



The Scottish Parliament
Pàrlamaid na h-Alba

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

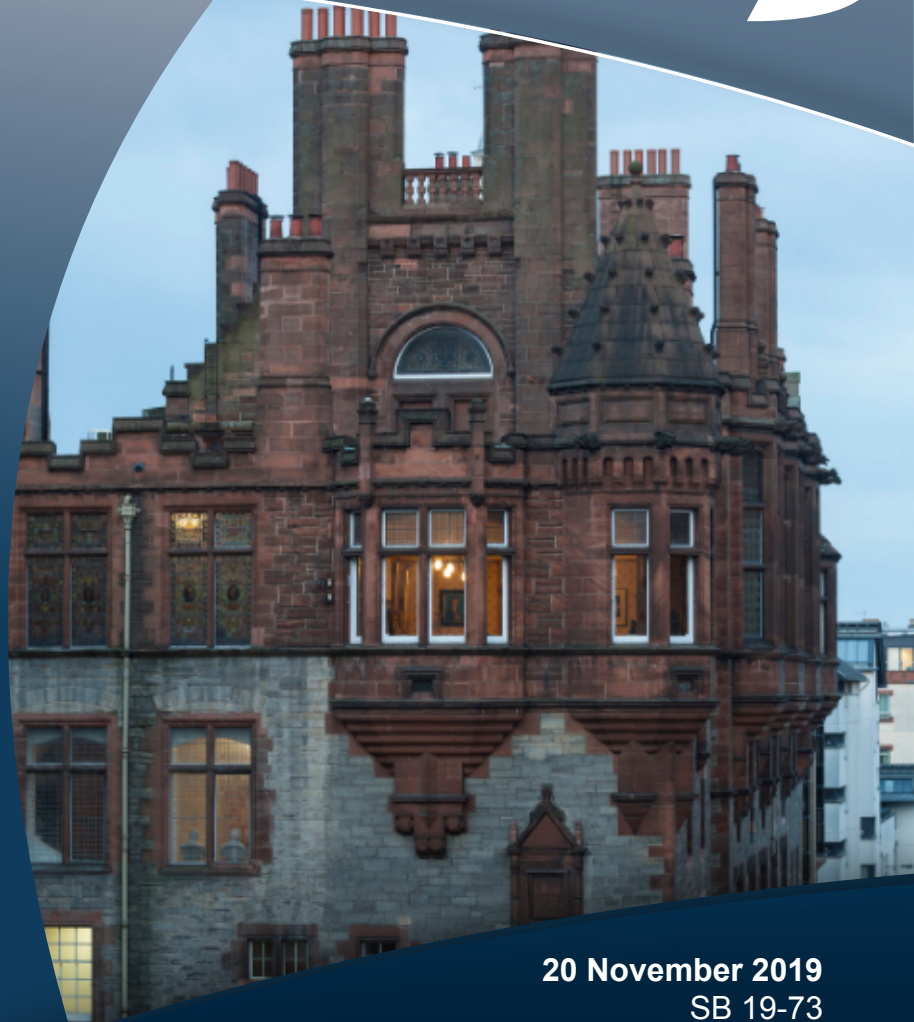
SPICe Briefing

Pàipear-ullachaidh SPICe

Solicitors in the Supreme Courts of Scotland (Amendment) Bill

Angus Evans

The Solicitors in the Supreme Courts of Scotland (Amendment) Bill is a private bill promoted by the Society of Solicitors in the Supreme Courts of Scotland. It is aimed at amending and modernising the private legislation which provides the legal framework for the Society.



20 November 2019
SB 19-73

Contents

Executive Summary	3
The Bill - relevant dates and documents	4
What is the Society of Solicitors in the Supreme Courts of Scotland?	5
What are the problems with the current legal framework?	6
The Bills objectives	7
What does the Bill do?	8
Private Bill Procedure	9
Objections	10
Why is a private bill necessary?	11

Executive Summary

The [Solicitors in the Supreme Courts of Scotland \(Amendment\) Bill](#) is aimed at amending and modernising the private legislation which provides the legal framework for the [Society of Solicitors in the Supreme Courts of Scotland](#) (SSC Society) - a body formed in 1784 to represent solicitors practising in and around Scotland's supreme courts in Edinburgh.

The main changes include:

- Updating the rules on marriage and partnership so that the SSC Society's Widows' and Orphans' Fund can provide annuities to a wider group of people.
- Giving the SSC Society the powers to close the fund either completely or to new members.
- Giving the SSC Society the power to create new forms of membership.
- Giving the SSC Society the power to wind itself up.

The Bill - relevant dates and documents

The [Solicitors in the Supreme Courts of Scotland \(Amendment\) Bill](#) (the Bill) was introduced in the Scottish Parliament on 26 September 2019, under private bill procedures. It is being promoted by the Society of Solicitors in the Supreme Courts of Scotland (SSC Society). The Bill is accompanied by [Explanatory Notes](#) and a [Promoter's Memorandum](#).

The Promoter's Memorandum indicates that the SSC Society consulted with its members on the proposed Bill in October-December 2017.

A [Promoter's Statement](#), which also accompanies the Bill, includes information required under the Scottish Parliament's Standing Orders. It notes that copies of the Bill and accompanying documents can be viewed in various libraries around Edinburgh.

The period for lodging an [objection](#) to the Bill runs from Friday 27th September to 5pm on Monday 25th November 2019.

What is the Society of Solicitors in the Supreme Courts of Scotland?

The [Society of Solicitors in the Supreme Courts of Scotland](#) (SSC Society) is a body which was formed in 1784 to represent solicitors practising in and around Scotland's supreme courts in Edinburgh - i.e. the Court of Session (civil court) and the High Court of Justiciary (criminal court).

Similar bodies in Scotland include the [Society of Writers to the Signet](#) in Edinburgh, the [Royal Faculty of Procurators](#) in Glasgow and the [Society of Advocates](#) in Aberdeen.

The SSC Society owns a building, including a library, in the centre of Edinburgh (for details see [this article](#) by the SSC secretary Robert Shiels). It also manages a Widows' and Orphans' Fund on behalf of its members which it characterises as follows:

“ The society also holds for the benefit of widows, widowers, civil partners and orphans as the case may be substantial investments which allow for the payment of the appropriate annuities. Currently, for example, there are 45 widows who are each paid an annuity of £3,000. ”

Promoter's Memorandum - para. 9

Membership of the SSC Society is voluntary and, under section 24 of [the Solicitors in the Supreme Courts of Scotland Act 1871](#) (1871 Act), is open to all solicitors who are members of the Law Society of Scotland. University students and those training to become solicitors (trainees) are permitted to use the library without being granted membership of the society.

Applications for membership have to be sponsored by two current members. Admission dues are payable to the SSC Society and the Widows' and Orphans' Fund on entry. Subscription fees are required on an annual basis.

The [Promoter's Memorandum](#) indicates that there are currently around 220 members of the SSC Society. [The SSC Society's website](#) notes that the current membership is:

“ mostly, but by no means exclusively, involved in the conduct of litigation in and around the Court of Session, the High Court of Justiciary, and Sheriff Courts throughout Scotland. However, there are many members in chamber practice in town and country, and in the public service”

Further details on the background to the SSC Society and its membership and functions can be found on the [website of the SSC Society](#) and in the [Promoter's Memorandum](#).

What are the problems with the current legal framework?

The [Promoter's Memorandum](#) explains that, although the SSC Society was initially incorporated by Royal Charter in 1797, the rules governing it are mainly based on private legislation - i.e. the [Solicitors in the Supreme Courts of Scotland Act 1871](#) (1871 Act).

The 1871 Act re-incorporated the SSC Society and consolidated the various bye-laws, regulations etc. made by the SSC Society up to that point (see para 6 of the [Explanatory Notes](#)). It was last amended in 1979.

According to the [Promoter's Memorandum](#) and [Explanatory Notes](#), the framework provided by the 1871 Act is no longer fit for current times or for the future development of the SSC Society.

One of the key issues identified is that social and demographic change threaten the viability of the society in its current state - i.e. few solicitors now join the society with the result that the membership is becoming increasingly elderly. The Promoter's Memorandum notes that:

“ The problem at present is the demographic balance with a predominantly older membershipⁱ persisting with their membership but not being supplemented by newer and younger members in such numbers as would secure the future of the society. This is believed to be a not uncommon feature of many other societies of wildly different backgrounds today. ”

[Promoter's Memorandum](#) - para 10

According to the Promoter, the 1871 Act does not include provisions which could be used to deal with this problem, i.e. powers:

1. to extend more limited forms of membership to non-solicitors (for example membership which only grants use of the society's facilities rather than being full member); or
2. to wind up the society and to distribute its assets should that at some point be necessary in the future.

Another problem identified is that the 1871 Act treats the SSC Society and the Widows' and Orphans' Fund as one entity and does not contain sufficiently detailed powers to deal with the potential closure of the fund.

A final issue with the current legal framework is that the rules in the 1871 Act do not reflect changes in society's views on marriage and partnership.

ⁱ The Promoter's Memorandum states that 40% of the current membership is retired (para 26).

The Bills objectives

Paragraph 14 of the [Promoter's Memorandum](#) summarises the objectives behind the Bill as follows:

- The first objective is to allow the members to consolidate the substantial assets of the society as held at present and secure their future and that of the society on the basis of the law as it has been since at least 1871 but updated for modern conditions.
- The second objective is to better rationalise the future of the society by adopting a different scheme of administration of the Widows' Fund from that in place now with appropriate powers in place to allow members of the SSC Society to make the requisite decisions.
- The third objective is to develop the use of the SSC facilities, particularly the working library, by being able to offer different types of membership, such as corporate membership for firms or other agencies that would allow use of the facilities but without involving full personal membership.
- The fourth objective is essentially the unwanted one but which with the changing demographic balance amongst members is not an impossible one; the closure of the SSC Society cannot proceed now as there is no authority in law for the members to implement a decision to that effect. It is envisaged that such a decision would require to be unanimous or nearly so.

The Promoter's Memorandum also stresses that the Bill is only aimed at achieving legislative change and that any future changes in the direction of the SSC Society would be taken following consultation with its members in the future (para 31 of the [Promoter's Memorandum](#)).

What does the Bill do?

The Bill amends the 1871 Act. The main amendments include those aimed at:

- **Updating the rules on marriage and partnership, namely:**
 - **Extending the Widows' and Orphans' Fund to widowers and civil partners and renaming it the "Dependents' Fund"** - see section 1(2) of the Bill and provisions following that section
 - **Giving the SSC Society the power to settle annuity claims based on cohabitation** - section 1(7)
 - **Amending the 1871 Act so that it is clear that annuities can be paid to children born outside of marriage** - section 1(8).
- **Giving the SSC Society the powers to close the new Dependents' Fund either completely or to new members** - see section 1(14). The provisions include conditions which must be fulfilled for the Dependents' Fund to be closed as well as rules which would allow lump sums to be paid as compensation for loss of future benefits to people who receive an annuity.
- **Giving the SSC Society the power to create new forms of membership** - section 1(15). This includes corporate membership, trainee membership and associate membership.
- **Giving the the SSC Society the power to wind itself up** - section 1(15).

A full commentary on each section of the Bill can be found in the [Explanatory Notes](#).

Private Bill Procedure

The Solicitors in the Supreme Courts of Scotland (Amendment) Bill is a private bill. It falls under different procedures to the public bills the Scottish Parliament normally deals with.

Chapter 9A of the [Standing Orders of the Scottish Parliament](#) sets out what constitutes a private bill.

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 . . . (Rule 9A.1.1)

Each private bill is considered by a Private Bill Committee. The committee is established only to deal with the bill. It is made up of three to five MSPs without any direct link to, or personal interest in, the subject matter of the bill.

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

- Preliminary Stage – consideration by the private bill committee of the general principles of the bill and whether the bill should proceed as a private bill. There is also preliminary consideration of any objections. This is followed by a parliamentary debate and vote;
- Consideration Stage – detailed consideration by the private bill committee of the proposals , including any objections and/or amendments lodged; and
- Final Stage – consideration by the full Parliament of any amendments lodged, plus a parliamentary debate and vote on whether to pass the bill.

Objections

Any person or organisation adversely affected by a private bill can register an objection.

To be admissible, an objection must:

- be in writing;
- state the objector's name and address (and any other contact details);
- set out the grounds for objection (and whether these relate to the whole bill or specific provisions);
- explain how the objector's interests would be adversely affected by the bill; and
- be signed and dated by the objector.

The Scottish Parliament leaflet "[Information for Objectors to Private Bills](#)" provides more information.

It is possible for those who are not adversely affected by a bill, but who nevertheless have views on it, to make a written submission to the private bill committee.

Why is a private bill necessary?

Private bills are used to provide their promoters with benefits which go beyond the general law.

The Promoter's Memorandum indicates that, given the statutory basis of the SSC Society and the proposed changes to its composition and to the Widows' and Orphans' Fund, there is no alternative to private legislation.

It explains that the following legal provisions would not be suitable alternatives:

- **The *cy pres* doctrine** - This is a common law rule (i.e. a rule based on case law) which allows trustees to apply to the Court of Session to vary the terms of a public trust where its purposes have become impossible to fulfil or particularly inappropriate. The Promoter's Memorandum notes that the Court of Session is very unlikely to approve such a scheme as the Widows' and Orphans' Fund has no difficulty in fulfilling its purposes. The issue is that the trustees wish to be granted authority to close the fund and to pay out lump sums on closure.
- **Section 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990** - This gives the courts powers to approve a scheme for the variation or reorganisation of the trust purposes in any public trust. The Promoter's Memorandum takes the view that an application would not be possible or at least suitable because of the substantial changes envisaged. It states that:

“ Closure of the fund to new members or closure altogether with suitable lump sum payments against future entitlement seems to be beyond the contemplation of the 1990 Act”
- **Sections 39 and 40 of the Charities and Trustee Investments (Scotland) Act 2005** - these allow charitable trusts to seek the approval of the Office of the Scottish Charities Regulator for a reorganisation of the trust purposes. The Promoter's Memorandum states that, although it might be possible for the trustees of the Fund to consent to it being treated as an endowment, the use of the Fund cannot be said to be dedicated to charitable purposes as such and so does not seem to fall under the legislation.

The Promoter's Memorandum indicates that it has received an Opinion of Counsel which confirms this view.

According to the Promoter's Memorandum, the only realistic alternative to the Bill is to do nothing. However, it explains that this option would not give the SSC Society the powers it needs in order to modernise for the future or to effectively deal with the possibility of having to close the society (see para 15).

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Angus Evans on telephone number 85356 or angus.evans@parliament.scot.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot. Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

