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The Scottish Parliament

Baird Trust Reorganisation Bill Committee

1st Report, 2005 (Session 2)

Preliminary Stage Report on the Baird Trust Reorganisation Bill

Published by the Scottish Parliament on 24 May 2005



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26 April 2005 (1st meeting, Session 2 (2005))

3 May 2005 (2nd Meeting, Session 2 (2005))

3 May 2005 (2nd Meeting, Session 2 (2005))

Oral Evidence:

Trustees of The Baird Trust

Mr David Campbell, Solicitor, Lindsays WS



The Scottish Parliament

Baird Trust Reorganisation Bill Committee

Remit and membership

Remit:

To consider and report to the Parliament on the Baird Trust Reorganisation Bill.

Membership:

Mr Andrew Arbuckle (Convener)
Scott Barrie
Mr David Davidson
Trish Godman
Mr Kenny MacAskill

Committee Clerking Team:

Clerk to the Committee
Claire Menzies Smith

Support Manager
Jennifer Gourley

Administrative Assistant
James Burton



The Scottish Parliament

Baird Trust Reorganisation Bill Committee

1st Report, 2005 (Session 2)

Baird Trust Reorganisation Bill

The Committee reports to the Parliament as follows—

BACKGROUND

1. The Baird Trust Reorganisation Bill was introduced in the Scottish Parliament by The Baird Trust (the Promoters) on 27 October 2004. It is a Private Bill, being promoted by the trustees of The Baird Trust. The Promoters are seeking to transfer the property, rights and liabilities of The Baird Trust to a successor company limited by guarantee and to dissolve The Baird Trust and repeal The Baird Trust Confirmation Acts 1939, 1957 and 1971.
2. Following the Bill's introduction, there was a 60 day objection period which ended on 7 January 2005. No objections were lodged.
3. The Parliament established the Baird Trust Reorganisation Bill Committee under Standing Orders Rule 9A.5 for the sole purpose of considering the Bill.
4. At Preliminary Stage, the Committee has three functions, namely:
 - To consider and report on the **general principles** of the Bill;
 - To consider and report on whether the Bill **should proceed as a Private Bill**, that is to say;
 - Is the purpose of the Bill to obtain for the promoter particular powers or benefits in excess of, or in conflict with, the general law?
 - Do the accompanying documents lodged with the Bill satisfy the technical criteria that are set down in the Standing Orders and are they adequate to allow proper scrutiny of the Bill?
 - To give preliminary consideration to the objections and reject any objection where the objector's interests are, in the opinion of the Committee, not clearly adversely affected by the Private Bill.

5. As there were no objections to the Bill lodged under Rule 9A.6, it is not necessary to report further on this function.

6. The Committee also gave the legislative procedure to be followed consideration because there were no objections; this is dealt with later in this report.

7. The Committee met in Edinburgh on 26 April to declare any relevant interests, elect a Convener and Deputy Convener and agree their approach to Preliminary Stage of the Bill process. It also met in Edinburgh on 3 May, when evidence was taken from the Promoters and David Campbell, solicitor and reporter to the Inner House of the Court of Session on public trust reorganisation.

8. The original Trust was established by James Baird by Deed of Trust dated 2 July 1873. In broad outline, his object was (in the words of the Deed of Trust)—

“to assist in providing the means of meeting, or at least as far as possible, promoting the mitigation of, spiritual destitution among the population of Scotland, through the efforts of securing the godly upbringing of the young, the establishing of Parochial Pastoral Work, and the stimulating of ministers and all agencies of the ... [Established] Church of Scotland, to sustained devotedness in the work of carrying the gospel to the homes and hearts of all.”¹

9. The Trustees were formally incorporated by the name of The Baird Trust by The Baird Trust Order Confirmation Act in 1939. Its constitution was amended by subsequent Acts of Parliament in 1957 and 1971. The only method of amending the objectives and powers of the Trust is to promote an Act of the Scottish Parliament.

10. The Baird Trust (the Trust) has current total assets of £7.2 million. Their income from investments is £260,000, plus approximately £25,000 in interest and £6,000 assorted income making a total income of approximately £292,000 in 2004². The Trust’s annual spend varies from year to year dependant on how many applications for grants are received. The Trust’s total spend for 2004 was approximately £265,000.³

11. The Promoters are seeking a Private Bill to reorganise the Trust in order to update the objectives and the powers of the Trustees, which they believe are now in some respects unsuitable and impracticable for the best application of charitable funds. The Promoters believe that this Bill will also enable the reorganised Trust to ensure proper regulation and administration of the Trust. Furthermore, the promoters believe that the reorganisation of the Trust to make it a charitable company limited by guarantee will enable account to be taken of changing circumstances in the future without the need for a further Private Bill, the associated costs of which, in the Trustees’ opinion, are not a proper use of charitable funds.

¹ Paragraph 5, Promoter’s Memorandum.

² Ronald Oakes, Secretary and Treasurer of The Baird Trust, Column 5, *Official Report*, 3 May 2005.

³ *Ibid.*

GENERAL PRINCIPLES OF THE BILL

Objectives of the Bill

12. The objective of the Bill as stated in the Promoter's Memorandum is:

"...to transfer the property, rights, interests and liabilities of the Baird Trust, a Scottish Charity (hereinafter referred to as "the Current Trust") to a new company limited by guarantee, also a Scottish charity, and known as the Baird Trust (hereinafter referred to as "Newco"). When the transfer has been completed, the Current Trust will be dissolved and the Acts of Parliament under which it was established and its constitution amended will be repealed."⁴

13. In giving evidence, the Promoters expanded on their reasons for promoting the Bill, explaining—

"We are promoting the Bill simply because we seek to simplify the Baird Trust's structure and to amend its objects so that we can widen its scope without departing from the spirit and intent of the original donor."⁵

14. Assurance was provided by the Promoters to the Committee in their evidence that Newco (the Reorganised Trust) would remain non-trading and dormant until such time as the transfer from the Current Trust had been completed. They further explained that the Baird Trust Trustees control Newco and confirmed that the Secretary and Treasurer, Mr Ronald Oakes, had been instructed to ensure no transactions are carried out until the transfer is complete.⁶

Legal structure of Trust

15. The Promoters contend that promoting a Private Bill to reorganise the Current Trust into a charitable company limited by guarantee is the most efficient method of organisation for their purposes.

16. There were only two other alternatives available to update the Current Trust, both of which were explored. One option was to revert to trust status and the original structure as set up by the founder of the Trust in 1873. This option was felt to be unsuitable for a charity with assets of as large a value as the Current Trust retains. The other alternative was for the Current Trust to remain incorporated by Act of Parliament. However, this structure was also felt to be inappropriate given that any changes to the Current Trust would need to be enacted through further Acts of Parliament.⁷ The Promoters believe this approach would be a waste of both charitable funds and parliamentary time.⁸

⁴ Paragraph 4, Promoter's Memorandum.

⁵ Marianne Baird, Chair and Trustee of The Baird Trust, Column 4, *Official Report*, 3 May 2005.

⁶ Alan Borthwick, Trustee of The Baird Trust and Partner, Brechin Tindal Oatts, Solicitors, Column 5, *Official Report*, 3 May 2005.

⁷ *Ibid.*

⁸ Marianne Baird, Chair and Trustee of The Baird Trust, Column 4, *Official Report*, 3 May 2005.

17. David Campbell confirmed that in his opinion the proposed approach was an appropriate legal structure for the Baird Trust:

“Nowadays the trend is for charities - especially larger ones - to have a corporate structure that is limited by guarantee ... [it] is a more flexible and workable arrangement for charities than using 100-year-old conditions that, through no fault of the early 20th century draftsmen, are outdated.”⁹

Other benefits of reorganisation

Improved administrative arrangements for a modern charity

18. The Committee sought clarification on the main differences between the objects and purposes of the Current Trust outlined in the various Baird Trust Confirmation Acts and that of the proposed Reorganised Trust, as set out in the Baird Trust Memorandum and Articles of Association. Three main differences were highlighted:

- The scope of the Reorganised Trust’s work is expanded from promoting the work of the Church of Scotland within Scotland to “the furtherance of the Christian religion in connection with the Church of Scotland or of other churches in Scotland or beyond, and the support of such institutions and their infrastructure, administration and activities”.¹⁰
- Under the Current Trust, individuals who are not members of the Church of Scotland could not become a Trustee, whereas with the Reorganised Trust no such restriction would apply, with the effect that the potential pool of trustees expands considerably.
- Currently, only Trustees can also be members of the Trust, whereas the Reorganised Trust has specific provisions for open membership which allow anyone to apply to become a member. This significantly expands the potential membership.

19. David Campbell, while broadly approving of the proposed changes, highlighted that the work of the Current Trust is to be widened to include churches which are not part of the Church of Scotland for the first time. He considered that although this was not a major change it was worthy of note.¹¹

20. The Committee is satisfied that the widening of the Current Trust’s powers to allow them to provide funds to other churches outwith Scotland and the Church of Scotland is in the public interest. The Committee also notes particularly that no objection has been raised to these changes during consultation or the objection periods.

Increased powers of investment

21. Paragraph 22 of the Promoters Memorandum states that Newco’s Memorandum of Association permits wider powers of investment than the Current

⁹ David Campbell, Partner, Lindsays WS, Solicitors, Column 9, *Official Report*, 3 May 2005.

¹⁰ Paragraph 18, Promoter’s Memorandum.

¹¹ David Campbell, Partner, Lindsays WS, Solicitors, Column 10, *Official Report*, 3 May 2005.

Trust. In response to the Committee's request for clarification of this point, the Promoters indicated that the investment powers of the Current Trust are somewhat restricted by The Trustee Investment Act 1961 and subsequent legislation, and that the arrangements for Newco widen those powers to allow the Trustees greater discretion in the range of investments they can make. In the opinion of the Promoter, the new arrangements are entirely consistent with the Charities and Trustees Investment (Scotland) Bill (the "Charities Bill") which is currently proceeding through its parliamentary stages.¹²

The Baird Lecture

22. The Baird Trust Order Confirmation Acts make specific provision for an endowment for a lectureship called the Baird Lecture. The Promoters indicated both in the Promoter's Memorandum and in their evidence that they feel the regulations covering the Baird Lecture were under the Current Trust unnecessarily restrictive. These conditions were established in 1939 and do not take account of advances in technology. Therefore, the Promoter considered it important to take the opportunity to update to allow for new media and delivery techniques and to broaden the scope of the content of the material and those who deliver it.¹³ They felt it appropriate to rename the Baird Lecture as the Baird Presentation, feeling this better reflects the diverse ways in which it may be delivered.

Increased public scrutiny

23. In addition to the existing scrutiny by the Inland Revenue and the Office of the Scottish Charity Regulator, the Promoters indicated that the Reorganised Trust's annual accounts will be required to be lodged with Companies House and any changes to the trustees or secretary will need to be intimated to Companies House. Records kept at Companies House are open to the public to view. The public will also have the right to inspect the Reorganised Trust's statutory books at its registered office.

Charities and Trustee Investment (Scotland) Bill

24. The Committee sought the Promoter's views on how the Bill fits with the Charities and Trustee Investment (Scotland) Bill (Charities Bill) and whether any amendments to that Bill might affect it. The Promoters stated that they were content at this stage that the Reorganised Trust was fully compatible with the provisions of the Charities Bill and did not at present foresee a need for any amendments.

25. David Campbell confirmed that, should the Charities Bill be altered materially prior to enactment, it would be a simple matter to insert a clause into the new Baird Trust Memorandum and Articles of Association without recourse to the Parliament, stating that "the memorandum and articles can be changed by special resolution of the company. I do not think they have to come back here for approval".¹⁴

¹² Alan Borthwick, Trustee of The Baird Trust and Partner, Brechin Tindal Oatts, Solicitors, Column 13, *Official Report*, 3 May 2005.

¹³ Paragraph 13, Promoter's Memorandum.

¹⁴ David Campbell, Partner, Lindsays WS, Solicitors, Column 11, *Official Report*, 3 May 2005.

26. The Committee were satisfied that the Baird Trust Reorganisation Bill sets up the Reorganised Trust in such a manner that it can meet any demands placed on it by the Charities Bill.

Conclusion

27. The Committee is satisfied that the transfer of the Current Trust to a company limited by guarantee is based on a reasonable expectation that this will simplify the operation of the Trust and improve its operation in terms of widening the scope for funding and support it offers. The Committee is also satisfied that the choice of legal structure is in keeping with modern public trust administration and charity law and is sensible for the future operation of the Trust. The Committee approved the removal of the need to promote further Bills to effect change.

28. Therefore, the Committee is content to recommend to the Parliament that the general principles of the Bill be agreed to.

SHOULD THE BILL PROCEED AS A PRIVATE BILL

Particular powers or benefits in excess of or in conflict with the general law

Scope of the Bill

29. The Committee has established the identity of the Promoters as the Trustees of the Current Trust as established by the Baird Trust Order Confirmation Act 1939. The Committee is satisfied that the promotion of a Private Bill falls within their general functions under that Act.

30. The Committee is satisfied that the Baird Trust Reorganisation Bill conforms to the definition of a Private Bill as set out in Rule 9A.1.1 of Standing Orders. In particular, the Committee is satisfied that a Private Bill is necessary to enable the assets and liabilities of the Current Trust to be transferred to a new company limited by guarantee and to dissolve the Current Trust.

Accompanying Documents

Explanatory Notes

31. The Committee is content that the Explanatory Notes summarise objectively what each of the Bill's provisions does and give other information necessary or expedient to explain the effect of the Bill.

Promoter's Memorandum

32. 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 Bill was adopted; and

the consultation, if any, which was undertaken on those objectives and the ways of meeting them and on the detail of the Bill together with a summary of the outcome of that consultation.

33. Further clarification on the consultation process was sought by the Committee and the Promoter explained that the Inland Revenue had sought two minor amendments. The first related to making the basis for turning down applications for membership of the Reorganised Trust less restrictive; the second involved the removal of a clause in the Memorandum and Articles of Association which allowed for an attendance allowance to be paid to members. The Promoters were happy to agree to both of these changes and these were incorporated into the final constitution of the new company.¹⁵ Additionally, the Promoters confirmed that the Inland Revenue is happy to recognise the Reorganised Trust as a registered charity.¹⁶

34. The Promoter also detailed the clarifications sought by the Church of Scotland on the proposed expansion on the range of the Current Trust's beneficiaries from the Church of Scotland only into the Christian religion more widely. The Promoter explained the intention more fully and the Church of Scotland were content with this explanation.

35. The Committee is content that the Promoter's Memorandum sets out the objectives of the Bill and appropriately deals with alternative solutions, as detailed in paragraphs 15-17 of this report.

36. The Committee is also satisfied that the promoter has fulfilled the requirements of the Promoter's Memorandum in respect of consultation.

Promoter's Statement

37. The Committee is satisfied that this document complies with the Presiding Officer's determination.

Conclusion

38. The Committee is satisfied that each accompanying document meets the requirements set out in Rule 9A.2.3 and is suitable for its intended purpose.

39. The Committee is satisfied that the accompanying documents to the Baird Trust Reorganisation Bill allow adequate scrutiny of the Bill, conforming to Rule 9A.2.3.

Legislative process

40. The Committee considered the Bill and heard evidence from the Promoter and David Campbell on whether, in their opinion, the Bill as presented may require any amendment before enactment. The Promoter indicated that they were not aware of any amendments being necessary. David Campbell concurred with this view, saying—

“As far as I can see, the bill is a mechanism for the dissolution of the existing Baird Trust and the creation of a modern, 21st century charitable trust. I suggest no changes to the bill as drafted.”¹⁷

¹⁵ Alan Borthwick, Trustee of The Baird Trust and Partner, Brechin Tindal Oatts, Solicitors, Column 7, *Official Report*, 3 May 2005.

¹⁶ *Ibid.*

¹⁷ David Campbell, Partner, Lindsays WS, Solicitors, Column 12, *Official Report*, 3 May 2005.

41. Given that no member of the Committee wishes to lodge an amendment to the Bill, and that no objections have been submitted, the Committee recommends that the Parliamentary Bureau consider suspending the relevant Standing Orders to omit Consideration Stage of the Bill process.

Conclusion

42. The Committee recommends to the Parliament that the Baird Trust Reorganisation Bill should proceed as a Private Bill.

BAIRD TRUST REORGANISATION BILL COMMITTEE

MINUTES

1st Meeting, 2005 (Session 2)

Tuesday 26 April 2005

Present:

Andrew Arbuckle (Convener)
David Davidson
Kenny MacAskill

Scott Barrie (Deputy Convener)
Trish Godman

The meeting opened at 3.16pm.

- 1. Declaration of Interests:** The oldest member present, Trish Godman, invited members of the Committee to declare any relevant interests. No interests were declared.
- 2. Choice of Convener:** The Committee chose Andrew Arbuckle as its Convener.
- 3. Choice of Deputy Convener:** The Committee chose Scott Barrie as its Deputy Convener.
- 4. Item in private:** The Committee agreed to take item 5 in private.
- 5. Baird Trust Reorganisation Bill (in private):** The Committee considered a paper on its approach to the Preliminary Stage of the Bill and agreed to invite the Trustees of the Baird Trust and David Campbell, Lindsays WS solicitors, to give evidence at the next meeting.

The meeting closed at 3.23pm.

Claire Menzies Smith
Clerk to the Committee

BAIRD TRUST REORGANISATION BILL COMMITTEE

MINUTES

2nd Meeting, 2005 (Session 2)

Tuesday 3 May 2005

Present:

Andrew Arbuckle (Convener)
David Davidson
Kenny MacAskill

Scott Barrie (Deputy Convener)
Trish Godman

The meeting opened at 3.15pm.

- 1. Item in private:** The Committee agreed to take item 3 in private.
- 2. General Principles of the Bill:** The Committee took evidence on the General Principles of the Bill from –

Marianne Baird, Chair and Trustee of the Baird Trust
Alan Borthwick, Trustee of the Baird Trust and Partner, Brechin Tindal Oatts,
solicitors
Ronald Oakes, Secretary and Treasurer, The Baird Trust,
and David Campbell, Partner, Lindsays WS, solicitors.

- 3. Preliminary Stage Report (in private):** The Committee agreed its approach to the drafting of the Preliminary Stage Report.

The meeting closed at 4.00pm.

Claire Menzies Smith
Clerk to the Committee

Scottish Parliament

Baird Trust Reorganisation Bill Committee

Tuesday 3 May 2005

[THE CONVENER opened the meeting at 15:15]

Item in Private

The Convener (Mr Andrew Arbuckle): Welcome to the second meeting of the Baird Trust Reorganisation Bill Committee. Today, we will concentrate on the principles of the bill. We will hear evidence from the promoter of the bill and from Mr David Campbell, who is an expert witness on reorganisation of public trusts. If required, we can thereafter ask the promoter to respond to any questions that arise from Mr Campbell's evidence.

As Scott Barrie has reminded us, all mobile phones and pagers should be switched off. No member should use any excuse to get away to do any electioneering until the meeting is finished. No apologies for absence have been received.

Under agenda item 1, I seek the committee's agreement to take item 3, which is consideration of the committee's approach to its preliminary stage report, in private. Is that agreed?

Members indicated agreement.

Baird Trust Reorganisation Bill (General Principles)

15:16

The Convener: We move on to agenda item 2. I welcome the representatives of the bill's promoter. With us are Marianne Baird, who is chair and trustee of the Baird Trust; Alan Borthwick, who is a trustee of the Baird Trust and a partner at Brechin Tindal Oatts; and Ronald Oakes, who is secretary and treasurer of the Baird Trust.

We have a number of questions for you. First, will you explain why a private bill is necessary to reorganise the trust?

Marianne Baird (Baird Trust): We are promoting the bill simply because we seek to simplify the Baird Trust's structure and to amend its objects so that we can widen its scope without departing from the spirit and intent of the original donor. The problem is that we cannot do that without an act of Parliament. We could find no good reason why the current trust should remain a body corporate that is incorporated by an act of Parliament. If we change it into a charitable company limited by guarantee, we will be able to take account of changing circumstances without the need for a private bill every time the trust must change, which the trustees consider to be a waste of charitable funds and parliamentary time.

The Convener: Would you care to highlight any particular aspects that are out of date and need to be changed?

Marianne Baird: One of the main aspects is described in paragraph 17 of the promoter's memorandum. In the Baird Trust Order Confirmation Acts of 1939, 1957 and 1971 there are lengthy provisions on the Baird lecture, the format and delivery of which is very prescribed. We seek to change that and to produce a Baird presentation. The Baird lecture takes place every five years and comprises a series of six public lectures that are given by a minister of the Church of Scotland and thereafter published. Nowadays, public lectures are less frequently used, given the huge range of media that are now available for dissemination of information.

The idea of the lectures was to spread the word on the work of the Church of Scotland in preaching the gospel in Scotland and beyond, and on any other issues of interest connected with theology and religion. Now that we have the options of the internet, television and radio, as well as the lecture format, we would like to be able to make the lectures accessible in formats that were not available when the trust was set up.

The Convener: You mentioned the Baird lecture. The paragraph in the promoter's memorandum that deals with the lecture contains the only reference to the financial basis of the trust. Can you give the committee an idea of the current value of the trust's assets and its average annual income and expenditure?

Ronald Oakes (Baird Trust): The trust's assets are clearly displayed on our balance sheet. Current assets total £7.2 million. The trust's income from investments is £260,000. There is also interest of £25,000 and other assorted income of £6,000. Total income in 2004 was £292,000.

The Convener: Is the trust currently spending its annual income?

Ronald Oakes: In 2004, we spent £265,000. Spending can go up and down, depending on the number of applications for grants that we receive.

The Convener: You have indicated that you examined other possible legal structures for the trust, but they were not considered appropriate. Why do you think that it is essential for the trust to become a company limited by guarantee?

Alan Borthwick (Baird Trust): We considered other structures, but there are not many options. One possibility was for the charity to revert to being a trust and to the structure that James Baird set up in 1873. However, we felt that that was an outdated way of dealing with a body that has assets of such magnitude. We considered remaining incorporated by acts of Parliament, but we decided that that is not appropriate, for the reasons that we have given. That left only one option, which was for the trust to become a charitable company limited by guarantee.

Mr Kenny MacAskill (Lothians) (SNP): How will the trustees ensure that the new company remains dormant and non-trading, pending transfer from the current trust?

Alan Borthwick: The new company is currently under the control of the existing trustees, who have instructed the secretary and treasurer, Mr Oakes, to ensure that no transactions are carried out by the company until the undertaking of the current trust is transferred.

Mr MacAskill: What are the differences between the general objects and purposes of the current trust and the main objects in the memorandum of association for the new company, especially in relation to the Baird lecture or presentation?

Marianne Baird: The object of the current trust is primarily to further the work of the Church of Scotland in spreading and preaching the gospel in Scotland. The objects of the new company are expanded beyond the Church of Scotland to

"the furtherance of the Christian religion in connection with the Church of Scotland or of other churches in Scotland or beyond, and the support of such institutions".

There is another difference: in the original trust, no one who is not a member of the Church of Scotland can be a trustee, but no such restriction will be placed on trustees of the new company, which means that the pool of potential trustees is expanded. There is no provision in the Baird Trust Order Confirmation Act 1939 or the acts that amend it for people other than the trustees to be members of the charity, but the new company has provisions for open membership. Article 5 of the new company's articles of association states:

"Any person who wishes to become a member ... shall lodge with the Company a written application for membership signed by him accompanied by a written declaration that he endorses and will uphold the objects of the Company Membership may only be refused for good and proper reasons."

Mr MacAskill: Thank you. We cannot oppose anything secular or ecumenical such as that.

Paragraph 22 of the promoter's memorandum states that the new company's memorandum of association permits wider powers of investment than those specified in the 1939 act. In what way are the new powers wider and what controls are placed on them? You probably touched on that in your previous answer.

Alan Borthwick: The current trust's investment powers are restricted by the Trustee Investment Act 1961 and subsequent similar legislation. The memorandum of association of the new company widens those powers somewhat and allows the trustees to have greater discretion in the range of investments that they can choose. That is in line with part 3 of the Charities and Trustee Investment (Scotland) Bill, which Parliament is currently considering, so our new constitution is entirely consistent with what is intended—it is only an intention, of course—in the Charities and Trustee Investment (Scotland) Bill. The broad summary is that the new memorandum of association is less restrictive.

Mr MacAskill: How will reorganisation of the Baird Trust aid public scrutiny of the trust?

Alan Borthwick: Public scrutiny will increase. In addition to the current arrangements for scrutiny by the Inland Revenue and the Office of the Scottish Charity Regulator, the annual accounts will have to be lodged with the registrar of companies at Companies House, changes of trustees and secretary will have to be intimated to Companies House—which, as you know, is a public register—and the public will have the right to inspect the company's statutory books at its registered office.

Trish Godman (West Renfrewshire) (Lab): Paragraph 30 of the promoter's memorandum states that the Inland Revenue sought some minor amendments to the constitution of the new company. Will you tell me what they were and whether the Inland Revenue is content to recognise the new company as a registered Scottish charity?

Alan Borthwick: The Inland Revenue is happy to recognise the new company as a Scottish charity. It sought two changes, the first of which related to the opening up of membership of the Baird Trust. The Inland Revenue asked that our basis for turning down applications for membership be less restrictive and said that we must have reasonable cause to refuse membership. On reflection, we were happy to agree to that.

The other change that the Inland Revenue requested was to a provision in the new constitution that had been carried over from the old one, under which the trustees were entitled to receive an attendance allowance over and above routine expenses for attending trustee meetings. The Inland Revenue suggested that we delete that provision from the new constitution; the trustees were happy to agree to that.

Trish Godman: What was the nature of the clarifications that the Church of Scotland and the Office of the Scottish Charity Regulator requested?

Alan Borthwick: The Church of Scotland wanted clarification on the expansion of the range of beneficiaries from the Church of Scotland into the Christian religion more widely. We gave the church our views on that, and it was entirely happy with the expansion.

The other matter on which the Church of Scotland wanted clarification was whether our new constitution would allow the trust to donate to the housing and loan fund, which is a special Church of Scotland fund that the Baird Trust has supported over a number of years. We had a dialogue with the church and it is perfectly happy with the outcome.

Trish Godman: Paragraph 28 of your memorandum lists about seven current trusts. If you increase that number—which seems to be your intention—will that have any effect on the existing trusts? I suppose that those trusts get regular grants from you and that, if you increase the number of trusts, it might have an effect on how much money trusts might get. What kind of discussions, if any, have you had with those groups about what will happen after the reorganisation?

15:30

Alan Borthwick: The seven trusts that are listed are just a sample—there are many more beneficiaries, but those are the seven that we consulted. We wrote to them and explained exactly what the changes would mean, as we are required to do under the parliamentary private bill procedures. There were no adverse comments from those who responded.

Scott Barrie (Dunfermline West) (Lab): I would like to clarify a point that arose in relation to OSCR. As you know, Parliament is currently handling stage 2 of the Charities and Trustee Investment (Scotland) Bill. Have you thought about how any changes that you are proposing might be affected by that bill?

Alan Borthwick: We are aware of the proposed legislation. We have studied the McFadden report and have been following the progress of the bill with interest. As matters stand, there is no change that we want to make at this stage in respect of what is intended in the Charities and Trustee Investment (Scotland) Bill.

Scott Barrie: It is important that you do not propose a change only to discover that other legislation has an impact on the situation.

Alan Borthwick: Absolutely.

Mr David Davidson (North East Scotland) (Con): Will the change result in any savings in administration costs to the trust?

Ronald Oakes: I do not think so. However, by the same token, I do not expect there to be any additional costs.

Mr Davidson: Are you aware of any amendments that might have to be lodged that might deliver more clearly what you are trying to achieve?

Alan Borthwick: We are not aware of any such amendments.

Mr Davidson: Are you content that all the proposals that you have made will supply the Baird Trust with everything that it needs for the future?

Alan Borthwick: Yes.

The Convener: I thank the witnesses for their attendance. Their answers were helpful, lucid and valuable to us. We will now hear an expert legal opinion, but I ask our witnesses to remain because we might call them back if any issues arise from the legal advice.

I welcome to the meeting David Campbell from Lindsays WS Ltd. We have asked you to give us an expert legal opinion on the proposed change. It might be helpful if you could tell the committee something about your experience of trust reorganisation.

David Campbell (Lindsays WS): I am glad that you have given me this opportunity, especially as you have introduced me as an expert. I am a reporter to the inner house of the Court of Session, which deals with variation of trusts and, in particular, of trust powers. My experience is limited to six or seven reports during the past two or three years. I have never been involved in variation of a trust that has been created by statute; this is a first for me. I could find very little in text books to give me any guidance. I have no experience of this kind of variation but I hope that I can give the committee some kind of input about variation of trusts generally.

The Convener: In that case, can you tell a layman what are the Inland Revenue's criteria for recognising a body as a charitable organisation?

David Campbell: I am sorry to say that that is outwith my sphere as an expert.

The Convener: The committee will remain uninformed about that. Are there any other questions?

Scott Barrie: Perhaps Mr Campbell can help us out by telling us what he thinks is the most appropriate legal structure for the Baird Trust?

David Campbell: Nowadays the trend is for charities—especially larger ones—to have a corporate structure that is limited by guarantee. My firm has charity advisers who always recommend to their clients that they go down that road. I have not been involved in charity law as such, so I regret to say that I do not have the experience to tell you about the pros and cons, but that route is a more flexible and workable arrangement for charities than using 100-year-old conditions that, through no fault of the early 20th century draftsmen, are outdated.

Scott Barrie: In your opinion—

David Campbell: That is the norm.

Scott Barrie: What is proposed would be an appropriate structure. That is quite helpful; it helps me out anyway.

Paragraph 20 of the promoter's memorandum states that

"the Articles of Association of Newco are drafted to reflect"

good administrative practice for a modern charity. Do you agree with that, and if so, why?

David Campbell: I have been concentrating more on the memorandum and the variation of powers, which reflects my experience in dealing with trusts. Articles of association are working regulations for a corporate body; again, if the committee seeks expert input on that, you are looking for someone with a strong corporate background. I regret to say that my background is

general and limited to variation of trusts going before the Court of Session. I am afraid that I cannot answer that question.

Mr Davidson: At this stage, would you recommend that any particular areas of the bill require amendment to fulfil the purposes that the promoter seeks?

David Campbell: I compared the powers clause in the memorandum of association to the objectives of the trust as currently drafted in the three acts of Parliament. I do not think that section 20 of the 1939 act has been varied by the Baird Trust Order Confirmation Act 1957 or the Baird Trust Order Confirmation Act 1971. I compared that section to paragraph 3.1 on pages 1 and 2 of the memorandum of association. In 1939, the wording limited the trust to furthering the work of the Church of Scotland; I think that it says "the established church". You heard earlier that that is being broadened to include the Church of Scotland and other churches in Scotland. I thought that that was not necessarily a major change but a change that is worthy of note. If the trust had come before me as a reporter to the court, I would have highlighted that point. I am not saying whether it is good or bad: it is a matter for the court to say whether such a change represents an appropriate widening of purposes.

The second change is an increase in powers to include areas furth of Scotland. The powers in the 1939 act were limited to

"preaching of the Gospel in Scotland ... among the population of Scotland".

There was no foreign element—I include England in that. The act mentioned home mission work, which the Church of Scotland still does. There are one or two wee changes, including removal of the phrase:

"including the Highlands and Islands."

In 1939 there seemed to be an emphasis on populated areas. The Highlands and Islands were mentioned specifically, but that phrase has now been dropped from the draft memorandum and articles. The word "church"—with a small or capital C—is not defined in the current draft memo.

The other matter that sprang to my mind, because I know that it comes quite often before the Court of Session, is the obtaining of professional indemnity insurance by the trustees. Talk of the Charities and Trustee Investment (Scotland) Bill, which is passing through Holyrood, has reminded me that I should have checked the position on indemnity insurance for charitable trustees. I know that the court has strict rules. In one case, the trustees of Dollar Academy sought an extension of their powers, which the court said would be fine in certain limited circumstances; the inner house of the Court of Session has followed

that decision since. I have a brief summary of the conditions, which I could read out, but that is perhaps too technical.

The Convener: Does anyone have any questions about that?

Mr Davidson: I want to press Mr Campbell a little. You brought up the Charities and Trustee Investment (Scotland) Bill, which is going through the Scottish Parliament. Are you suggesting—or even hinting—that the final stages of the Baird Trust Reorganisation Bill should not be completed until the Charities and Trustee Investment (Scotland) Bill has been dealt with, in case it changes things? Alternatively, do you think that the Baird Trust Reorganisation Bill, as drafted, will provide the required freedom to deal with any eventual changes?

David Campbell: Modern trustees, who are not necessarily remunerated, as opposed to company directors, who are often extremely well remunerated, will generally seek some kind of indemnity cover for their negligence. The Court of Session has resisted that on the basis that it is an extension of powers beyond what most trusts need. I do not know whether the Charities and Trustee Investment (Scotland) Bill will give charities powers to seek indemnity insurance. I meant to check that. Of course, that bill is changing all the time.

The Convener: We are not finished with it yet.

Mr Davidson: That was the purpose of the question. Mr Campbell is talking about something that will be set in tablets of stone, according to the promoter.

David Campbell: That is not necessarily the case; the memorandum and articles can be changed by special resolution of the company. I do not think that they have to come back here for approval.

Mr Davidson: They will not, if the bill is passed. However, we have an obligation to ensure that the bill is all-encompassing and will take account of variations that might come along.

My original question was not so much about what changes the bill seeks to make to previous acts, but about whether there are any parts of it—apart from those relating to indemnity—that you feel may be amended during the parliamentary process. Which parts of the bill could be amended and what would be the advantage of doing so?

15:45

David Campbell: I do not think that there was anything beyond the four points that I mentioned, which were the major ones that I found. Any other changes that I had in mind were minor and I do not consider them to be particularly worthy of note.

Mr Davidson: Finally, is there anything that you would like to be included in the bill that has not been included?

David Campbell: No. As far as I can see, the bill is a mechanism for the dissolution of the existing Baird Trust and the creation of a modern, 21st century charitable trust. I suggest no changes to the bill as drafted.

The Convener: Are there any more questions?

Scott Barrie: How will reorganisation of the Baird Trust aid public scrutiny of the trust's activities?

David Campbell: That question has already been answered; I have nothing to add. The new body will be a limited company that will have certain return obligations to Companies House.

The Convener: As there are no more questions, I thank David Campbell very much for the information that he has provided, especially his view that the conversion would bring the trust into the 21st century.

In the light of the information that we have received, I invite the representatives of the promoter to return to the table, as we have one more question that relates to an issue that Scott Barrie and David Davidson raised. Does the proposed model for the trust require to be in line with the Charities and Trustee Investment (Scotland) Bill? In other words, if that bill is amended, will the trust require to be changed to remain in line with it?

Alan Borthwick: I would say that it would not. The Baird Trust Reorganisation Bill is a simple bill that seeks to transfer assets and liabilities to the new company. Any legislation that the Scottish Parliament enacts subsequent to passing the bill will surely apply to the new company. I do not think that there are any changes of which we will need to take account.

Mr Davidson: Do the trustees have anything to say on indemnity, which Mr Campbell mentioned?

Alan Borthwick: As far as I am concerned, the constitution of a company limited by guarantee would contain a fairly standard clause on that. I have seen such clauses many times. The trust does not have professional indemnity insurance, nor has there been any discussion about taking it out. Perhaps that is something to consider in the future, but there is no intention to effect such cover.

Mr Davidson: Thank you for clarifying that.

The Convener: For clarity, are you sure that if the reorganisation of the Baird Trust goes ahead, it will be in line with the Charities and Trustee Investment (Scotland) Bill, as enacted?

Alan Borthwick: Yes.

15:49

Marianne Baird: That is certainly our intention.

Meeting continued in private until 16:00.

Alan Borthwick: The reorganisation will be in line with the Charities and Trustee Investment (Scotland) Bill as it stands at present, but it could obviously change.

The Convener: Thank you for that.

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