

BAIRD TRUST REORGANISATION BILL

PROMOTER'S MEMORANDUM

INTRODUCTION

1. This document relates to the Baird Trust Reorganisation Bill introduced in the Scottish Parliament on 27 October 2004. It has been prepared by Brechin Tindal Oatts (Solicitors) on behalf of the promoter, the Trustees of the Baird Trust, to satisfy Rule 9A.2.3(b) of the Parliament's Standing Orders. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.

2. Explanatory Notes and other accompanying documents published by the Parliament are available separately as SP Bill 27-EN. That document contains details of the accompanying documents published by the promoter, and where those documents may be inspected or purchased.

OBJECTIVE OF THE BILL

Summary

3. The objective of the Bill 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").

4. 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Trust will be dissolved and the Acts of Parliament under which it was established and its constitution amended will be repealed.

Background

5. James Baird established a trust called The Baird Trust by Deed of Trust dated 2 July 1873 (hereinafter called "the Original Trust"). In broad outline, his object was (in the words of the said 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."

6. By virtue of the Baird Trust Order Confirmation Act 1939, the then trustees of the Original Trust became incorporated by the name of “The Baird Trust” and by that name became a body corporate with perpetual succession; the trust fund was vested in the Current Trust; and the Original Trust was superseded and cancelled.

7. The 1939 Act was amended in 1957 and again in 1971.

The need for change

8. While the general thrust of the Current Trust is still appropriate, times have changed and the Trustees believe that their powers as specified in the 1939 Act (as amended) are out of date and in some respects unsuitable and impracticable for the best application of the Current Trust’s charitable funds. Accordingly, they believe that the objectives of the Current Trust require updating, as do the powers of the Trustees, to ensure proper regulation and administration.

9. The only method of amending the objectives of the Current Trust and the powers of the Trustees is to promote an Act of the Scottish Parliament.

10. The Trustees, conscious of the unpredictability of ecclesiastical and business matters and changing legislation are concerned that in the future further amendments may be required to the objectives of the Trust and the powers of the Trustees. The cost of procuring the necessary private legislation would be substantial and the Trustees are of the opinion that such recurring expenditure would not be a proper use of charitable funds.

11. The Trustees are of the opinion that there is now no good reason why the Current Trust should remain as a body corporate incorporated by Act of Parliament.

12. The Trustees have examined alternative legal structures and have concluded that a charitable company limited by guarantee would best secure their objectives. In the future, this approach will allow account to be taken of changing circumstances without the need for a Private Bill every time a change is proposed.

13. For the above reasons the Trustees wish to transfer the whole property, right, interests and liabilities of the Current Trust to Newco.

The Current Trust and Newco

14. Newco was incorporated under the name “The Baird Trust” on 23 August 2002 as a company limited by guarantee, has company number SC235853 and has its registered office at 182 Bath Street, Glasgow, G2 4HG. It is a dormant company, has never traded and presently has no assets or liabilities. The Trustees will ensure that Newco remains dormant and non-trading, and therefore without assets or liabilities, pending the transfer to it of the whole property, rights, interests and liabilities of the Current Trust.

15. The Current Trust is recognised as a Scottish Charity by the Inland Revenue. Its charity number is SC 016549. By agreement with the Inland Revenue, Newco will be recognised as a

Scottish Charity under the same charity number with effect from the date on which the whole property, rights, interests and liabilities of the Current Trust are transferred to Newco.

16. The general objects and purposes of the Current Trust are contained in section 20 of the 1939 Act. These are as follows:

- “(1) To further the work of the church in Scotland the spreading and preaching of the Gospel in Scotland in connection with the church and the mitigation of spiritual destitution among the population of Scotland particularly in populous places where such destitution is most prevalent;
- (2) To assist the funds and schemes of the church relative to Scotland and in particular the funds and schemes with respect to home mission work including the Highlands and Islands and church extension the maintenance of the ministry the support of aged and infirm ministers the religious instruction and education of youth and other similar schemes;
- (3) To assist in the building repair and renovation of churches church halls training colleges for the ministry and other buildings in connection with the church and the endowment of churches with a view to their erection into parish churches whereby a distinct territory is definitely assigned to churches so erected;
- (4) To augment the stipends of ministers where this is deemed necessary or advisable by the Trustees and the Trustees are satisfied with the work done by the ministers;
- (5) To provide or assist in providing pensions to ministers;
- (6) To assist students who intend to become ministers of the church in obtaining an adequate education and in preparing and equipping themselves for the ministry of the church;
- (7) To produce and disseminate literature for the purpose of promoting the objects and purposes of the Trust.”

17. Section 21 of the 1939 Act also made specific provisions regarding an endowment for the lectureship known as “the Baird Lecture”. Section 21 of the 1939 Act was repealed and re-enacted by section 5 of the 1957 Act and so the Current Trust’s objective as regards the Baird Lecture is now as follows:

- “(1) In addition to implementing the foregoing objects and purposes the Trustees shall (subject as after-mentioned) annually appropriate out of the revenue of the Trust Fund the sum of three hundred pounds and shall use such sum to form an endowment fund (hereinafter referred to as “the endowment fund”) for the lectureship founded by the Truster [i.e. James Baird] and known as and hereinafter referred to as “the Baird Lecture”.
- (2) The maximum amount of the endowment fund shall be such a sum as the Trustees may from time to time determine provided that if at any time the maximum amount of the endowment fund so determined shall be exceeded by reason of the annual sums appropriated as aforesaid such appropriation shall forthwith be suspended until such time as the amount of the endowment fund shall fall below the said maximum and thereafter such appropriations shall be resumed.

- (3) The following terms and conditions shall be attached to the Baird Lecture namely:
- (a) The Baird Lecture shall be delivered as often as the Trustees shall from time to time determine but so that in any event not more than five years shall elapse between successive Baird Lectures;
 - (b) A lecturer (hereinafter in this section referred to as “the lecturer”) shall be appointed by the Trustees not less than one year before the date fixed by the Trustees for the next Baird Lecture;
 - (c) The lecturer shall be a minister of the Church [i.e. the Church of Scotland] who has been ordained for not less than five years or a minister of any other of the Scottish Presbyterian Churches who has been ordained for a similar period in his own church and in making the appointment care shall be taken by the Trustees to choose a man of piety ability and learning who is approved and reputed sound in all the essentials of the Christian truth;
 - (d) Each Baird Lecture shall consist of a course of not less than six lectures on any subject bearing on theology Christianity church organisation and work or such other kindred subject as the Trustees may decide;
 - (e) The Baird Lecture shall be advertised by the Trustees and shall be delivered publicly at such time and at such place as may be appointed by the Trustees;
 - (f)
 - (i) Each Baird Lecture shall be published as soon as possible after the completion of the course of lectures of which it is comprised and not later than a date to be fixed by the Trustees;
 - (ii) Such publication shall be carried out by the lecturer to the satisfaction of the Trustees and save in respect of payment of the cost of such publication as after-mentioned the Trustees shall not incur any liability in consequence of such publication;
 - (iii) Not less than seven hundred and fifty copies of each Baird Lecture shall be printed and of these there shall be deposited free of charge two copies in the library of each of the Scottish universities two copies in the library of the General Assembly of the Church and of each of the other Scottish Presbyterian Churches and one copy in each of the theological libraries connected with the said universities and the Scottish Presbyterian Church colleges;
 - (iv) The surplus copies of such publication shall be available for purchase by the public at such price as shall be determined by the Trustees from time to time and the proceeds of the sales thereof shall be received by the Trustees and added to the endowment fund;
 - (g) All costs incidental to the advertising and delivery of the Baird Lecture and to the publication thereof shall be paid by the Trustees out of the endowment fund;
 - (h) The lecturer shall be paid out of the endowment fund an honorarium of such sum as the Trustees may from time to time determine and payment of such honorarium shall be made in equal moieties the first moiety being

payable to the lecturer on completion of the course of lectures and the second moiety being payable on publication of the Baird Lecture given by him and in addition the lecturer shall be paid such a sum as shall be fixed by the Trustees in respect of the travelling expenses (if any) as have been incurred by him.”

18. The main objects in the Memorandum of Association of Newco are as follows:

“3.1 The Company’s objects are 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 and in furtherance thereof but not otherwise:

3.1.1 to take over and assume the whole assets and liabilities and generally the whole undertaking of the entity known as “The Baird Trust” (a Scottish Charity, charity number SCO16549) incorporated by Act of Parliament under and by virtue of the Baird Trust Order Confirmation Acts 1939, 1957 and 1971 and with a view to intromitting, managing, discharging and generally dealing with the same in furtherance of the Company’s objects thereafter in this regard:

- (1) to assist the funds and schemes of the church relative to Scotland and in particular the funds and schemes with respect to home mission work and church extension the maintenance of the ministry the support of aged and infirm ministers and their families the religious instruction and education of youth and other similar schemes:
- (2) to assist in the building repair and renovation of churches church halls training colleges for the ministry and other buildings in connection with the church and the endowment of churches with a view to their erection into parish churches whereby a distinct territory is definitely assigned to churches so erected:
- (3) to augment the stipends of ministers where this is deemed necessary or advisable by the Trustees and the Trustees are satisfied with the work done by the ministers:
- (4) to provide or assist in providing pensions to ministers and their dependants:
- (5) to assist ministers, and students who intend to become ministers of the church, in furthering or obtaining an adequate education and in preparing and equipping themselves for the ministry of the church:
- (6) to assist ministers of the Church in furthering their ecclesiastical education and/or skills:
- (7) to produce and disseminate literature for the purpose of promoting the objects and purposes of the Company:
- (8) to produce or assist with or facilitate the production of “The Baird Presentation” being the dissemination to the public and the world at large in such format and frequency as the Trustees shall determine

of information and opinion bearing on the work of the Church of Scotland or of other Churches in Scotland or beyond and/or on the spreading and preaching of the Gospel in Scotland and beyond, and/or on issues of interest connected with theology or religion, all as determined by the Trustees from time to time.”

19. The members and directors of Newco are the current Trustees of the Current Trust. (The Directors of Newco are called “trustees” in the Memorandum and Articles of Association of Newco and hereinafter referred to as “Newco Trustees”).

20. It is the Trustees’ opinion that the Articles of Association of Newco are drafted to reflect good practice in the context of the administration of a modern charity, established primarily to donate funds to specific projects or causes.

21. Against that background, the following matters should be noted:

- (a) Membership of Newco is under the control of the Newco Trustees. Any person may apply to be a member by written application accompanied by a written declaration that the applicant endorses and will uphold the objects of Newco. Newco Trustees will then consider the application and may only refuse to admit any person for good and proper reasons. Newco Trustees are automatically members but if any Newco Trustee ceases to be a Newco Trustee, his or her membership automatically lapses.
- (b) The minimum number of Newco Trustees shall be five. There is no maximum number.
- (c) There is no power to appoint alternate trustees. It is felt that a trustee of a charity such as The Baird Trust serves as a trustee because of his or her personal skills and it is therefore inappropriate to appoint alternates.
- (d) Newco Trustees retire by rotation – essentially each trustee stands for re-election every three years.
- (e) A Newco Trustee must vacate office if:
 - the Newco Trustee is prevented by law from being a director of a company;
 - the Newco Trustee becomes bankrupt;
 - the Newco Trustee suffers from severe mental disorder;
 - the Newco Trustee becomes incapacitated for a period in excess of six months;
 - the Newco Trustee is absent for more than three successive meetings of the Board held on any period of eighteen months and the Board resolves to remove him or her from office; and
 - the Newco Trustee has been convicted of a criminal offence involving dishonesty.
- (f) The 1939 Act (as subsequently amended) currently empowers the trustees to receive remuneration each year divided amongst them in accordance with the

number of meetings which each trustee has attended in that year. However, the Newco Trustees have agreed that they will not receive any such remuneration and have removed all reference to remuneration from the Memorandum of Association of Newco.

22. The Memorandum of Association of Newco permits wider powers of investment than those specified in the 1939 Act (as amended).

ALTERNATIVE APPROACHES

23. As set out in paragraphs 8 to 13, the Trustees consider that a charitable company limited by guarantee would best secure their objectives. The constitution of the Trust cannot be changed in this way other than by means of the Bill.

24. The alternative approach, to update the constitution by way of private legislation retaining the Trust as a body constituted by Act of Parliament, was considered and was the subject of early consultation with the Inland Revenue with regard to the Trust's charitable status. However, this approach would have meant that the Trust would require a further Act of Parliament for any future amendment intended to keep the Trust in tune with changing ecclesiastical and business matters as well as changing legislation. The cost of procuring private legislation to this end was considered an inappropriate use of Trust funds and of parliamentary time.

25. If the Trust was not to continue as a body constituted by Act of Parliament, then it required to consider other forms of constitution. The Trust considered that it should continue to be formally constituted as a body corporate but could not constitute as a company limited by shares, as this is contrary to charity law. Therefore a company limited by guarantee, as the accepted corporate form for charities, was the most suitable option available to the Trust.

CONSULTATION

26. Consultation, by way of an exchange of correspondence, initially took place with the Inland Revenue (between June and November 2001) regarding the option of retaining the Trust's constitution by Act of Parliament, whilst amending the terms of that constitution. The amendments proposed by the Trust found favour with the Inland Revenue at that time, however the Trust further considered its options and decided to go forward to amendment of its constitution to that of a company limited by guarantee.

27. Further consultation, again by an exchange of correspondence, was carried out with the Inland Revenue (between April and June 2002) regarding the proposed change to a company limited by guarantee. Draft Memorandum and Articles of Association for Newco were provided to the Inland Revenue who confirmed at that time that this proposed new constitution would be recognised as a charity by the Inland Revenue.

28. In August and September 2003, consultation was carried out with the following bodies, each of which was sent a letter explaining the proposed change in the Trust's constitution in similar terms to the explanation set out in paragraphs 3 to 22 above:

- the Inland Revenue;
- the Scottish Charities Office/the Office of the Scottish Charity Regulator;
- Scott Moncrieff, the Current Trust's accountants and auditors;
- the Bank of Scotland, the Current Trust's bankers;
- the Church of Scotland;
- Historic Scotland;
- the Scottish Churches Architectural Heritage Trust;
- the Ferguson Bequest Fund;
- the Renfield Street Trust;
- the following organisations, that are in receipt of grants or recurring grants from the Current Trust:
 - Lodging House Mission;
 - Ruchill Church Youth Outreach Project;
 - Bridgeton, St Francis-in-the-East;
 - Hospital Chaplain, Gartnavel General Hospital;
 - Lamlash Parish Church;
 - Williamwood Parish Church;
 - Kelvinside Hillhead Parish Church.

29. Consultees were selected on the basis of the following aspects:

- governmental and regulatory bodies;
- the auditors, as independent assessors of the charity's accounts;
- user groups;
- other interested parties, such as the Church of Scotland and the Trust's bankers.

30. The Church of Scotland and the Office of the Scottish Charity Regulator sought clarification of the proposals. The Inland Revenue sought some minor amendments to the constitution of Newco. The Trustees accepted the Inland Revenue amendments and all the above consultees were advised of the amendments by letters sent out in April 2004.

31. By July 2004 all but 2 of the above consultees had replied. Historic Scotland and the Scottish Churches Architectural Heritage Trust had not replied. The consultees that have replied have all stated that they have no objections to the Trust's proposals.

This document relates to the Baird Trust Reorganisation Bill (SP Bill 27) as introduced in the Scottish Parliament on 27 October 2004

32. The Trust owns heritable property in Glasgow and the effect of the Bill will be to vest ownership in that property in Newco. Appropriate notification of the Bill has been sent to all persons whom the Trustees know to have an interest in the heritable property owned by the Trust.

*This document relates to the Baird Trust Reorganisation Bill (SP Bill 27) as introduced in the
Scottish Parliament on 27 October 2004*

BAIRD TRUST REORGANISATION BILL

PROMOTER'S MEMORANDUM

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2004.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary
Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

