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Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill Committee

Preliminary Stage report on the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill



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Remit: To consider matters relating to the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill.



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Introduction

1. The Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill ¹ was introduced to the Scottish Parliament on 18 May 2017. It is a private bill promoted by the trustees of the Writers to the Signet Dependants' Annuity Fund (the promoters) under the procedures set out in Chapter 9A of the Parliament's Standing Orders ² and the Guidance on Private Bills ³ .
2. Following introduction, there was a 60 day objection period which ended on 18 July 2017. No objections to the Bill were lodged.
3. At Preliminary Stage, the Committee met on 6 and 20 September, 4 October and 1 November 2017.

Background to the Bill

Writers to the Signet Society

4. The signet was the private seal of the kings of Scotland and its first recorded use was in 1369. Writers to the Signet began as clerks to the Keeper of the Signet and were those officers of the court entitled to work on behalf of the Crown. The Society of Writers to Her Majesty's Signet in Scotland (the WS Society) was established in 1594 as the professional body of Writers to the Signet.
5. Today, the WS Society is an independent professional body of solicitors. The Society is a not-for-profit corporation for public benefit and it provides legal training, support in the form of library services, research and drafting services and charitable trust administration. It owns and operates the Signet Library in Edinburgh.
6. The Keeper of the Signet is appointed by Her Majesty the Queen and the current Keeper of the Signet is Lord Mackay of Clashfern. The Deputy Keeper to the Signet is the president of the WS Society and chairs the board of trustees to the Writers to the Signet Dependants' Annuity Fund.

Writers to the Signet Dependants' Annuity Fund

7. Historically, the WS Society looked after Writers to the Signet and their widows by making ad hoc charitable donations. The fund was formalised by private legislation in 1803 by providing for the payment of annuities to WS Society members' widows. The legislation governing the fund has subsequently been updated by private legislation, most recently by the Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982 (the 1982 Act)⁴ which sets out the current legislative framework. The 1982 Act provided for the change of name from the widows' fund to dependants' annuity fund, in recognition of the fact that women were then admitted to the WS Society, and the fund was opened up to orphans. More recently, the fund regulations were updated to include civil partners.
8. The fund is administered by a collector who must be a contributor to the fund and is elected annually by other contributors at the WS Society's annual general meeting. Further provision about the election, role and functions of the collector is made in regulations 19 and 20 to the 1982 Act.
9. The fund is managed by seven trustees. The Deputy Keeper is a trustee 'ex officio' and the six other trustees must be elected by other contributors at a general meeting.
10. The Promoter's Memorandum (PM) states the value of the fund is £55,505,185 (as at 5 April 2016) and the annual value of an annuity is £8,400. There are currently 141 beneficiaries of the fund, known as annuitants. During evidence to the Committee, the collector confirmed there are currently 538 contributors, and possibly more than 500 potential annuitants, and that projections suggest the fund will continue paying annuities into the 2040s.

11. Contributors make annual payments to the fund and annuities are paid in equal half-yearly payments. The fund closed to new members in 1989.

Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982

12. As set out in paragraph 7, the current legislative framework for the dependants' annuity fund is set out in the 1982 Act.
13. The 1982 Act is the legislative vehicle used to “confirm” (i.e. convert into statute law) a provisional Order made by the Secretary of State under the Private Legislation Procedure (Scotland) Act 1936. Prior to devolution, this was the normal process for enacting private legislation relating to Scotland.
14. The Act and its schedule (the confirmed Order) can only be amended by primary legislation and, thus, the promoters have introduced the Bill to amend the confirmed Order.
15. The regulations which govern the fund are set out in the schedule to the confirmed Order. Paragraph 13(2) of the confirmed Order provides that “the contributors may at any time by special resolution alter all or any of the regulations or add to or modify the same and any alteration, addition or modification” and that any alterations to the regulations shall “be as valid as if originally contained in the regulations”.⁵
16. The regulations can, therefore, be amended following the agreement of the contributors to the fund and without recourse to legislation.

Objectives of the Bill

17. The PM states there are two objectives of the Bill.
18. The first objective is “to remove the requirement that the collector is a contributor to the fund and to substitute a new requirement that the collector shall be an individual. The change does not affect the provisions on election of the collector contained in the 1982 Act and does not otherwise affect the role or functions of the collector.”⁶ Section 1(2) of the Bill seeks to make this change.
19. The second objective is “to modernise one provision of the 1982 Act to reflect the merger of the Faculty of Actuaries in Scotland and the Institute of Actuaries in 2011”.⁷ The definition of actuary is relevant for the periodic investigation of, and reporting on, the affairs of the fund. Section 1(1) of the Bill seeks to make this change.

Parliamentary procedure

Private bill procedure

20. The definition of a private bill is set out in Rule 9A.1.1 of Standing Orders—

” A private bill is a bill introduced for the purpose of obtaining for an individual, body corporate or unincorporated association of persons (“the promoter”) particular powers or benefits in excess 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 committee 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 on 14 June 2017 to consider the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill.

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.

24. This report will consider both these issues in turn.

Consideration of the general principles of the Bill

25. In order to inform its scrutiny of the general principles of the Bill, the Committee took evidence at its meeting on 20 September 2017 from the promoters.

Section 1(1) - definition of an actuary

26. As set out in paragraph 19, the Bill seeks to modernise the definition of actuary to reflect the 2011 merger of the Faculty of Actuaries in Scotland and the Institute of Actuaries to create the Institute and Faculty of Actuaries.
27. The 1982 Act defines an actuary as “a Fellow of the Faculty of Actuaries in Scotland or a Fellow of the Institute of Actuaries”.⁸ Following their merger, the PM states the more appropriate description of a Fellow is as “a Fellow of the Faculty of Actuaries or a Fellow of the Institute of Actuaries”.⁹
28. The PM states the promoters’ view that this change is not strictly necessary, as any statutory interpretation would reflect the merger of the two organisations. It states “the amendment is proposed for the avoidance of doubt”.¹⁰
29. When questioned about this, Christine O’Neill representing Brodies LLP on behalf of the promoters, confirmed the position set out in the PM that—
- ” ... as a matter of law, a change to the definition would not be required. If there was ever any difficulty around the existing definition, a court would interpret it to include the new organisation post merger. A court would take a pragmatic and sensible approach to the old definition.”¹¹
30. Christine O’Neill went on to suggest the promoters may seek to amend the definition set out in the Bill at Consideration Stage to “achieve a further degree of future proofing”. Christine O’Neill stated—
- ” I spoke informally to the Institute and Faculty of Actuaries about the change and it suggested that, in due course, if the Bill proceeds to the next stage [Consideration Stage], it might wish to see a further additional concept of something called a fellow of the Institute and Faculty of Actuaries, which is its new title going forward.”¹²

The Committee is content with the arguments put forward by the Bill’s promoters to update the definition of actuary as set out in the 1982 Act.

The Committee notes the promoters may seek to amend section 1(1) at Consideration Stage. Amendments to a private bill can only be lodged by a member of the bill committee at Consideration Stage.

Section 1(2) - identity of the collector

31. The PM states the main objective of the Bill is to change the identity of the collector, removing the requirement for it to be a post held by a contributor and substituting a new requirement for the collector to be an individual, rather than a company, limited liability partnership or unincorporated association.¹³
32. The PM states this change to the confirmed Order is to respond to the “risk that the pool of available persons eligible to be elected as collector [due to the fund having been closed to new members] will be reduced to zero”. The PM also states the change will widen the pool of eligible individuals and that “it is highly desirable that the collector is a person who remains in professional practice, has access to professional services and access to professional indemnity insurance”.¹⁴
33. The Committee pursued a number of areas of questioning with the promoters at the evidence session.
34. First, the Committee explored whether there were alternative solutions to address the diminishing number of contributors which would enable the fund to continue to meet the existing requirement for the collector to be a contributor. Solutions such as re-opening the fund to new contributors or changing other eligibility criteria for the collector were put forward by Committee members.
35. The Deputy Keeper ruled out any alternative solutions and stated “we are where we are with the fund”.¹⁵ The collector referred to an actuarial report, dated July 1996, which advised against reopening the fund to new entrants. This advice was based on the changes to the tax regime in 1988 as a result of the Income and Corporation Taxes Act 1988 (which led to the closure of the fund in 1989) which meant the fund became a “tax-inefficient way of saving” and “it was difficult to see what could be provided through the fund that could not as easily and probably more cheaply be provided through the mechanism of personal pensions”.¹⁶

The Committee is content with the promoters' view that there are no alternative solutions which would enable the fund to continue to meet the existing requirement for the collector to be a contributor.

36. Second, the Committee explored the requirement for the collector to be an individual and asked whether a solicitors' firm would provide greater flexibility and/or professional expertise to undertake the role.
37. The collector confirmed this provision had been prompted by feedback from the contributors themselves. The collector went on to state—

” ... the contributors were quite clear that they wanted an individual in the role, although they recognise that a number of the functions required the support of a professional firm or professional organisation. They wish to continue with an individual in the role with overall responsibility to them as contributors and to the annuitants for the running of the fund. However, they recognise and expect that there will be professional backup. Indeed, all my predecessors in the role [in living memory] have been solicitors in private practice who had back-up from their professional firms. ¹⁷

38. Subsequent to the evidence session, the Committee wrote to the promoters asking for further information about this and, in particular, where the legal responsibility for carrying out the collector's functions lay if the collector was supported by their firm. The Deputy Keeper replied—

” The reliance by the collector on support from his firm is well understood (and approved of) by the trustees of the fund and I believe it is also well understood by the contributors to the fund (all of whom, of course, are themselves solicitors, retired or former solicitors). ... The relationship between the collector and trustees bears great similarities to the solicitor/client relationship ... [and] this solicitor/client relationship allows, among other things, for the fund to have the benefit of the collector's firm's professional indemnity insurance. However, the trustees and the collector are clear that legal responsibility for the carrying out of the work rests with the collector. As with any work carried out by more junior members of staff within a law firm, the responsible partner ultimately bears responsibility. ¹⁸

The Committee agrees with the promoters' view that the eligibility criteria for who can be elected as collector must be extended beyond the pool of contributors in order for the fund to be administered in the longer term.

The Committee understands the reasons why the Bill requires the collector should be an individual and notes he or she would be elected with the expectation they would receive administrative and legal support from their law firm.

39. Third, the Committee explored the trustees' expectations for the management of the fund when the last of the contributors dies.

40. The Deputy Keeper argued that: “at any point, they [the trustees] are looking five years, 10 years and further ahead and considering the various options for the fund”. ¹⁹ She spoke about the need for the trustees to devise a strategy for the fund when there are no contributors to take decisions about its management. She stated—

” The most likely end game for the fund is that, at some point in the future, a product will be bought from an insurance company using the remaining funds—to put it simplistically—to provide annuities for the remaining annuitants, to avoid [residual moneys being left in the fund after all the annuitants die]. ²⁰

41. Subsequent to the evidence session, the Committee wrote to the promoters seeking further information about the trustees' possible strategy. The promoters responded stating that, at the point at which the trustees receive advice from the actuary that the fund has reached a point where the risk of continuing to have the fund's assets invested in stocks, shares and bonds outweighs the potential benefits, the fund would be converted to cash and the cash used to buy annuities.

” At that point - i.e. where annuities had been purchased for all of the annuitants and future annuitants, the fund would, effectively, have been fully spent, and therefore there would be nothing left for distribution. Also, there would be no future need for the trustees, as the annuities would be paid direct to the annuitants. At that point, the fund would be wound up, having fulfilled its purpose through the purchase of those annuities, and thus having utilised the fund in full.²¹

The Committee notes the trustees' work in looking ahead to the end of the fund and acknowledges this is some way in the future. The Committee agrees the strategy anticipated by the current trustees would seem the most appropriate way forward.

Conclusion on the general principles of the Bill

The Committee agrees with the general principles of the Bill.

Consideration of whether the Bill should proceed as a private bill

Requirements under Standing Orders

42. 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: first, that the Bill conforms to the definition of a private bill, as set out in Rule 9A.1.1 and, second, 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).

Definition of a private bill

43. The definition of a private bill provided in Standing Orders is set out in paragraph 20.

The Committee is satisfied the Bill complies with the definition of a private bill.

Accompanying documents

44. The relevant documents in this context are the PM, Explanatory Notes and Promoter's Statement.

Promoter's Memorandum

45. The PM must set out—
- the Bill's objectives;
 - whether alternative ways of meeting those objectives were considered and, if so, why the approach taken in the private bill was taken; and
 - the consultation which was undertaken on those objectives, the ways of meeting them and on the detail of the private bill, together with a summary of the outcome of that consultation.

Objectives

46. The Bill's objectives have been set out in paragraphs 18 and 19.

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

Alternative approaches to achieving the Bill's objectives

47. The alternative approaches considered by the promoters are set out in the PM.
48. In relation to section 1(1) – definition of actuary – the PM states the Bill's objectives could, if tested in the courts, be achieved via statutory interpretation but that legislation was required "for the avoidance of doubt".
49. In relation to section 1(2) – identity of collector – the PM states the Bill's objectives could only be achieved via primary legislation.

The Committee is content with the information set out in the Promoter's Memorandum about alternative approaches to achieving the Bill's objectives.

The Committee notes the provisions relating to both the definition of an actuary and identity of the collector are set out in the confirmed Order and that a confirmed Order can only be amended by primary legislation. The Committee agrees, therefore, that a private bill is the only means by which the promoters can achieve the Bill's objectives.

Consultation

50. The PM states the collector wrote on 11 November 2016 to all contributors ahead of the fund's AGM. The letter included the agenda for the meeting, the draft minute of the 2015 AGM (which noted a discussion about the need to amend the 1982 Act) and a note "describing the purpose of the Bill and a document setting out an indicative timeline for the introduction and passage of the Bill".²²
51. The PM goes on to state the AGM was attended by five trustees, the collector and six other contributors. Apologies were received from eight contributors. The PM states, "at the conclusion of the discussion, the contributors present at the AGM expressed their unanimous approval of the introduction of the Bill".²³ During evidence to the Committee, the Deputy Keeper confirmed that no opposing views were expressed during this meeting.²⁴
52. The PM also details the consultation with the annuitants. The collector wrote to each of the 141 annuitants, explaining the background to the promoter's conclusion that the Bill was necessary, the amendments proposed and the expectation that the Bill would be duly advertised and introduced. The collector received one response which expressed no view on the proposed changes.²⁵

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

Explanatory Notes

53. 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 the Explanatory Notes are fit for purpose.

Promoter's Statement

54. The requirements for the Promoter's Statement are set out in Standing Orders Rule 9A.2.3(d). The Promoter's Statement 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.
55. The Statement included details of the notification of and consent to the proposed private bill obtained from the 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 Bill.

The Committee agrees the Promoter's Statement complies with Standing Order requirements.

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 the Bill should proceed as a private bill.

Recommendation

The Committee recommends that the Parliament agrees to the general principles of the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill and that the Bill should proceed as a private bill.

- 1 [Writers to the Signet Dependants' Annuity Fund Amendment \(Scotland\) Bill](#) (340KB pdf), as introduced (SP Bill 13, Session 5 (2017)).
- 2 Scottish Parliament. [Standing Orders](#) (5th edition, 5th revision, May 2017).
- 3 Scottish Parliament. [Guidance on Private Bills](#) (May 2017).
- 4 [Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982](#) (2.9MB pdf) (c. xxiv).
- 5 Schedule to the Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982.
- 6 Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill. [Promoter's Memorandum](#) (616KB pdf) (SP Bill 13-PM, Session 5 (2017)), paragraph 17.
- 7 Promoter's Memorandum, paragraph 16.
- 8 Schedule to the Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982, paragraph 3.
- 9 Promoter's Memorandum, paragraph 17.
- 10 Promoter's Memorandum, paragraph 20.
- 11 Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill Committee (WSD Committee). [Official Report, 20 September 2017](#) (392KB pdf), Col 4.
- 12 WSD Committee. *Official Report, 20 September 2017*, Col 5.
- 13 Promoter's Memorandum, paragraph 13.
- 14 Promoter's Memorandum, paragraph 15.
- 15 WSD Committee, *Official Report, 20 September 2017*, Col 6.
- 16 WSD Committee, *Official Report, 20 September 2017*, Col 8.
- 17 WSD Committee, *Official Report, 20 September 2017*, Col 7.
- 18 [Writers to the Signet Dependant's Annuity Fund](#) (1.97MB pdf), 2 October 2017.
- 19 WSD Committee, *Official Report, 20 September 2017*, Col 9.
- 20 WSD Committee, *Official Report, 20 September 2017*, Col 4.
- 21 [Writers to the Signet Dependant's Annuity Fund](#) (1.97MB pdf), 2 October 2017.
- 22 Promoter's Memorandum, paragraph 21.
- 23 Promoter's Memorandum, paragraph 22.
- 24 WSD Committee, *Official Report, 20 September 2017*, Col 10.

25 Promoter's Memorandum, paragraph 23.

