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Edinburgh Bakers' Widows' Fund Bill Committee
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Edinburgh Bakers' Widows' Fund Bill
Committee - Preliminary Stage Report



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Edinburgh Bakers' Widows' Fund Bill Committee

Remit: To consider matters relating to the Edinburgh Bakers' Widows' Fund Bill.
(As agreed by resolution of Parliament on 19 April 2017)



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Introduction

1. The Edinburgh Bakers' Widows Fund Bill ("the Bill") was introduced in the Scottish Parliament on 20 March 2017. It is a Private Bill being promoted by the Trustees of the Widows' Scheme of the Incorporation of the Bakers of the City of Edinburgh ("the promoter") under the procedures set out in Chapter 9A of the Parliament's Standing Orders ¹ and the Guidance on Private Bills ².
2. Following introduction, there was a 60 day objection period which ended on 19 May 2017. No objections were received to the Bill.

At Preliminary Stage, the Committee met on 10 May, 14 and 28 June, and 6 September 2017.

Objectives of the Bill

3. The promoters' objective is to transfer the property and assets of the Edinburgh Bakers Widows' Fund ("the Fund") to a modern non-statutory charitable trust (which would support education and training opportunities in baking).
4. The purposes of the Bill are:
 - to enable the Trustees of the Fund to make capital payments to the potential beneficiaries before it is dissolved;
 - to dissolve the Fund;
 - to repeal the 1813 Act ("An Act Providing a Fund for Annuities for Widows Of Members of the Incorporation of Bakers of the City of Edinburgh 1813").

Background to the Bill

5. The Promoter's Memorandum (one of the accompanying documents to the Bill) ³ details the background to the Fund.
6. The Incorporation of Bakers of the City of Edinburgh ("the Incorporation") was one of the trade incorporations set up in medieval times to regulate trade and in 1803 a scheme was formed to provide a fund for bakers' widows. As the scheme could not become operational without the authority of Parliament, an 1813 Act ⁴ was passed authorising the scheme and naming it the "Widows Fund for the Incorporation of Bakers within the City of Edinburgh". The contributions from members of the scheme were used to pay annuities to widows of contributors to the Fund. The 1813 Act limited membership of the scheme to men under the age of 45 who were members of the Incorporation.

Recent history of the Fund

7. Recent members of the Incorporation have tended to be women or older men, so no-one has been eligible to join the Fund for a number of years under the terms of the 1813 Act. The last contribution to the Fund was made in 1981.
8. In 2013, the Trustees decided that the scheme should not continue to operate in its current form and formally closed the scheme to new members. The last annuity paid under the scheme was in 1997 and since then, there have been no qualifying beneficiaries under the Fund.
9. There are currently two wives of contributing members to the Fund who could qualify in the future for annuities if they were widowed. Arrangements are being put in place to ensure that these individuals are treated equitably - this is discussed in more detail later in the report.

The need for change

10. According to the Promoter's Memorandum, the promoters considered that there was a need for change, for various reasons (which are detailed in the Promoter's Memorandum) including:
 - the restrictions on the ability of the Trustees to apply the assets of the Fund as intended by the provisions of the 1813 Act;
 - the lack of any defined benefits for widows of contributing members, depending instead of the discretion of the Trustees.
11. At the Committee's meeting on 14 June 2017, the promoters expanded on the need for change and summarised the restrictions imposed by the 1813 Act:

” ... the incorporation of bakers was sitting there as an unincorporated association with very few members—so few members, in fact, that the meetings must have been quite sporadic. The members of the incorporation tended to be elderly gentlemen. Nothing was happening, and the widows' fund was not attractive to new members. In order to join it, you had to be a male under 45 years old; you could not be a woman. None of the members of the incorporation was under 45—everyone was much older than that—and anyone who joined the incorporation was unlikely to want to join the fund.

The incorporation itself, never mind the widows' fund, was quite dormant ... The trades in Edinburgh were not being activated; it is only fairly recently—perhaps in the last 10 years—that they have been undergoing a renewal, with people joining not just the bakers but the bonnetmakers, the goldsmiths, the candlemakers and so on.

Source: Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 6⁵

12. The promoters went on to explain that, in its current form, the Fund was not viable as an investment vehicle or annuity provider in competition with large pension providers. And if the Fund simply remained as it was, there was also a danger that

” ... it would eventually just fall into the Crown’s hands as something that could not be used. The fact that it was not being used was a major problem.

Source: Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 10⁶

The new Charitable Trust

13. The new Trust ("the Incorporation of Bakers of Edinburgh Charitable Trust") is to receive the assets from the dissolved Fund. The Trust has been approved by the Office of the Scottish Charities Regulator (OSCR).
14. The objectives of the new Trust are:
 - the encouragement and support of training and education in baking trade-related careers;
 - the provision of training opportunities in baking;
 - the encouragement of discussions on baking and baking standards;
 - the promotion of an appreciation of local baking and the history of baking.
15. There is further discussion on the new Charitable Trust later in the report under the "General principles" section.

Parliamentary procedure

Stages of the Bill process

16. A private bill is subject to the following three-stage procedure:
- 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.
 - Final Stage - at which point the Parliament considers any further amendments to the Bill and whether the Bill should be passed.

Preliminary Stage role of the Committee

17. The Committee was established (under Standing Orders Rule 9A.5) to consider the Bill at Preliminary Stage and at Consideration Stage. Since no objections were lodged, the Committee's role at Preliminary Stage was to consider and report on:
- the general principles of the Bill; and
 - whether the Bill should proceed as a private bill.

General principles of the Bill

18. In order to help inform its scrutiny of the Bill's general principles, the Committee took evidence at its meeting on 14 June 2017, from the Bill's promoters.

Dissolution of the Fund and the new Charitable Trust

19. The Committee asked the Trustees whether consideration was given to promoting the scheme – and membership of the Incorporation – more widely to encourage new members, as an alternative to closing the scheme. The promoters explained that the scheme was only open to members of the Incorporation and, because the Incorporation was not putting itself forward, there was no promotion of the Fund as such.
20. The Committee asked about the appropriate management of the Fund's assets for the public benefit once they were transferred to the new Charity. The promoters referred to the conditions which had to be met in registering with OSCR for charitable status and, in relation to the management of the funds:

” We have had a review of investment managers to consider to whom we would give the bulk of the fund if it became available to us. We would give it to an investment manager—a specialist charity fund manager—and the trustees are minded to give grants only in accordance with the income from the fund. We would not be digging into the fund's capital; we would have a small income from the fund, which we would use to give grants, having applied the purposes of the trust. The fund would then be managed conservatively, as a charitable trust, by a specialist charity fund manager.

Source: Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 28⁷

Change of purpose

21. The Fund was established to provide financial support to the widows of contributing members. The new charity would support education and training, which could be considered a significant change of purpose. This is one reason why the promoters argue that a private bill is the appropriate mechanism to make the change.
22. The law recognises that arrangements for administering trusts such as the Widows' Fund can become outdated or impractical over time. Thus, it is possible for trustees to apply to the courts to get additional administrative powers, or to re-organise how a trust is set up. However, in most cases, the courts will only agree to change the purpose of a trust to something closely aligned to the original purpose. It was therefore clear to the promoters that none of the alternative remedies would enable the purpose of the trust to be changed from financially supporting widows to education. (See also section on "Alternative approaches to the Bill".)

23. In response to the Committee's queries about the purpose of the original Fund being in line with those of the new charity, the promoters explained that:
- ” We felt that that was the best way to go to make a genuinely good use of the assets in line with the spirit of the Incorporation of Bakers of the City of Edinburgh, so that we could get practical modern usage out of the money that had been invested by members of the incorporation and the incorporation itself, who were interested in promoting baking in the city of Edinburgh. That was one way to use the money, and creating a charitable vehicle was the way to encase it in a fully responsible mechanism that fits today's purposes.
- Source: Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 41⁸
24. The charity would be promoted through the baking community - two of the Trustees were members of the baking community, and grant applications would be made to the charity in accordance with its purposes.

Potential beneficiaries of the Fund

25. As stated earlier, there are currently two wives who could potentially benefit from the Fund in the event that they became widows. The Promoter's Memorandum set out how these individuals would be recompensed for the dissolution of the Fund:
- ” "Prior to transferring the Fund assets into the Charitable Trust, the Trustees will make a single capital payment to each of the two wives of contributing members. The agreed capital payments have been ring-fenced from the Fund assets. The Bill will give authority to the Trustees to make a single payment to each of the wives who are not yet (and may never become) widows. The Trustees do not otherwise have authority to make such payments to wives (rather than widows) in terms of the 1813 Act. It is intended that the payments will be made to the wives prior to the dissolution of the Fund.
- ” The Trustees have consulted an actuary and the capital payments have been calculated by the actuary to ensure that the wives receive equitable payments. The wives have been consulted on the actuarial calculation. The outcome of the consultation with the wives was that they have agreed to accept the capital payments from the Fund assets in lieu of potential future annuities to which they might have been entitled as widows in terms of the 1813 Act."
26. In a written submission, Professor George Gretton of the University of Edinburgh noted that once the Fund was dissolved, any current beneficiaries would no longer be able to receive payments. This would prevent any as yet unidentified beneficiary claiming an annuity.
27. The Committee sought the promoters' views on this matter. The promoters were very confident that there are no other potential beneficiaries:

” We know who the members of the incorporation are—it is a very small membership. We also know who the qualifying members are and there are only two of them who have made contributions who have wives, who are therefore potential beneficiaries. It is as simple as that.

Source: Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Flora Asplin, contrib. 56⁹

28. The Committee was satisfied with the promoter's assurances that the Trustees had taken adequate measures to ensure that the capital payments offered to the wives of contributing members were fair, and that no additional or future Fund beneficiaries (beyond the two potential beneficiaries identified) would emerge.
29. The Committee was also satisfied that the 1813 Act had clearly become outdated and restrictive, and that the Trustees were correct in seeking a practical way of allowing the money in the Fund to be redirected to a new set of objectives.

Conclusion on general principles

30. **The Committee recommends to the Parliament that the general principles of the Bill be agreed to.**

Consideration of whether the Bill should proceed as a private bill

Standing Order requirements

31. The second issue for the Committee to address in its Preliminary Stage report is 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).

Does the Bill meet the definition of a private bill?

32. The definition of a Private Bill set out in Rule 9A.1.1. of Standing Orders is—

” “A Private Bill is a Bill introduced for the purpose of obtaining for an individual, 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.”

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

Adequacy of accompanying documents

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

Promoter's Memorandum

35. 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

36. The objectives of the Bill have already been referred to in terms of the Promoter's Memorandum in the Introduction to the report.

37. The Committee is content that the objectives are adequately set out in this context.

Alternative approaches to the Bill

38. In the Promoter's Memorandum, the promoter detailed the alternative legal approaches it had considered to transfer the assets and liabilities of the Fund to a non-statutory charitable legal vehicle.
39. The options considered were:
- a charity constituted by a Deed of Trust;
 - a company limited by guarantee; and
 - a Scottish Charitable Incorporated Organisation (a "SCIO").
40. The Trustees considered the advantages and disadvantages of the various options (details of which are set out in the Memorandum) and concluded that a Deed of Trust would provide an effective legal structure to further the objectives of the new charitable trust. The Trust would be regulated by OSCR and had to adhere to the terms of The Charities and Trustee Investments (Scotland) Act 2005 ("the 2005 Act"). In addition, a Deed of Trust could be amended more simply than an Act of Parliament, company limited by guarantee or SCIO, adding to the effectiveness and efficiency of the selected legal vehicle.
41. Having identified a charitable trust as being the most appropriate recipient legal structure, various mechanisms to transfer the assets and liabilities of the Fund to the Charitable Trust were then considered - namely:
- Cy pres, which allows trustees to make an application to the Court of Session to have the terms of a public trust varied where the purposes of the trust are or have become impossible to fulfil or have become particularly inappropriate.
 - Section 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, which gives the Sheriff Court and the Court of Session powers to approve a scheme for the variation or reorganisation of the trust purposes in any public trust.
 - Sections 39 and 40 of the 2005 Act which provide a regime for charitable trusts to seek the approval of OSCR for a reorganisation of the trust purposes.
42. Details of these potential mechanisms are set out in the Memorandum. The Trustees concluded that the only appropriate method of amending the objectives of the Fund and the powers of the Trustees was to promote a Private Bill in the Scottish Parliament.
43. The Committee is satisfied that the Promoter's Memorandum sets out the alternative legal approaches which were considered by the promoter and explains why the chosen approach was adopted.

Consultation

44. 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 needed only to satisfy itself that the information about the consultation was sufficient for its scrutiny.
45. The Promoter's Memorandum details the consultation carried out regarding the change to the Fund as follows:
 - The Trustees of the Charitable Trust, Trustees of the Fund, and members of the Incorporation were all consulted on the proposal.
 - The wives of contributing members of the Fund were also consulted.
 - The Trustees also consulted OSCR as part of their application for charitable status for the Charitable Trust.
46. The Committee is satisfied that the information provided regarding the consultation process is sufficiently detailed and clear for the Committee's purposes.

Explanatory Notes

47. 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.
48. The Committee is satisfied that the Explanatory Notes are fit for purpose.

Promoter's Statement

49. The requirements of the Promoter's Statement are set out in Standing Orders Rule 9A.2.3(d) and are to detail all the arrangements made by the promoter with regard to such matters as notification, advertising and distribution of the Bill and accompanying documents.
50. The Statement includes 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 Private Bill.
51. The Committee is of the view that the Promoter's Statement complies with Standing Order requirements.

Conclusion on accompanying documents

52. **The Committee is of the view that the accompanying documents meet the criteria set down in Standing Orders and are adequate to allow for scrutiny of the Bill.**

Conclusion

The Committee recommends that the general principles of the Bill be agreed to and that the Bill should proceed as a private bill.

- [1] Scottish Parliament. (n.d.) Standing Orders. Retrieved from <http://www.parliament.scot/parliamentarybusiness/17797.aspx>
- [2] Scottish Parliament. (n.d.) Guidance on Private Bills. Retrieved from <http://www.parliament.scot/parliamentarybusiness/Bills/79081.aspx>
- [3] Scottish Parliament. (2017, March 20). <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/103886.aspx>.
- [4] Scottish Parliament. (n.d.) An Act Providing a Fund for Annuities for Widows of Members of the Incorporation of Bakers of the City of Edinburgh (1813). Retrieved from http://www.parliament.scot/S5ChamberOffice/Incorporation_of_Bakers_Act_1813.pdf
- [5] Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 6, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11010&c=2009589>
- [6] Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 10, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11010&c=2009593>
- [7] Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 28, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11010&c=2009611>
- [8] Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Lady Elizabeth Drummond Young, contrib. 41, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11010&c=2009624>
- [9] Edinburgh Bakers' Widows' Fund Bill Committee 14 June 2017, Flora Asplin, contrib. 56, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11010&c=2009639>

