



The Scottish Parliament
Pàrlamaid na h-Alba

Published 20 December 2018
SP Paper 443
1st Report, 2018 (Session 5)

**Hutchesons' Hospital Transfer and Dissolution
(Scotland) Bill Committee
Bile Tar-chur is Sgaoilidh Ospadal MhicÙistein (Alba)**

**Hutchesons' Hospital Transfer and
Dissolution (Scotland) Bill - Preliminary
Stage Report**



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Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee

Remit: To consider matters relating to the Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill.



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Introduction

1. The Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill ¹ was introduced in the Scottish Parliament on 25 June 2018. It is a Private Bill being promoted by The Patrons of the Royal Incorporation of Hutchesons' Hospital in the City of Glasgow ("the Promoter") under the procedures set out in Chapter 9A of the Parliament's Standing Orders ² and the Guidance on Private Bills. ³
2. The introduction of the Bill was followed by the standard 60-day objection period, during which any person, body corporate or unincorporated association of persons that believes their interests would be adversely affected by the Bill, can lodge an objection. The objection period for this Bill concluded on 24 August 2018. No objections were lodged.
3. The Bill and its accompanying documents, as well as links to other relevant documents, such as the SPICe Bill Briefing, can be found on the Bill page of the Parliament website. ⁴
4. At Preliminary Stage, the Committee met on 30 October, 7 and 28 November, and 12 December 2018.

Objectives of the Bill

5. The objectives of the Bill, as reflected in the sections of the Promoter's Memorandum outlining the background to the Bill and the need for change, are to modernise the governance of the Incorporation's assets, and enable a more effective and efficient functioning of the charity.
6. The purposes of the Bill are:
 - to transfer the property, rights, interests and liabilities of the Royal Incorporation of Hutchesons' Hospital in the City of Glasgow ("the Incorporation") to a successor Scottish Charitable Incorporated Organisation ("the SCIO");
 - to dissolve the Incorporation; and
 - to repeal the Hutchesons' Hospital Act 1872.

Background to the Bill

History

7. The Promoter's Memorandum (PM) sets out the history and background to the charity. The original Hutchesons' Hospital charity was established in December 1639 by Mr George Hutcheson of Lambhill under the terms of his will. He bequeathed land in Glasgow and the funds to build a hospital, to provide relief for the poor and aged. He also bequeathed funds to provide clothing, food and lodging to hospital residents. The first to receive support from charity funds were two men in 1643. As the PM explains:
 - ” George Hutcheson's Deed of Mortification envisaged the bequeathed funds providing pensions (meaning grants) for the sustenance and lodging of eleven "aged and decrepit men" above fifty years of age; formerly merchants, craftsmen or any other trade and known to be destitute of all help and support at the time of their entry to the hospital. ⁵
8. Thomas Hutcheson, George's brother, also made bequests to the charity. This included providing funding for the education of poor orphans who were sons of burgessesⁱ of Glasgow. He also established the school which became Hutchesons' Grammar School.
9. Thomas entered into a contract with the original Patrons (trustees) of the charity to administer its assets and funds and fulfil the conditions of his brother's will.
10. Over the years a number of other bequests were made and the categories and numbers of people eligible to receive assistance expanded. For example, as mentioned in the Promoter's Memorandum:
 - ” From 1781 onwards poor women of any age, and whether or not widowed, were made eligible for pensions from the charity funds, provided they were resident in Glasgow and their husbands or fathers were burgesses of Glasgow. The current number of pensioners (i.e. recipients of discretionary grants) is 24, being 21 female and three male. ⁷
11. A Royal Charter was granted in 1821, at which point the charity became The Royal Incorporation of Hutchesons' Hospital in the City of Glasgow. It was incorporated in its current form in 1872 by the Hutchesons' Hospital Act.
12. Amongst other things, the 1872 Act increased the number of Patrons. It enabled Patrons to allocate some funding to pay pensions (grants) to Glasgow residents meeting certain criteria. It also allowed for the better administration and governance of the incorporation and gave the Patrons wider powers in particular in terms of revenue distribution for educational initiatives. It is still the 1872 Act which regulates the management of the Incorporation and its revenues today.

ⁱ Burgesses were originally inhabitants of the city, owning land and contributing to taxation. Only they enjoyed the privileges of trading, practising a craft and voting in local and parliamentary elections. ⁶

13. The Hutchesons' Educational Trust Scheme ("The Hutchesons' Scheme") was set up under the Educational Endowments (Scotland) Act 1882. From 1885 the Incorporation's funding for educational purposes was paid to The Governors of Hutchesons' Educational Trust, and administered separately by them. The Incorporation is obliged by the Hutchesons' Scheme to pay to the Educational Trust a minimum specified proportion of the annual net revenue of certain funds it controls. As explained in the Promoter's Memorandum, this is currently set at "not less than 40%".

Current situation

14. The Promoter's Memorandum states that there are currently 95 Patrons. This is a result of the provisions of the 1872 Act, under which the governing body comprises of:
- the Lord Provost and every councillor of the City of Glasgow;
 - the Magistrates of the City of Glasgow;
 - the Lord Dean of Guild (Chair of the Board of the Merchants House of Glasgow);
 - the Deacon Convener (Leader of the Trades House of Glasgow);
 - Ministers of specified parishes of Glasgow;
 - three annually elected representatives from the Merchants House of Glasgow;
 - three annually elected representatives from the Trades House of Glasgow; and
 - six Ministers to be elected by the Patrons from the Ministers of religion officiating in Glasgow who are not Ministers of the established Church of Scotland.⁸
15. The Incorporation's Executive Committee is responsible for the day-to-day running of the charity. It meets quarterly, is chaired by a Preceptor (Convener) and reports to an Annual Meeting of Patrons.
16. As set out in the Promoter's Memorandum, the Incorporation's accounts for the year ending 2016 show assets (investments) of £2,831,629 and a total of £61,379 available for charitable purposes (the income of the Incorporation, after deducting administration expenses).ⁱⁱ

ii The figure currently available on the website of the Office of the Scottish Charities Regulator (OSCR) (£112,673) represents the income for the year ending 2017, before any deductions.

The need for change

17. According to the Promoter's Memorandum, there are a number of reasons why the Promoter perceives a need for change:

” The promoter considers that there is a need for change given the outdated and unwieldy governance arrangements and the inability to amend the constitution of the Incorporation without primary legislation, as well as the restrictions the 1872 Act places on the ability of the promoter to apply the assets of the Incorporation. These restrictions are outdated and affect the ability of the promoter to provide genuine charitable benefit.

18. During the evidence session on 7 November 2018, Donald Reid, of Mitchells Robertson, Ltd., acting as chamberlainsⁱⁱⁱ to the Hutchesons' Hospital charity, commented in relation to the 1872 Act:

” Our hands are not tied behind our backs at the moment; it is just that moving is like being in a spacesuit rather than in athletic gear. However, what needs to be done gets done.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 21⁹

19. The Promoter's Statement explains further why it is no longer considered necessary or appropriate to have the Incorporation governed by statute:

- Updating or changing governance or administration should not require legislation. Other comparable charities can make such changes through internal decision-making, with consent of the Office of the Scottish Charity Regulator (OSCR) where appropriate;
- Having to deal with future changes through legislation would not be a good use of the Parliament's time or the charity's assets;
- As a SCIO is regulated by OSCR, this will make up for the removal of parliamentary scrutiny.

ⁱⁱⁱ The chamberlains to the charity are a firm of solicitors advising on and supporting the work of the charity.

Parliamentary Procedure

Private Bill Procedure

20. The definition of a Private Bill is set out in Rule 9A.1.1 of Standing Orders: ¹⁰

” 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, and includes a bill relating to the estate, property, status or style, or otherwise relating to the personal affairs, of the promoter.

21. A Private Bill is subject to the following three-stage process:

- Preliminary Stage - consisting of Committee consideration of the general principles of the Bill and whether it should proceed as a Private Bill, plus preliminary consideration of objections, and a decision by the Parliament whether the general principles should be agreed to, and whether the Bill should proceed as a Private Bill;
- Consideration Stage - consisting of consideration and disposal of any remaining objections and consideration of the details of, and any amendments to, the Bill; and
- Final Stage - consisting of consideration by the Parliament of any further amendments to the Bill and a decision whether the Bill should be passed.

Role of a Private Bill Committee at Preliminary Stage

22. The Committee was established (under Standing Orders Rule 9A.5) on 12 September 2018 to consider the Bill at Preliminary Stage and at Consideration Stage.

23. Since no objections were lodged, the Committee's role at Preliminary Stage has been to consider and report on:

- the general principles of the Bill; and
- whether the Bill should proceed as a Private Bill.

Consideration of the general principles of the Bill

Dissolution of the Incorporation and transfer to a new Scottish Charitable Incorporated Organisation (SCIO)

24. In order to help inform its scrutiny of the Bill, the Committee took evidence at its meeting on 7 November 2018 from the Promoter of the Bill.¹¹ The Committee asked the Promoter why the Patrons of the Incorporation had decided a change was needed. The Promoter explained that there was a need to modernise and streamline how the charity works.

Governance

25. The Promoter's Memorandum sets out how, under the 1872 Act, the Incorporation is governed by a number of trustees (or Patrons), many of whom are *ex officio*, meaning the holders of specific positions or offices. David Dobson, a member of the charity's Executive Committee, explained that one reason for the change was:

” To allow the patrons to become more agile in their decision making and governance with regard to the trust. I believe that there are 95 patrons of the trust; we are very lucky if we see 15 of them, but we still have the burden of having to contact all 95 in a proper fashion.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], David Dobson, contrib. 12¹²

26. According to the Promoter, the planned changes would also enable them to name bodies, which would nominate people as patrons, rather than naming posts, which is the current practice.

” In future, we will have a group of committed trustees who will be informed to the same extent as the current executive committee members are. However, we hope that, as they will choose to be appointed, rather than simply having trustee status imposed on them as a result of their holding a different office, the overall body of commitment and understanding will be broader and there will be a greater ability thereafter to look at innovations that might be suggested. At the moment, because of the sheer number of trustees, it is more just a case of ticking over and doing what needs to be done, because involving a much larger body and getting it to consider major decisions is much more difficult.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 53¹³

27. Attendance at meetings and contribution to the running of the Incorporation by the majority of the *ex officio* trustees in recent years has been limited, according to the Promoter's Memorandum. During the evidence session, the Committee asked whether the fact that a large proportion of the Patrons are not engaged would suggest that the charity's time was up. Donald Reid responded that it is inevitable

that some Patrons are more involved than others, given the size of the group. Some have chosen to make Hutchesons' Hospital a special interest which, it was underlined, has been to the great benefit of the charity.

28. Mr Reid explained that Glasgow City Council was also supportive of the change, as they could see the unwieldy nature of the current situation, with all councillors *ex officio* trustees.

He reported that:

” The charity's work, particularly its work with the needy elderly people whom it supports, is by no means out of date or moribund. On the contrary, the people who are supported by it are very grateful. The flood of letters of gratitude that regularly comes in is a great encouragement to the patrons, who realise that their work is greatly appreciated by the people who benefit from it.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 18¹⁴

The Committee considers that, given many of the 95 Patrons are *ex officio* rather than in the role through choice, and the evident high level of disengagement, there is a strong case for improving the governance of the charity, and a committed group of trustees, in its view, will serve that purpose.

It is likely that this would improve the overall management and oversight of the charity, through a streamlining of activities, and would establish a more direct and transparent link to a group of committed trustees, who have chosen to engage.

Financial structure

29. The Promoter's Memorandum sets out the Promoter's view that the Incorporation's assets cannot be used to their best effect, with the Incorporation currently constituted and regulated under an Act of Parliament. This is not considered best practice for the purposes of a modern charity.

30. The Committee asked the Promoter what the SCIO would enable the charity to do that cannot, currently, be done in terms of investment. Alan Eccles, of Brodies LLP, the Promoter's agent, explained that, as currently constituted, the charity faces some restrictions and has less flexibility in how it carries out its purpose. He stated that, as a SCIO:

” We could invest in anything that furthers the charity's purposes. If an investment manager thought that it was a good idea to invest in a particular way, we could do that as long as the trustees thought that that was right for the charity. In the current format, we do not get the same flexibility and there are more restrictions on what we can do and invest in.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Alan Eccles, contrib. 33¹⁵

The aims of the SCIO

31. The Incorporation's current charitable purposes are set out in the Promoter's Memorandum, which states that, broadly speaking, they are:
- ” • to provide assistance to residents of Glasgow and such others who are considered by the Patrons to be needful and deserving of aid. The assistance consists of grants (or "pensions") made on an annual basis and paid quarterly, and such *ad hoc* distributions as are approved by the Executive Committee; and
 - to make provision for the education of children. This purpose is met by paying to the [Governors of Hutchesons' Educational] Trust not less than 40% of the annual net revenue of the funds held by the Incorporation for the purposes of providing bursaries to those in need. ¹⁶
32. SCIOs are a modern, flexible form of organisation for charities, and are created under the Charities and Trustee Investment (Scotland) Act 2005. As set out in the Promoter's Memorandum, charities set up as a SCIO are regulated by the Office of the Scottish Charity Regulator (OSCR) and must adhere to the 2005 Act.
33. The charitable purposes of the new SCIO, ¹⁷ according to the Promoter's Memorandum, are:
- the relief of those in need by reason of age, financial hardship or other disadvantage; and
 - the advancement of education.

It will operate as a grant-giving charity to support those with sufficiently close connections to Greater Glasgow and, as set out in the PM, will in particular:

- ” • make provision (financial or otherwise) for those in need by reason of financial hardship or other disadvantage (including but not limited to older age, significant changes in personal circumstances, personal or family owned business failure, and bereavement resulting in dependant(s) being in the care of surviving family;
 - make provision (financial or otherwise) for the education and learning of children, young people and adults, with a view to meeting or providing for educational needs and improvements in and around the City of Glasgow; and
 - make over not less than 40% of its net revenue to the Trust ¹⁸
34. According to Charles Livingstone, of Brodies LLP, the Promoter's agent, this represents a great degree of connection between what the 1872 Act requires and the purposes of the SCIO in its constitution.
35. The Promoter gave further details, in the Committee's evidence session, on the charity's current activities and how the change will affect them. David Dobson explained:

- ” We currently give grants or pensions to a group of 20 to 30 needy people in Glasgow. They also get the benefit of a social worker, whom we employ on a part-time basis and who visits all our grantees and makes sure that everything is going well with them. That is one main thrust of the purposes of the trust, and it will be maintained absolutely.

The other broad purpose of the trust is the advancement of education in Glasgow. Over the years, that has become established as being that 40 per cent of the trust's net income goes to another charity, namely the Governors of Hutchesons' Educational Trust. We have no intention of changing that, and that will be within the authority granted by the new SCIO, should we start operating in that way. Becoming a SCIO could also free up the trust's remit to do other things in the education field.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], David Dobson, contrib. 43¹⁹

Impact on current beneficiaries

36. The Committee asked whether anyone currently in receipt of benefits would lose out as a consequence of the change. In their response, the Promoters stated:

- ” None whatsoever. Indeed, there has been communication with all the grantees to explain the situation that we are trying to advance. I think that that is recorded in the information that has been passed to the committee; I just mention it to clarify that there is no thought of there being any change.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], David Dobson, contrib. 45²⁰

The Committee noted the Promoter's statements that there would be no significant material changes to the purposes of the charity, and that none of the current beneficiaries would lose out as a consequence of the change.

Conclusion on the general principles of the Bill

The Committee is content with the general principles of the Bill.

Consideration of whether the Bill should proceed as a Private Bill

Requirements under Standing Orders

37. The Committee is required to consider and report on whether the Bill should proceed as a Private Bill. This involves the Committee satisfying itself on two points: firstly, that the Bill conforms to the definition of a Private Bill as set out in Rule 9A.1.1 and secondly, that the Bill's accompanying documents conform to Rule 9A.2.3 and are adequate to allow proper scrutiny of the Bill (Rule 9A.8.3).²¹

Definition of a Private Bill

38. The definition of a Private Bill provided in Standing Orders is set out in paragraph 20.

The Committee is satisfied that the Bill complies with the definition of a Private Bill.

Accompanying documents

39. The relevant documents in this context are the Promoter's Memorandum,²² Explanatory Notes²³ and the Promoter's Statement²⁴.

Promoter's Memorandum

40. The Promoter's Memorandum must set out:
- the objectives of the Bill;
 - whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the Private Bill was adopted; and
 - the consultation which was undertaken on those objectives and the ways of meeting them and on the detail of the Private Bill, together with a summary of the outcome of that consultation.

Objectives

41. The objectives of the Bill, as referred to in the terms of the Promoter's Memorandum, have been set out in paragraphs 5 and 6.

The Committee is content that the objectives are adequately set out in the accompanying documents.

Alternative approaches to the Bill

42. The Promoter's Memorandum sets out the alternative approaches considered by the Promoter, before concluding that they should proceed with the promotion of a Private Bill.
43. The main other option considered was a reorganisation, as provided for in Chapter 5 (sections 39 and 40) of the Charities and Trustee Investment (Scotland) Act 2005 ("the 2005 Act").
44. The reorganisation provisions under the 2005 Act are available in certain circumstances. The Promoter's Memorandum sets out the Promoter's concerns as to whether the Incorporation could in fact make use of these provisions. The provisions do not apply to charities constituted under a Royal Charter or under any enactment, which is the case for the Incorporation. However, according to section 42(6) of the 2005 Act, the provisions may nevertheless apply to an endowment, if its governing body is a charity. In the view of the Promoter, as set out in the PM:
 - ” ... although the assets of the Incorporation could, at least in part, be characterised as an endowment ("any property, heritable or moveable, dedicated to charitable purposes...") the Patrons, as the governing body of the Incorporation, are not registered as a charity. It is the Incorporation which is the registered charity.²⁵
45. During the evidence session on 7 November, Charles Livingstone explained further and referred to the response the Promoter received from OSCR to the consultation letter. The letter from OSCR states:
 - ” I note that we were previously asked to consider what options were open to the charity trustees of the incorporation to achieve the modernisation they intend, and in particular whether the reorganisation provisions of the Charities and Trustee Investment (Scotland) Act 2005 would be available to them. Our view was that in order for the incorporation of Hutchesons' Hospital to be able to rely on the reorganisation provisions it must establish that the charity holds property that qualifies as an endowment. The drafting of section 42 of the 2005 act on this point is ambiguous and its interpretation is difficult. Indeed, we have recommended to ministers that it should be amended. Therefore, it is understandable that the charity trustees have chosen to promote the private bill and we have no particular comment on—and certainly no objection in principle to—the proposal.”

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Charles Livingstone, contrib. 64²⁶
46. Charles Livingstone went on to explain:

” It is not necessarily the case that we can say with certainty that we fall outside, or indeed inside, section 42(6). The difficulty is that the interpretation of section 42(6) has never been tested in court, so the reorganisation of a body that relied on that provision would be vulnerable to a challenge. As advisers, we are not able to say to a charity in the hospital's position, “You can definitely rely on that.” Although the prospect of such a reorganisation being challenged and struck down is possibly quite low, the impact of such a result would be almost impossible to deal with. That is why—with the probable exception of the educational endowments that I mentioned, which fit more neatly within the legislation—we have not been able to advise any charities established under an act of Parliament that they can use the reorganisation provisions with absolute confidence.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Charles Livingstone, contrib. 64²⁶

47. Given the potentially serious consequences of any legal challenge, the Promoter has concluded, as set out in paragraph 41 of the Promoter's Memorandum, that a Private Bill is the most appropriate and best available method of achieving the Bill's objectives.

48. The Committee invited written views from experts in the field. Both written submissions received by the Committee addressed the option of reorganisation under the 2005 Act. James McNeill QC stated:

” I note that OSCR and the promoters have considered an alternative approach to reorganisation through use of the mechanisms provided in the 2005 Act. I agree that, on a proper interpretation of s.42 of the Act, a proposal of this nature might not be within the competence of OSCR under that provision. Whilst the prospect of a challenge by an interested person to reliance on s. 42(6) is very remote, the Bill is within the legislative competence of the Scottish Parliament and proceeding by way of the Bill both gives security to the promoters and removes the prospect of significant legal costs were there to be a challenge. ²⁷

49. In his written submission to the Committee, Dr Patrick Ford, Dundee Law School, University of Dundee, stated:

” While I arrive at the same conclusion as the promoter (PM, para 41) that a Private Bill is the most appropriate method of achieving the promoter's objectives, I do so by a different route. I take a different view from the promoter on a number of points, but I would like to emphasise at the outset that the technical issues under discussion are not straightforward and that it is not surprising that more than one view can be taken on difficult points ... The key message for the Committee is that I support the promoter's conclusion that a Private Bill is justified in the circumstances. ²⁸

50. Dr Ford explained further how, in his interpretation, the assets of the Incorporation amount to endowments of which the governing body is a charity. Accordingly therefore:

” ... the Incorporation falls within the exception and could, in principle, invoke the provisions of section 39 or section 40 in reorganising the endowments of which it is the governing body.

51. Dr Ford went on to refer to uncertainty about the force of the exception. In terms of how this would be authorised, he pointed to the likely need for consent from the Privy Council or legislature. Proceeding without this may risk challenge. Consent from the legislature would be obtained by a Private Bill. Dr Ford stated:

” If a Private Bill would be required in any case, however, the alternative of proceeding entirely by Private Bill without involving OSCR appears attractive.

In conclusion, therefore, there are obvious merits in proceeding entirely by Private Bill as proposed in the PM, and by-passing the various difficulties of interpretation inherent in the reorganisation provision of the 2005 Act as they stand. On that basis I support the conclusion in para 41 of the PM. ²⁸

The Committee notes with interest Dr Ford's further reflections as to how he reached his view. Notwithstanding Dr Ford's differing view as to the reasons why, the Committee considers his overall conclusion to be the most pertinent point, for the purposes of its consideration of the Bill.

It has been suggested that the reorganisation provisions of the 2005 Act do present difficulties of interpretation. This was mentioned by the Promoter, by OSCR in its letter to the Promoter, and in written evidence received by the Committee.

Given the evidence presented, the Committee feels it would be a valuable exercise for the Scottish Government to review the provisions of the 2005 Act related to charity reorganisation, with a view to giving greater clarity on those aspects currently presenting difficulties of interpretation.

In its assessment of whether the Promoter had considered alternatives to the Promotion of a Private Bill, the Committee felt it also important to consider the alternative of doing nothing. It is of the view that doing nothing would potentially impact on the ability of the Incorporation to continue to act effectively and ultimately could lead to it becoming moribund. In this case the risk would be that the beneficiaries would lose out.

The Committee is satisfied that other alternatives were considered and, given the views received on the s.42 reorganisation provisions in the 2005 Act, is content with the Promoter's conclusion that promoting a Private Bill in the Scottish Parliament is the most appropriate and best available method of achieving the Promoter's aims.

Consultation

52. In the Promoter's Memorandum, the Promoter is required to set out and explain the consultation which was undertaken on the Bill's objectives and the ways of meeting

them and on the detail of the Private Bill, together with a summary of the outcome of that consultation. In the context of considering whether the accompanying documents were adequate for scrutiny, the Committee need only satisfy itself that the information about the consultation was sufficient for its scrutiny.

53. The Promoter's Memorandum details the consultation carried out. In the first instance, this involved contacting the following bodies as part of a process of considering the restructuring option:

- Glasgow City Council;
- Merchants House of Glasgow;
- The Trades House of Glasgow;
- The Presbytery of Glasgow; and
- The Governors of Hutchesons' Educational Trust.

The general proposals and prospect of the promotion of a Private Bill were explained and all indicated approval in principle.

54. In a second stage, prior to introduction of the Bill, letters were sent in May 2018 to the following, explaining that the Promoter intended to promote a Private Bill and why, and inviting feedback.

- The Governors of Hutchesons' Educational Trust
- Current recipients of 'pensions' (grants) from the Incorporation;
- Glasgow City Council;
- The Merchants House of Glasgow;
- The Glasgow Presbytery;
- The Archdiocese of Glasgow; and
- OSCR

55. The Promoter's Memorandum reports that three replies were received, from Glasgow City Council and the Trades House of Glasgow, who expressed support for the Bill proposals, and OSCR, which had no objection in principle to the proposals.

56. During its evidence session, the Committee asked about the response rate. The Promoter explained that there had been discussions with the various bodies involved in appointing patrons, or whose members are *ex officio* patrons, prior to the formal pre-introduction consultation. Charles Livingstone explained that these discussions were held whilst proposals were being developed, ensuring that people were on board with them.

57. Donald Reid referred to his prior discussions with the Glasgow Presbytery:

” The Glasgow presbytery—the office with which I was communicating—was advised of the proposal, and it indicated informally that it would approve it and would endeavour to participate in appointing relevant patrons or trustees come the day, if it happened. Given that experience, I am not surprised that the presbytery did not offer a formal response to the intimation when it was made, because it probably felt that it had already responded.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 78²⁹

He went on to state:

” It was not a poor response. It was a good response. If a proposal meets with favour and receives no objections, that is a good response.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 78²⁹

58. The Committee discussed whether it had been necessary to follow up with those that did not reply. When asked if an attempt had been made to do so, the Promoter responded that there had not been. Charles Livingstone explained:

” We had engaged with the key bodies from which we would expect engagement, based on the experience of the Incorporation as to who was and was not engaged.

I add that, although they were not consultation letters because they went out to trustees rather than to external bodies, there were also letters that went out to everybody who was a trustee of the incorporation as an update, reminding them of the agreement at the previous annual meeting to pursue a private bill and telling them that we had reached the stage where we were going to introduce the bill. That was pre-introduction as well.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Charles Livingstone, contrib. 83³⁰

When pressed by the Committee as to whether, categorically, that there had been no sign of any objections at all, Donald Reid responded that this was categorically the case.

The Committee notes that no attempt was made to follow up with those that had been consulted, writing to them a second time on the matter.

The Committee is content that the information provided regarding the consultation process is sufficiently detailed and clear for the Committee's purposes.

Explanatory Notes

59. The purpose of the Explanatory Notes is to summarise objectively and clearly what each provision of the Bill does and to give other information necessary or expedient to explain the effect of the Bill.

The Committee is satisfied that the Explanatory Notes are fit for purpose.

Promoter's Statement

60. The requirements for the Promoter's Statement are set out in Standing Orders Rules 9A.2.3(d). It should detail all the arrangements made by the Promoter with regard to such matters as notification, advertising and distribution of the Bill and accompanying documents.
61. The Promoter's Statement includes:
- details of the notification of, and consent to, the proposed Private Bill obtained from the Patrons/Trustees as the Promoters of the Bill;
 - details of the advertisement of the Promoter's intention to introduce the Private Bill;
 - a list of the premises where the documents may be inspected; and
 - an undertaking to pay any costs that may be incurred by the Parliamentary Corporation during the passage of the Private Bill.
62. As set out in the Promoter's Statement, the Patrons were notified (by email or post) that a meeting of Patrons would be held. They received an agenda detailing that the meeting would provide Patrons with a report on work undertaken over the past two years on modernising the Constitution and reducing the numbers of Trustees. It also noted that a Resolution would be proposed as follows:
- ” It is resolved to mandate the Executive Committee to continue and carry through to a conclusion the process of constitutional change, taking all steps which are appropriate following legal advice, including the establishment of a Scottish Charitable Incorporated Organisation (as "SCIO") as a successor to the present charity and the promotion for a Private Act of the Scottish Parliament. The Executive Committee is authorised to incur such costs and expenses as may be necessary to achieve this objective.
63. At the meeting of Patrons on 4 August 2017 the resolution was passed unanimously by the eight Patrons present.
64. In the evidence session on 7 November 2018, the Committee asked about the relatively low number of Patrons involved in the actual decision. The Promoters referred to the issue of the overall low levels of participation, beyond a committed few, underlining however:

- ” The democracy of the decision to proceed to seek to promote the bill was fully observed in the holding of the relevant meetings, in giving notice and so on. None of the trustees had any issues to raise on its wisdom. No doubt they were guided by the fact that they knew that there was an executive committee on which they had good reason to be able to rely.

Source: Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 68³¹

The Committee is satisfied that the Promoter's Statement complies with Standing Order requirements and is sufficient for the Committee's purposes.

Conclusion on accompanying documents

The Committee is of the view that the accompanying documents meet the criteria set out in Standing Orders and are sufficient to allow for scrutiny of the Bill.

Conclusion on whether the Bill should proceed as a Private Bill

On the basis of the requirements set out in Standing Orders, the Committee is content that the Bill should proceed as a Private Bill.

Recommendations

The Committee recommends that the Parliament agrees to the general principles of the Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill and that the Bill should proceed as a Private Bill.

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- [8] Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill, Promoter's Memorandum, (SP Bill 36-PM). (2018, June). Retrieved from [http://www.parliament.scot/S5_Bills/Hutchesons%20Hospital%20Transfer%20and%20Dissolution%20\(Scotland\)%20Bill/SPBill36PMS052018.pdf](http://www.parliament.scot/S5_Bills/Hutchesons%20Hospital%20Transfer%20and%20Dissolution%20(Scotland)%20Bill/SPBill36PMS052018.pdf) [accessed December 2018]
- [9] Hutchesons' Hospital Transfer and Dissolution (Scotland) Bill Committee 07 November 2018 [Draft], Donald Reid, contrib. 21, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11771&c=2126598>
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