act 2005 ('the 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.

1.3 As is narrated by the Promoter, the additional powers sought require agreement of the charity trustees of The Sir William Burrell Trust (a Scottish Charity with the number SC010109) ("the Charity"), in accordance with a published code. The Bill will therefore augment the objects and powers of the Charity.

1.4 The Committee has asked for comment on a number of points. We offer a view based on our understanding of the legal relationships between the Promoter and the Charity, in which we have a regulatory interest.

2. Written evidence

2.1 The general principles of the Bill in particular its intention to alter the terms of Sir William Burrell's bequest.

2.1.1 Sir William Burrell's bequest was effected through both his Will and the Agreement with Glasgow Corporation. There were a number of amendments made during Sir William's lifetime. However, no mechanism was provided for later amendment.

2.1.2 As stated in the Promoter's Memorandum, there is no formal legal relationship between Glasgow Corporation and the Charity. The Collection was to be donated to the Corporation subject to conditions imposed in both the Will and the Agreement.

2.1.3 These same documents, principally the Will, form the founding documents of the Charity. However, the Charity's purposes are distinct from those of the Corporation.

2.1.4 The Charity's property consists of residue from Sir William Burrell's estate, and its principal purpose is to use income from this fund to augment the Collection, by purchasing works of art, subject to conditions imposed in the Will, and delivering these to the Corporation to be held as part of the Collection.

2.1.5 The Bill seeks to remove restrictions on lending and borrowing of items in the Collection imposed on the Corporation by the Will and Agreement.

2.1.6 It removes liability for certain of the costs associated with the Collection from the Corporation and instead confers them on the Charity (in accordance with the code to be published in terms of section 1(2) of the Bill).

2.1.7 It also seeks to place on the Charity an additional purpose and duty, namely overseeing the publication of the code which will regulate lending and borrowing arrangements.

2.2 Is the purpose of the Bill to obtain for the promoter particular powers or benefits in excess of or in conflict with the general law?

2.2.1 There is in our view no other competent legal remedy which permits the restrictions on lending and borrowing imposed on the Corporation (and the promoter as its successor) to be relaxed. As noted above, the agreement

between the Corporation and Sir William did not make provision for amendment after Sir William's death.

2.2.2 OSCR has powers to approve a reorganisation scheme to vary the constitution of a charity so far as it relates to purposes, where the charity's constitution does not contain an existing power to do so; it also has power to approve a scheme to vary the purpose for which funds are used by a charity, where a restriction has been imposed by a donor.

2.2.3 Whereas the Charity is a party affected by the Bill, the changes sought in the Bill itself do not fall within the categories mentioned above, and therefore cannot be approved by OSCR by means of a reorganisation scheme under the 2005 Act.

2.2.4 The Charity has now submitted an application to OSCR for approval of a reorganisation scheme with reference to the changes to its purposes and powers which would be required as a result of the measures proposed in the Bill described at 3.1.6-7 above, and this is will be assessed in line with the tests set out in the 2005 Act.

2.3 Any comments on the Bill and accompanying documents, particularly the policy matters set out in the Promoter's Memorandum.

2.3.1 The general approach taken by the Promoter, including consideration of social and economic changes which have occurred in the years since Sir William expressed his wishes with respect to the Collection; and of the benefits of the wider powers to lend and borrow for a range of parties, including the public, is analogous to that required by the tests in charity law which charities must satisfy in order to reorganise.

2.3.2 We note the collaborative approach taken by the Promoter, including regular meetings with the Charity's trustees and confirmation that the Charity supports the Bill.

2.3.2 We also note that consultation with a number of other interested relevant parties has taken place and that broad support for the proposed changes has been expressed.

2.4 Do the accompanying documents satisfy the technical criteria that are set down in the Parliament's Standing Orders and are they adequate to allow proper scrutiny of the Bill?

2.4.1 In our view the technical criteria of Rule 9A of the Parliament's Standing Orders are satisfied.

2.4.2 We consider that the Charity is an unincorporated association named in the Bill (not being the promoter) whose constitution is modified by the Bill and upon whom powers are conferred by the Bill, in terms of Rule 9A.2.3(d)(iii); and we note that consent to this has been duly obtained from the Charity.

3. Overall, **OSCR** welcomes the opportunity to give a view on the development of this Bill, and hopes the Committee find it useful. Should there be any further questions please contact me using the details below.

Yours sincerely

Martin Tyson
Head of Registration
martin.tyson@oscr.org.uk