



# The Scottish Parliament

## **Economy, Energy and Tourism Committee**

### **2nd Report, 2008 (Session 3)**

### **Stage 1 Report on the Scottish Register of Tartans Bill**

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**2nd Report, 2008 (Session 3)**

## **Stage 1 Report on the Scottish Register of Tartans Bill**

**Published by the Scottish Parliament on 6 June 2008**





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## Economy, Energy and Tourism Committee

### 2nd Report, 2008 (Session 3)

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# The Scottish Parliament

## **Economy, Energy and Tourism Committee**

### **Remit and membership**

#### **Remit:**

To consider and report on the Scottish economy, enterprise, energy, tourism and all other matters falling within the responsibility of the Cabinet Secretary for Finance and Sustainable Growth apart from those covered by the remits of the Transport, Infrastructure and Climate Change and the Local Government and Communities Committees.

#### **Membership:**

Brian Adam (Deputy Convener)  
Gavin Brown  
Christopher Harvie  
Marilyn Livingstone  
Lewis Macdonald  
Tavish Scott (Convener)  
Dave Thompson  
David Whitton

#### **Committee Clerking Team:**

##### **Clerk to the Committee**

Stephen Imrie

##### **Senior Assistant Clerk**

Katy Orr

##### **Assistant Clerk**

Gail Grant







# The Scottish Parliament

## Economy, Energy and Tourism Committee

### 2nd Report, 2008 (Session 3)

#### Stage 1 Report on the Scottish Register of Tartans Bill

The Committee reports to the Parliament as follows—

#### INTRODUCTION

1. The Scottish Register of Tartans Bill<sup>1</sup> (the Bill) was introduced to the Scottish Parliament by Jamie McGrigor MSP on 25 March 2008. The Bill was accompanied by Explanatory Notes (SP Bill 8-EN), including a Financial Memorandum, and by a Policy Memorandum (SP Bill 8-PM). The Explanatory Notes have been prepared by the Scottish Government on behalf of Jamie McGrigor MSP. The Policy Memorandum has been prepared by Jamie McGrigor MSP, with the assistance of the Scottish Government.
2. On the 16 April 2008, the Parliament agreed that the Economy, Energy and Tourism Committee be appointed as the lead committee in consideration of the Scottish Register of Tartans Bill at Stage 1.<sup>2</sup>
3. The provisions of the Bill that confer powers to make subordinate legislation were referred to the Subordinate Legislation Committee under Rule 9.6.2 in order that the latter could report to the Economy, Energy and Tourism Committee as lead committee. In addition, the Convener of the Finance Committee wrote to the Committee on the Financial Memorandum accompanying the Bill. The Subordinate Legislation Committee report and the letter from the Convener of the Finance Committee are attached at annexes A and B respectively.
4. The Bill proposes to establish a Scottish Register of Tartans, requires a Keeper of the Register of Tartans to maintain and oversee the Register and new registrations, and sets out the procedures for registering new tartan designs in the Register.

<sup>1</sup> Scottish Register of Tartans Bill (SP Bill 8), <http://www.scottish.parliament.uk/s3/bills/08-TartanBill/index.htm>.

<sup>2</sup> S3M-1713 Bruce Crawford on behalf of the Parliamentary Bureau: Designation of Lead Committee—*That the Parliament agrees that the Economy, Energy and Tourism Committee be appointed as the lead committee in consideration of the Scottish Register of Tartans Bill at Stage 1.*

## BACKGROUND TO THE BILL

5. The Bill represents a revised version of a Member's Bill introduced by Jamie McGrigor MSP in the second session of the Scottish Parliament. The initial Scottish Register of Tartans Bill (SP Bill 76) was introduced on 27 September 2006, after a final proposal had secured cross-party support from 28 MSPs. The Bill was considered at Stage 1 by this Committee's predecessor at three meetings: 14 November 2006, 5 December 2006 and 16 January 2007.

6. At a debate in the Parliament on the promotion of tartan and Scotland's tartan industry,<sup>3</sup> the then Scottish Executive indicated that it was supportive of the legislation and that it would explore options for the establishment of a Register. Allan Wilson MSP, then Deputy Minister for Enterprise and Lifelong Learning stated—

“Further consideration of the proposal for a Scottish register of tartan is merited, and I propose to take that work forward by carrying out an economic impact assessment of the importance of the tartan industry in Scotland and by considering the potential economic and promotional advantages of introducing a national register. Moreover, I suggest that the Scottish textiles team and my officials engage with key players in the tartan industry on possible legislative and non-legislative options and on the way forward for a national register of tartan in Scotland.”<sup>4</sup>

7. On the basis of the commitments made by the then Deputy Minister, Jamie McGrigor MSP withdrew his original Bill on 16 February 2007.

8. On 25 October 2007, following the elections to the Scottish Parliament held on 3 May 2007, and the subsequent change of Scottish Government, Jamie McGrigor lodged a draft proposal for a Scottish Register of Tartans Bill. The Policy Memorandum for the Scottish Register of Tartans Bill states that the Bill has “the support of the Scottish Government which has assisted in its preparation and drafting.”<sup>5</sup> In addition, when giving evidence to the Committee, the Minister for Enterprise, Energy and Tourism – Jim Mather MSP - stated that “the Government supports Jamie McGrigor's member's bill, which is a good example of the Parliament working on areas of consensus.”<sup>6</sup>

9. Under Rule 9.14.3 of the Standing Orders, a member wishing to introduce a Member's Bill must first lodge with the Clerk a draft proposal consisting of the proposed short title of the Bill and a brief explanation of the purposes of the proposed Bill, together with either a consultation document or a written statement of reasons why, in the member's opinion, a case for the proposed Bill has already been established.

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<sup>3</sup> <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-07/sor0207-01.htm>

<sup>4</sup> Scottish Parliament, Official Report 7 February 2007. Col 31816

<sup>5</sup> Policy Memorandum, <http://www.scottish.parliament.uk/s3/bills/08-TartanBill/index.htm>, paragraph 2.

<sup>6</sup> Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col. 892.

10. In accordance with Standing Orders, Jamie McGrigor lodged a statement of reasons, which was considered by the Economy, Energy and Tourism Committee at its meeting of 7 November 2007. The Committee agreed that it was satisfied with the statement of reasons provided and that the proposed Bill could proceed to a final proposal. Jamie McGrigor's draft proposal for a statutory Scottish Register of Tartans Bill in session 3 receive cross-party support from 25 MSPs.

#### THE CONSULTATION PROCESS

11. The consultation process on the original Scottish Register of Tartans Bill was conducted between March 2005 and May 2005. A total of 62 responses were received from the tartan and weaving industry, local authorities and other organisations and individuals with an interest in tartan. As noted above, the Economy, Energy and Tourism Committee agreed that the consultation on the proposed Bill had been sufficient when it considered Jamie McGrigor's statement of reasons on 7 November 2007.

12. Further consultation on options for the establishment of a statutory register was carried out by the previous Scottish Executive. This included consultation and engagement with the tartan industry and other key stakeholders. Scottish Enterprise commissioned an economic impact assessment of the tartan industry in Scotland. In addition, the new Scottish Government has continued to work with an expert group, including the Scottish Tartans Authority (STA) and the Scottish Tartans World Register (STWR). The Policy Memorandum states that "there has been extensive engagement with key tartan industry stakeholders, including the holders of the existing tartan registers, to build a consensus on the way forward. The Scottish tartan industry therefore supports the proposals for a Register as set out in the Bill."<sup>7</sup>

**13. The Economy, Energy and Tourism Committee considers that adequate consultation has been conducted on the proposals contained within the Bill. It commends the Member in charge of the Bill and Scottish Government officials for building consensus within the industry around the proposal to establish a statutory Register.**

#### THE GENERAL PRINCIPLES OF THE BILL

14. The purpose of the Scottish Register of Tartans Bill is to establish a statutory Scottish Register of Tartans and designate a Keeper of the Register who is required to maintain and oversee the Register and new registrations, and establish a process for registering new tartan designs in the Register.

15. In practice, the Register will incorporate the 3,000 tartans held in the Scottish Tartans World Register (STWR) and the 6,000 tartans held in the Scottish Tartans Authority's (STA) register. Jamie McGrigor, the Member in charge of the Bill, presented this as one of the key achievements in developing the Bill. He stated—

"That the Scottish Tartans Authority and the Scottish Tartans World Register have agreed to share their tartan collections with the national Register is a

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<sup>7</sup> Policy Memorandum, paragraph 10.

major and positive step forward, as there was a previous reluctance to do this. These collections will form the cornerstones of the Register.”<sup>8</sup>

16. The tartan collections of the STA and the STWR will form the basis for the register and all new tartans will be registered in accordance with the procedures set out in the Bill and elaborated on by the Keeper of the Register.

### **The Register**

17. Section 1 of the Bill establishes the Register as a repository for the preservation of tartans and a source of information about tartans. The Register will be kept in an electronic form.

18. One of the key arguments presented in support of the establishment of a Register is that there would be economic benefit to the industry in having a single national, public register. Jamie McGrigor MSP, identified the following tangible and real economic benefits—

- *It will help promote and preserve tartan in Scotland and worldwide.*
- *It will help the tartan industry in Scotland to capitalise on the commercial opportunities that will flow from the Register.*
- *It will provide a springboard to promote the Scottish tartan industry – and open up marketing opportunities for the unique, authentic, high value, high quality products that the tartan industry in Scotland produces.*<sup>9</sup>

19. The economic impact assessment commissioned by Scottish Enterprise indicated that the overall contribution of tartan to Scotland’s GDP was approximately £350 million per annum.<sup>10</sup> It is argued that a publicly held register will provide readily accessible information on existing tartans as well as providing greater opportunities for marketing and profiling tartan. Scottish Enterprise described the economic benefit of the Bill in the following terms—

“The economic benefit will probably be an indirect benefit to the sector. We work with a lot of companies across the textile industry in Scotland and our sector groups have strong representation from tartan-related companies, primarily those in weaving and manufacturing. In general, they warmly welcome the bill because it recognises the importance of tartan as a national resource. Once the register is established, they will seek, individually and collectively, to use it as a profile-raising or promotional tool, in line with their global marketing efforts.”<sup>11</sup>

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<sup>8</sup> Jamie McGrigor MSP. Written submission to the Economy, Energy and Tourism Committee.

<sup>9</sup> Jamie McGrigor MSP. Written submission to the Economy, Energy and Tourism Committee.

<sup>10</sup> Quoted in Scottish Parliament Information Centre. (2008) Scottish Register of Tartans Bill. SPICe briefing 02/08. p.9.

<sup>11</sup> Kirsty Scott, Scottish Enterprise, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 782.

20. The Keeper of the Records of Scotland emphasised the potential importance of the cachet and kudos of a tartan being registered in a single official register for marketing purposes—

“I hope and expect that a tartan’s registration number or the fact that it appears in the register of tartans will be used in the sales and promotional aspects of the tartan industry. Alongside “Made in Scotland” or “woven in Scotland” will be the tartan’s number in the official tartan register.”<sup>12</sup>

21. The Policy Memorandum contends that the establishment of a Register will also secure the preservation of existing and future tartan designs in a public repository that “will be established permanently and in perpetuity for the nation.”<sup>13</sup> The historic archive will be kept at Register House under the auspices of the National Archive of Scotland, rather than being held privately. The Policy Memorandum describes the existing records as “piecemeal, relatively inaccessible, and run by narrow, commercial and sectoral interest.”<sup>14</sup> It further states that “there is also a risk that information in the privately held registers may be restricted for commercial or individual gain or lost or damaged and, as they are dependent on the efforts of a handful of key individuals, there is also a risk that these registers will become unsustainable in the long term.”<sup>15</sup> The Kilt Makers Association of Scotland echoed this view, emphasising that “tartan is one of Scotland’s most instantly recognised symbols and is uniquely Scottish and The Register of Tartans under The Keeper of Tartans will create a safe accessible national repository of all the old and new tartan records.”<sup>16</sup>

22. The proposed link between the Register and the Family History Centre, to be opened shortly by the National Archive of Scotland, will offer additional opportunities for those interested in genealogy to also research tartans at Register House in Edinburgh. Thus, the establishment of the Register will secure the preservation of the existing archives and future tartan designs and make them accessible to the public.

23. The principle of establishing a statutory Register appears to have been central to gaining the support of the STA and the STWR. As mentioned above, these two organisations currently hold significant private collections of tartans and the Policy Memorandum indicates that “it has been on the basis of a statutory approach to a Register that the holders of the existing private registers have agreed to share the data that they hold.”<sup>17</sup> This will allow all of the existing information on tartans to be gathered in one place for the first time.

24. The Member in charge of the Bill, Jamie McGrigor MSP, also emphasised the wider benefits of making the existing records relating to tartan more readily accessible, stating “not only will it help raise interest in tartan but it will also provide

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<sup>12</sup> George MacKenzie, Keeper of the Records of Scotland, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 763.

<sup>13</sup> Policy Memorandum, paragraph 21.

<sup>14</sup> Policy Memorandum, paragraph 36.

<sup>15</sup> Policy Memorandum, paragraph 36

<sup>16</sup> Kilt Makers Association of Scotland. Written submission to the Economy, Energy and Tourism Committee.

<sup>17</sup> Policy Memorandum, paragraph 38.

a focus for tartan for academic, family and genealogical research ...and act as a stimulus for further academic research into tartans and how they have evolved.”<sup>18</sup>

25. Some of the evidence received and heard by the Committee also referred to the cultural importance of tartan and its association with Highland and Scottish identity, particularly among the Scottish diaspora. In written evidence submitted to the Committee, Deirdre A. Kinloch Anderson articulated the broad cultural importance of tartan and the role that a Register would have in promoting this—

“From the outset this project has addressed the perceived value to Scotland of a National Tartan Register **in its widest sense**: the issue is a national one and not one confined to those who work within the Tartan Industry. The recognition and indeed the love of tartan is worldwide and the Register will, I believe, have international implications for the profile of Scotland, the tourism industry, education and inevitably also for the economy.”<sup>19</sup>

**26. The Committee recognises that the principle of establishing a statutory Register has been central to the negotiations to secure the existing tartan archives held by the Scottish Tartans Authority and by the Scottish Tartans World Register. It acknowledges the importance of protecting and preserving these archives and considers that there may be benefits in the Register being linked to the Family History Centre which will shortly be opened by the National Archive of Scotland. The Committee also recognises the potential benefits to the textile industry of the establishment of a Register.**

### **Meaning of “tartan”**

27. Section 2 of the Bill proposes that “for the purposes of this Act tartan is a design consisting of two or more alternating coloured stripes which combine vertically and horizontally to form a repeated chequered pattern.” Accordingly, the Bill proposes that the Keeper will only register designs that conform with this statutory definition. Whilst the definition of tartan in section 2 makes no reference to the need for it to be capable of being woven, Section 6(7)(c) of the Bill states that an application for the register must include “a description of the tartan including its colours, thread count and sett”. It was acknowledged in evidence that this latter provision, *de facto*, places a requirement for the design to be capable of being woven.

28. In terms of whether the definition should be extended, it should be noted that an official from the Scottish Government’s Legal Directorate commented that “there is a power under the Bill for the Keeper to issue guidance, and that may be the more appropriate place to make it clear that a tartan must be capable of being woven.”<sup>20</sup>

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<sup>18</sup> Jamie McGrigor MSP. Written submission to the Economy, Energy and Tourism Committee.

<sup>19</sup> Deirdre A. Kinloch Anderson. Written submission to the Economy, Energy and Tourism Committee.

<sup>20</sup> Neil Mojee, Scottish Government, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 904.

29. The definition of tartan contained in section 2 of the Bill was developed with industry experts and the STA and the STWR. In giving evidence on the definition of tartan, a Scottish Government official acknowledged that “to find a definition that will be acceptable to everyone who has an idea about what defines tartan would be extremely difficult” and that those drafting the Bill had “tried to frame a definition that is to be used solely for the purposes of the Bill; that is, for the Keeper of the Register of Tartans to apply to new registrations for entry in the register.”<sup>21</sup>

30. In both the written evidence submitted to the Committee and the oral evidence taken by the Committee there were divergent views on whether there should also be a reference to the capacity to weave a tartan in the definition, as well as – or in addition to – the requirement in section 6(7)(c) for the description of the tartan to include a thread count. The views fell into two distinct camps: the “modernists” holding the position that tartan was a design that could be reproduced in a number of formats including ceramics and screen prints, and the “wovenists” who were of the view that tartan was historically a woven design and that this should be reflected in the definition. That is, for the tartan to be registered there must be a requirement for a woven sample.

31. In written evidence to the Committee, the Scottish Tartans World Register argued that tartan was a woven pattern and that the Register should be a Register of woven tartans—

“They have been historically and culturally woven and were considered a cloth or plaid. Their images were not possible to produce accurately until the advent of cameras and computers. Those in painted portraits are only approximations.”<sup>22</sup>

32. Similarly, evidence submitted by Blair Urquhart emphasised the woven character of tartan—

“My contention is that tartan is first and foremost a fabric, distinguished from other fabrics in that it is woven with self coloured threads in stripes that are broadly symmetrical in repeating patterns of 6 inches or thereabouts, and that the warp and weft are broadly the same.”<sup>23</sup>

33. The division between the “wovenists” and the “modernists” was explored by the Committee in oral evidence. Whilst the “wovenist” position was based on the assumption that a tartan design is a woven design, the “modernist” position recognised the value of a minimalist definition that would be, in effect, more inclusive of a variety of designs and which could include designs developed primarily for application in other mediums, such as ceramics, screen-printing or even on the tailfin of an airplane. Mr Robin Blair, the former Lord Lyon King of

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<sup>21</sup> Mike McElhinney, Scottish Government, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 757.

<sup>22</sup> Scottish Tartans World Register. Written submission to the Economy, Energy and Tourism Committee.

<sup>23</sup> Blair Urquhart. Written submission to the Economy, Energy and Tourism Committee.

Arms, stated that “it would be a disadvantage if the definition limited designs that could be registered to those that had been woven.”<sup>24</sup>

34. Scottish Enterprise emphasised the many Scottish Textile companies involved in weaving tartan also had interests in tartan outside woven cloth and therefore that “textile companies and the wider business community derive greater benefit from considering tartan in a broader sense.”<sup>25</sup> This was reinforced by Dr Nick Fiddes, who stated—

“I do not think that a requirement that the tartan should be woven should be an essential part of the definition. A lot of the tartan goods that we sell are not necessarily woven—for example, tartan mugs or even quaichs. Normally, the tartans that we use for such goods can be woven, too, but the requirement that you raise is not an essential part of the definition.”<sup>26</sup>

35. This point was further expanded on by the Minister for Enterprise, Energy and Tourism. He observed—

“We accept and respect the varying views on woven and non-woven tartans. The fact is that most tartan is woven, but not all of it is. Again, the issue is pragmatism, and we believe that we should maximise the commercial opportunities for non-woven tartans—through measures such as screen printing, their use on ceramics and printing on to fabric—by considering tartan to be the design or pattern and not purely the woven iteration of the design. That will maximise the register’s relevance and potency.”<sup>27</sup>

36. Jamie McGrigor MSP, the Member in charge of the Bill, argued that it was important to recognise the value of the non-woven design in the context of the objective to increase the commercial benefit from tartan—

“The approach in the Bill is that the Keeper will accept registrations of tartan designs that are both woven (as the vast majority will be) and non-woven (of which the current registers receive about a handful each year). But if we are serious in the commercial intent to help the industry market itself, we should not discount the commercial and intrinsic value of the non-woven design.”<sup>28</sup>

37. An issue related to the definition of tartan and whether it should include a requirement to be capable of being woven, is that of whether an application should include a swatch (a woven sample) of a tartan. When questioned about whether a requirement of this nature would have the effect of promoting Scotland’s indigenous textile industry, Scottish Enterprise pointed out that many of the

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<sup>24</sup> Mr Robin Blair, former Lord Lyon King of Arms, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 774.

<sup>25</sup> Kirsty Scott, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 774.

<sup>26</sup> Dr Nick Fiddes, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 783.

<sup>27</sup> Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 892.

<sup>28</sup> Jamie McGrigor MSP. Written submission to the Economy, Energy and Tourism Committee.



applications to one of the existing registers came from outside Scotland so the effect would be limited—

“...the hope would be that the cloth would be woven in Scotland, but of course there would be no guarantee that it would be woven here. It is a question for the Scottish Tartans Authority as to where the majority of registrations come from, but they obviously come from global sources—there are commissioned weavers worldwide. Having to provide swatches of cloth would not have a huge impact on the Scottish industry. The wider premise of the bill would have a benefit for the Scottish industry, but having to provide swatches of cloth when registering would not make a big impact.”<sup>29</sup>

**38. The Committee recognises the divergent definitions that exist among stakeholders in relation to tartan, particularly those that pertain to whether tartan should be woven or be capable of being woven before registration is permitted. It notes the argument that by taking a minimalist approach to the definition of tartan in the Bill, the Register could be more inclusive of a variety of tartan designs, including those that may be developed for use in forms other than woven cloth.**

**39. The Committee notes that the provision in section 6(7)(c) for the description of the tartan in the application to the Register to include a thread count already places a *de facto* requirement that the design be capable of being woven. However, the Committee is of the view that tartan has been historically defined by its woven character. The Committee therefore suggests that the Member in charge considers bringing forward an amendment should the Bill proceed to Stage 2 consideration that broadens the definition to include the requirement that the design should be capable of being woven.**

**40. The Committee considers that the evidence is inconclusive as to whether a requirement to include a swatch with an application to register would help promote the textile industry in Scotland or whether the cost of producing a swatch would act as a deterrent to some applicants. The Committee therefore calls on the Member in charge to address this issue in the Stage 1 debate in order to inform a decision by the Committee on whether it wishes to revisit this issue at Stage 2.**

### **Keeper of the Scottish Register of Tartans**

41. Section 3 of the Bill provides for the Keeper of the Records of Scotland to take on the function of Keeper of the Scottish Register of Tartans. The Policy Memorandum indicates that in running the Register, the Keeper will consult and engage where necessary with the Lord Lyon King of Arms and others with an expertise on tartan.

42. This approach differs from that in the original Bill introduced in session 2 in that it avoids the creation of an additional public body or involvement of the Lyon

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<sup>29</sup> Kirsty Scott, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Cols 787-8.

Court in the registration of tartans. This is reflected in the costs for establishing and operating the Register, which are set out in the Financial Memorandum. At a cost of £100,000 to establish the Register and £75,000 per annum to run it over the course of the three years of the current spending review period, the costs are lower than those foreseen in the original Bill (£137,868 in the first year and £95,368 in subsequent years).

43. In written evidence to the Committee, Jamie McGrigor, MSP indicated that he was “pleased that the proposals for the Register will minimise cost to the taxpayer, utilise existing public sector expertise and infrastructure and – importantly – avoid adding to the public sector landscape by creating a new public body.”<sup>30</sup>

44. In response to questioning from the Committee on the public benefit of having the Register in the public sector, the Minister for Enterprise, Energy and Tourism stated that—

“The public benefit is the added legitimacy and the increase in the number of jobs that will flow through the textile industry from the interest in tartan and from the motivation of more people to produce tartan goods. We think that the interest will be huge. ... It is a matter of raising the profile of tartan and giving it legitimacy and a central domain that people can access and browse, allowing them to see designs and to motivate themselves to produce more. The key thing is building economic value from what has been very much a latent brand to date.”<sup>31</sup>

45. In evidence to the Committee, a Scottish Government official emphasised that the public benefit was twofold: “One is preserving the archive that exists in perpetuity for the Scottish Nation” and one which allows the Scottish textile industry to promote itself.<sup>32</sup> Similarly, the former Lord Lyon King of Arms stated, “the justification for using public money to create a Register is simply that a Register would preserve what is thought to be an important aspect of Scottish culture for the nation in perpetuity rather than leave it at the mercy of a commercial operation.”<sup>33</sup>

46. In relation to whether it was appropriate for the Keeper to be the Keeper of the Records of Scotland as opposed to the Lord Lyon, as had been previously mooted, there was support for the approach taken in the Bill. The former Lord Lyon King of Arms, Mr Robin Blair, explained the reasoning behind the change in approach—

“When we looked into the details of how the previous proposal might work, we realised that the Lyon court is not constituted in a form that would enable it to hold the register. Legislation might be required at Westminster because a lot of the functions that are carried out by Lyon are not devolved.

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<sup>30</sup> Jamie McGrigor MSP. Written submission to the Economy, Energy and Tourism Committee.

<sup>31</sup> Jim Mather MSP, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 894.

<sup>32</sup> Mike McElhinney, Scottish Government, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 906.

<sup>33</sup> Mr Robin Blair, former Lord Lyon King of Arms, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 788.

Secondly, and perhaps more crucially, the Court of the Lord Lyon is a court of law. In Scotland, uniquely, heraldry is governed by a legal court. That does not happen anywhere else in the world. It would be difficult for a judicial operation to carry out the administrative function of registering tartans. If an application to register a tartan conflicted with the views of a clan chief, somebody would have to make a decision, and it would almost certainly be the Lord Lyon. The Lyon court would be in an impossible position.”<sup>34</sup>

**47. The Committee is of the view that it is appropriate that the Keeper of the Records of Scotland be the Keeper of the Scottish Tartans Register, and acknowledges that this avoids the establishment of a new public body. The Committee considers that there is a particular benefit to the Keeper of the Records of Scotland taking on this role in terms of the preservation of the existing records relating to tartan and the classification of tartans for public use.**

**48. The Committee recognises that much of this information already exists in two, privately owned registers. However, there are serious questions as to the accessibility and also the long-term preservation of historical information.**

#### **Functions of the Keeper**

49. Section 4 sets out the functions of the Keeper of the Scottish Register of Tartans. It confers the functions of establishing, keeping and maintaining the Register. It includes a requirement for the Keeper to make the Register available on a website, or by other electronic means, to the public. It also requires the Keeper to make appropriate arrangements for the care and preservation of documents or physical things connected to the registration of tartans. On payment of an appropriate fee, the Keeper will allow members of the public to inspect the documents and other physical aspects relating to the Register of Tartans.

50. An area that the Committee explored in oral evidence that is not included on the face of the Bill, other than in reference to the general requirement in section 4(1) for the Keeper to maintain the register, is the classification of tartans and whether this could protect the unique value of some of the historic, clan-based tartans. Unless there are duplicates in the existing registers, the new Register will see approximately 9,000 tartans once it has been established.

51. The STA currently operates a degree of classification in its register, including such categories as family, clan, corporate, geographical and military/regimental. Brian Wilton of the STA pointed out that a tartan might come under a number of categories: “A corporate tartan, for example, might also be a sporting tartan if the corporate body is a sporting body and it might also be a rugby tartan.”<sup>35</sup> This view as reinforced by Dr Nick Fiddes, who observed—

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<sup>34</sup> Mr Robin Blair, former Lord Lyon King of Arms, Scottish Parliament Economy Energy and Tourism Committee, *Official Report, May 2008*, Col781.

<sup>35</sup> Brian Wilton, Scottish Parliament Economy Energy and Tourism Committee, *Official Report, 14 May 2008*, Col 771.

“I think there are still on-going discussions about how the National Archives of Scotland will handle classification. An element of classification is certainly useful, but the reality is that classification often ends up being arbitrary, because particular tartans can slot into several different categories.”<sup>36</sup>

52. The Keeper of the Registers of Scotland acknowledged that “we require to classify tartans to allow people to find them” but that the approach adopted was “not to put the provision in the bill but to make it part of the way in which the register will operate.”<sup>37</sup> He indicated that he intended to introduce a simple approach to classification that would help to find information in the Register. The Keeper’s view was reiterated by the Jamie McGrigor MSP who stated, “the sensible approach is not to make things inflexible by including classification in statute; it is better to have classification in the secondary stage.”<sup>38</sup>

**53. The Committee is of the view that the functions of the Keeper as set out in section 4 will allow the Register to be maintained in a suitably protected environment as well as making it more accessible to the public. Whilst it recognises that primary legislation is not necessarily the appropriate place to set out the fine detail of a classification scheme, it is of the view that a classification scheme would not only facilitate access to, and searches of, the Register, but would also allow the differentiation of historically significant tartans from those developed for other purposes, such as corporate tartans. We would urge the Keeper of the Register to give very careful consideration as to how to use the classification system to differentiate those tartans that have played such an important role in our nation’s history from those that have been registered for entirely separate reasons (e.g. a corporate or sporting design).**

#### **Existing collections of tartans**

54. Section 5 provides for the Keeper to make entries in the Register in respect of tartans contained in existing collections, providing the owner or keeper of the existing collections consents.

55. In evidence to the Committee, a Scottish Government official indicated that a memorandum of understanding was being developed with the Scottish Tartans Authority in order that the latter body would cease to register tartans and that the Scottish World Tartans Register would migrate its designs to the national register. Although the Committee understands that both the Scottish Tartans Authority and the Scottish Tartans World Register have committed to making over their existing collections of tartans to the proposed new statutory register, the Committee notes that in oral evidence, the Scottish Tartans Authority indicated that it would retain its register, although it would not continue to register tartans. It perceived that this

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<sup>36</sup> Dr Nick Fiddes, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 786.

<sup>37</sup> George MacKenzie, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 901.

<sup>38</sup> Jamie McGrigor MSP, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 902.

would be “a continual two-way stream of information between the Scottish Tartans Authority” and the National Archives of Scotland.<sup>39</sup>

**56. The Committee commends the Scottish Tartans Authority and the Scottish Tartans World Register for committing to making over their collections of tartans to the proposed Register of Scottish Tartans. It considers that these existing collections will be vital in establishing a significant and comprehensive Register. The Committee urges the STA and STWR to ensure there is no capacity for ongoing confusion as to where new tartan designs should be registered.**

#### **Applications to register tartans**

57. Sections 6-9 of the Bill relate to applications to register tartans. These sections set out the processes for applying, determining and reconsidering refused applications. As intellectual property matters are reserved, a Scottish Government official emphasised that “registration does not confer any intellectual property rights, copyright or designer protection.”<sup>40</sup> Any Bill that seeks to provide for rights, trade marks etc. would be *ultra vires* and outwith the competences of the Scottish Parliament under the 1998 Scotland Act.

58. Section 6 includes provisions to ensure that an applicant seeking to register a tartan has a right to do so and that an application is sufficiently unique to warrant an entry in the register. This provision is aimed at ensuring that there is an association with any claimed name and that the tartans that are registered are sufficiently unique to warrant entry. Such an approach is designed to reduce the risk of diluting the authenticity or uniqueness of registered tartans. In relation to the naming of tartans, a Scottish Government official assured the Committee that—

“One of the criteria for registration will be that an individual who claims an association with a name or an organisation must be able to link to that name or organisation. There is nothing to prevent someone from producing a tartan for an organisation, but unless they can demonstrate that they have a viable and genuine link to the organisation it will not be accepted for registration.”<sup>41</sup>

59. The Keeper of the Records of Scotland recognised the potential difficulty of defining what constitutes a sufficient link between an applicant and their right to authorise the Keeper to register a tartan, particularly where this relates to names. However, he argued that “there has to be a discretionary power – the keeper will have to deal with it case by case.”<sup>42</sup>

60. Subsection 6(8) includes a provision disallowing an application to be made to register a tartan with a name which is the same as the name of an already

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<sup>39</sup> Brian Wilton, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 776.

<sup>40</sup> Mike McElhinney, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 763.

<sup>41</sup> Mike McElhinney, Scottish Government, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 767.

<sup>42</sup> George McKenzie, Keeper of the Records of Scotland, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 14 May 2008, Col 767.

registered tartan. A Scottish Government official suggested that the inclusion of the year of the registration including a geographical location were methods for differentiating between tartans of the same name—

“A sporting organisation or a commercial organisation might change its corporate tartan, so including the date of registration would be one possible way of ensuring that the entry was sufficiently distinct. Families might have branches in different parts of the world, so including an indication of where the family comes from would be another way of ensuring that the entry for the tartan was sufficiently distinct.”<sup>43</sup>

**61. The Committee is concerned by the lack of definition on the face of the Bill as to what constitutes a sufficient link between an applicant and their right to authorise the Keeper to register a tartan. It calls on the Member in charge to find a means of further clarifying this either on the face of the Bill or through the development of guidance by the Keeper.**

### **Fees**

62. Section 14 of the Bill provides for Scottish Ministers to specify, by order, the fee payable in respect of matters mentioned in the Act and in relation to the Register. The Policy Memorandum notes that “a reasonable level of charging for tartan registration will ensure that applications for registration are genuine and those seeking registration of a new design are serious enough about the design and its uniqueness to seek to register it in the Scottish National Register.”<sup>44</sup> In oral evidence to the Committee, the Keeper of the Records of Scotland indicated that the likely fees would be between £80 and £100. The Keeper also confirmed that the power for the Keeper to waive the fee meant that the existing registers would be incorporated into the new Register without any fees being charged.

63. When questioned about whether the Keeper will operate a full-cost recovery principle in relation to fees, the Keeper of the Records of Scotland stated that—

“We do not intend to set charges to recover the full costs of operating the register. Of course, we cannot predict the number of registrations that will be made. You will recall that in our previous evidence we indicated that the charge will be around £80 to £100. At the moment, there are about 150 registrations, which would mean about £12,000 of income. As the expected cost of running the register will be nearer to £75,000 a year, there will be a shortfall.”<sup>45</sup>

**64. The Committee is of the view that the balance between identifying a fee which does not deter genuine applicants and one that deters frivolous applicants is crucial.**

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<sup>43</sup> Mike McElhinney, Scottish Government, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 900.

<sup>44</sup> Policy Memorandum, paragraph 31.

<sup>45</sup> George McKenzie, Keeper of the Records of Scotland, Scottish Parliament Economy Energy and Tourism Committee, *Official Report*, 28 May 2008, Col 905

### **Subordinate Legislation Committee Report**

65. The Subordinate Legislation Committee submitted a report on the delegate powers provisions in the Scottish Register of Tartans Bill at Stage 1 to the Economy, Energy and Tourism Committee under Rule 9.6.2 of Standing Orders. A copy of this report is attached in Annexe A.

66. The Economy, Energy and Tourism Committee notes the clarifications provided by Jamie McGrigor MSP to the Subordinate Legislation Committee and that the latter is content with the powers under section 14 and that they are subject to negative procedure. The Economy, Energy and Tourism Committee also notes that in relation to section 16 the Bill departs from the general presumption modifications of the application of primary legislation should be subject to the affirmative procedure. The Committee accepts that the Subordinate Legislation Committee is content with the justification provided in this case at to the narrow purpose of section 16(1). **The Economy, Energy and Tourism Committee concurs with these views.**

### **Financial Memorandum**

67. The Finance Committee adopted a 'level 1' approach to scrutiny of the Financial Memorandum for the Scottish Register of Tartans Bill and did not, therefore, take oral evidence on the Bill or produce a report. A letter from the Convener of the Finance Committee with a copy of the evidence received is attached in Annexe B.

68. **The Committee is content with the Financial Memorandum.**

### **Policy Memorandum**

69. The Member in charge of the Bill prepared a Policy Memorandum, which accompanied the Bill when introduced. The Committee agrees that the Policy Memorandum provided a comprehensive explanation of the policy objectives of the Bill and that alternative approaches were considered. It is content that that an inclusive and in-depth consultation process took place, and that there was an adequate consideration of the impact of the Bill on equal opportunities, human rights, island communities, local government, sustainable development, equal opportunities, local government and business.

### **CONCLUSION**

70. **The Economy, Energy and Tourism Committee recommends that the Parliament agree the general principles of the Scottish Register of Tartans Bill.**

**ANNEXE A: REPORT FROM THE SUBORDINATE LEGISLATION  
COMMITTEE**

**Subordinate Legislation Committee**

**Scottish Register of Tartans Bill at Stage 1**

The Committee reports to the lead Committee as follows—

**Introduction**

1. At its meetings on 29 April and 13 May 2008, the Subordinate Legislation Committee considered the delegated powers provisions in the Scottish Register of Tartans Bill at Stage 1. The Committee submits this report to the Economy, Energy and Tourism Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.
2. The Member in charge provided the Parliament with a memorandum on the delegated powers provisions in the Bill.
3. The Committee's correspondence with the Member in charge is reproduced in Annexes [1](#) and [2](#).

**Delegated Powers Provisions**

4. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves sections 4 and 18 without further comment.

**Section 14: Fees**

The Committee is content that the powers taken to fix fees for the following functions listed in the Bill:

Section 4(3)(a) – the inspection of documents or physical things held by the Keeper or the copying of any such document;

Section 4(3)(c) request for information or research;

Section 4(3)(d) – such other services to the public in relation to the Register as the Keeper thinks fit

Section 6(10) – making an application for an entry in the Register

Section 8(2)(c) – a request to reconsider an application following its refusal by the Keeper (fee refundable if request granted);

Section 9(5) – obtaining a copy of a certificate of registration;



Section 10(6) – a request to amend an entry in the Register; and

Section 13(3) - obtaining a copy of an amended certificate of registration.

and that additional matters in relation to the Register in respect of which a fee may be made payable in the future, are suitable to be exercised under delegated powers.

6. The Committee requested an explanation however from Mr McGrigor in relation to the provisions contained in sections 14(4)(b) and 14(5). Section 14(4) provides that different fees may be specified (by order) for different purposes and the order may also specify the circumstances in which no fee is payable. Section 14(5) empowers the Keeper to waive a fee which has been specified by order under the Bill in such circumstances as the Keeper may specify with the approval of the Scottish Ministers. The Delegated Powers Memorandum does not explain why both provisions are necessary and how it is intended they will be used.

7. The Committee found the response provided by Mr McGrigor to be very helpful in explaining the intention behind these provisions and how it is proposed that they will operate in practice.

8. The Committee is content for Ministers to have the ability to exempt fees in particular circumstances. While the effect of waiving fees would increase the burden on the public purse, the Parliament would have the sanction of annulment of the order if it found this to be objectionable.

9. The Committee also considers that it is appropriate to provide discretion to the Keeper to waive fees in individual circumstances. A reasonable example of circumstances in which the Keeper may choose to exercise that discretion is given in Mr McGrigor's response. The Committee notes that the exercise of this power of waiver requires the consent of Ministers. Although Parliament has no role to play in that process, having consented to it on the face of the Bill, the Committee is content that this seems to be an administrative matter which can properly be left in the hands of Ministers and the Keeper as the administrator of the register.

**10. The Committee draws these provisions to the attention of the lead committee on the basis that in light of the response received from Mr McGrigor it is content with the powers available under section 14 and that they are subject to negative procedure.**

#### **Section 16: Ancillary provision**

11. Section 16(1) of the Bill provides that the Scottish Ministers may, by order, make such consequential or incidental provision as they consider necessary or expedient for the purposes of, in consequence of or for giving full effect to, any provision of this Act.

12. Section 16(2) provides that such an order may make different provision for different purposes, and may modify any enactment.

13. Section 16(3) and (4) provides that such an order shall be subject to negative resolution procedure, except where it adds to, replaces or omits the text of an Act, when the order shall be subject to affirmative procedure.

14. The Committee is content with the scope of the ancillary powers as these are framed only to enable consequential or incidental provisions for the purposes of, in consequence of, or for giving full effect to, the provisions of the ASP.

15. In relation to the procedure applied, the Committee agrees with the view in the Delegated Powers Memorandum that the separation between negative procedure and affirmative procedure (for ancillary modifications of enactments) is appropriate. However, the Committee noted that the Bill provided for affirmative procedure only in respect of modifications which add to, replace or omit any part of the text of the Act in question. Such a restriction would permit future modifications of the effect or application of an Act, other than by textual amendment, by negative procedure.

16. The Committee observed that the Act itself would make a number of modifications to enactments without making actual textual amendments. It considered that it could transpire at a later date that there are other provisions concerning the Keeper's existing statutory duties which should be disapplied and which, in contrast, the Parliament would not have the opportunity to approve. The Committee therefore asked for an explanation as to why affirmative procedure should not also apply in the circumstances where the ancillary provisions provide for the modification or disapplication of Acts without making textual amendments.

17. In his response, Mr McGrigor stated "In this case, however, any changes to primary legislation (whether textual or not) will be minor because of the narrow limits of the power in section 16(1). In these cases it is arguable that draft affirmative procedure even for textual amendment does not strike the correct balance. If the Committee agrees, I would be happy to consider amending the Bill to remove section 16(4) so that all exercises of the power in section 16(1) are subject to negative procedure."

18. While there is a general presumption in favour of affirmative procedure where power is taken to amend primary legislation the Committee accepts that this is not an absolute rule. As in relation to any delegated power, it considers that a balance requires to be struck between administrative efficiency, expediency, best use of Parliamentary time and proper scrutiny of the content of the measures brought forward having regard to its significance or effect.

19. The Committee notes that the subject matter of this Bill in essence concerns the creation of a particular register which has a narrow purpose. The ancillary powers available under section 16(1) relate to making consequential or incidental provision necessary or expedient for the purpose of giving full effect to the Bill. There must therefore be some clear connection to the purposes of the Bill and the register before the ancillary powers are available and the Committee accepts that the scope of the ancillary powers in this case are therefore restricted in scope. Nevertheless, in relation to amendments to the text of primary legislation, there is to be added to the factors to be weighed in considering any departure from the

general presumption, the value of Parliament (as the source of primary legislation) being afforded the opportunity to consent to changes to it.

20. The Committee remains of the view that draft affirmative procedure should apply to textual amendment of primary legislation arising out of the exercise of ancillary powers under this Act. The Committee is however persuaded that modifications of the application of primary legislation may be subject to negative procedure given the restricted scope of the power.

21. **The Committee draws these provisions to the attention of the lead committee on the basis that –**

**(a) it is content with the scope of the ancillary powers as these are framed only to enable consequential or incidental provisions for the purposes of, in consequence of, or for giving full effect to, the provisions of the Act;**

**(b) it is content that justification has been provided in this case for the departure from the general presumption that modifications of the application of primary legislation should be subject to affirmative procedure; it remains of the view however that textual amendment of primary legislation should be subject to affirmative procedure; it does not agree with Mr McGrigor’s suggestion that all modifications to primary legislation should be subject to negative procedure.**

## **ANNEX 1**

### **Letter from the Subordinate Legislation Committee to Jamie McGrigor MSP**

1. The Subordinate Legislation Committee considered your Bill today and seeks further information from you in relation to the delegated powers in Sections 14 and 16.

#### **Section 14: Fees**

2. The Committee asks why it is thought necessary to provide for both—

the circumstances in which fees provided by order are not payable (section 14(4)(b)); and

the power of the Keeper to waive a fee which has been specified by order (section 14(5)); and

for an explanation as to the circumstances in which the member envisages each of these powers being exercised.

#### **Section 16: Ancillary provision**

3. The Committee also asks why the draft affirmative procedure should not apply in the circumstances where the ancillary provisions modify or disapply any

enactment (without a textual amendment of the Act), given that the Bill contains examples of such provision and more may subsequently be required.

## **ANNEX 2**

### **Response from Jamie McGrigor MSP**

1. Thank you for your letter of 29th April. I welcome the Subordinate Legislation Committee's consideration of my Bill. You are seeking further information in relation to the delegated powers in sections 14 and 16.

#### **Section 14: Fees**

2. The Committee asks why it is thought necessary to provide for both—

the circumstances in which fees provided by order are not payable (section 14(4)(b)); and

the power of the Keeper to waive a fee which has been specified by order (section 14(5); and

for an explanation as to the circumstances in which the member envisages each of these powers being exercised.

3. I would respond as follows—

4. These provisions are not mutually exclusive. Section 14(4)(b) enables Ministers to identify circumstances where a person does not have to pay a fee which would otherwise be required under section 14(1) (in effect, creating an exemption or exception to the general matter so specified). In relation to the inspection of documents and other physical things underpinning the register for which a fee is payable (section 4(3)(a)(i)) the power in section 14(4)(b) might be used to exempt school children or pensioners or the inspection of all documents and other physical things on certain days, for example for "open days", exhibitions or other promotional activity planned by the Keeper.

5. Section 14 (5), by contrast, operates where a fee is payable, i.e. in relation to a matter specified by order as chargeable and where no exemption or exception has been provided for. Subsection (5) gives the Keeper discretion to waive the fee, perhaps to ensure equity in the circumstances of a particular case (but of course only with Ministers' approval). We suggest this could apply where the Keeper has received a request to amend the register under Section 10 to correct minor errors to an existing entry or to update an entry, perhaps where an applicant has subsequently noticed an administrative, clerical or other minor error, either in the application or the registration. It could be argued that a fresh request – and fee - is unwarranted and disproportionate in such instances.

#### **Section 16: Ancillary provision**

6. On ancillary provision, the Committee asks why the draft affirmative procedure should not apply in the circumstances where the ancillary provisions modify or disapply any enactment (without a textual amendment of the Act), given that the Bill contains examples of such provision and more may subsequently be required.

7. I would respond by saying that the power in section 16(1) is more limited than equivalent powers in many Acts of the Scottish Parliament (ASPs) in that it permits only consequential or incidental provision to be made. Negative procedure would normally be considered appropriate for such a limited power.

8. It is common for ASPs conferring ancillary powers to require draft affirmative procedure to apply where the powers are exercised so as to textually amend primary legislation. This is done as it is considered appropriate to allow the Parliament the opportunity to consider and vote on any proposed changes to primary legislation.

9. In this case, however, any changes to primary legislation (whether textual or not) will be minor because of the narrow limits of the power in section 16(1). In these cases it is arguable that draft affirmative procedure even for textual amendment does not strike the correct balance. If the Committee agrees, I would be happy to consider amending the Bill to remove section 16(4) so that all exercises of the power in section 16(1) are subject to negative procedure.

10. I trust this answers the points raised by the Committee and please let me know if there is further information the Committee would find useful.

**ANNEXE B: LETTER FROM THE FINANCE COMMITTEE**

**Finance Committee  
Convener: Andrew Welsh MSP**

Tavish Scott MSP  
Convener  
Economy, Energy and Tourism  
Committee  
Via Email

Room T3.60  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Direct Tel: (0131) 348 5451  
(RNID Typetalk calls welcome)  
Fax: (0131) 348 5252  
(Central) Textphone: (0131) 348 5415  
[finance.committee@scottish.parliament.uk](mailto:finance.committee@scottish.parliament.uk)

22 May 2008

Dear Tavish

**SCOTTISH REGISTER OF TARTANS BILL – FINANCIAL MEMORANDUM**

The Finance Committee considered its approach to the Financial Memorandum of the above bill and agreed to adopt level 1 scrutiny.

This level of scrutiny is applied where there appears to be minimal additional costs as a result of the legislation. Applying this level of scrutiny means that the Committee will not take oral evidence, nor will it produce a report. It will, however, seek written comments from relevant organisations through its agreed questionnaire, and then pass these comments to your committee.

One submission was received, from the Keeper of the Records of Scotland (attached). Comments were also sought from various weavers, design houses etc, but no submissions were received.

Please contact Allan Campbell, Assistant Clerk to the Committee, if you have any questions about the Committee's consideration of the Financial Memorandum.

**Yours sincerely**

**Andrew Welsh MSP  
Convener**

**Questionnaire**

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Scottish Register of Tartans Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee's scrutiny.

**Consultation**

- 1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?*

Yes, we discussed the financial assumptions with officials working on the Bill and agreed on the text of the Financial Memorandum.

- 2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?*

Yes

- 3. Did you have sufficient time to contribute to the consultation exercise?*

Yes

**Costs**

- 4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

Yes, the costs to us of operating the Register were discussed in detail and have been accurately reflected in the Financial Memorandum

- 5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

Yes, subject to the proviso that a transfer of funds of £75,000 per annum is made from Enterprise to NAS for the 2008-2011 Spending Review period.

- 6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

Yes.

**ANNEXE C: EXTRACT FROM THE MINUTES**

**8th Meeting, 2008 (Session 3), Wednesday 16 April 2008**

1. **Decision on taking item in private:** The Committee decided to take item 3 in private.
3. **Scottish Register of Tartans Bill:** The Committee considered and agreed its approach to the Bill.

**10th Meeting, 2008 (Session 3), Wednesday 14 May 2008**

**The Scottish Register of Tartans Bill:** The Committee took evidence on the Scottish Register of Tartans (Scotland) Bill, from—

Michael McElhinney, Head of Manufacturing Policy, and Helena Janssen, Senior Principal Legal Officer, Scottish Government Legal Directorate, Scottish Government;  
George MacKenzie, Keeper of the Records of Scotland;  
Mr Robin Blair, Former Lord Lyon King of Arms;  
Brian Wilton, Director of the Scottish Tartans Authority;  
Keith Lumsden, Director Scottish Tartans World Register;  
Kirsty Scott, Head of National Textiles Team, Scottish Enterprise;  
Dr Nick Fiddes, Managing, Director Scotweb

**12th Meeting, 2008 (Session 3), Wednesday 28 May 2008**

**The Scottish Register of Tartans Bill:** The Committee took evidence on the general principles of the Bill at Stage 1 from—

Jim Mather MSP, Minister for Enterprise, Energy and Tourism, Mike McElhinney, Branch Head, Manufacturing Policy and Neel Mojee, Principal Legal Officer, Education, Land and Pensions Division, Scottish Government and George MacKenzie, Keeper of the Records of Scotland;

Jamie McGrigor MSP, Mike McElhinney, Branch Head, Manufacturing Policy and Neel Mojee, Principal Legal Officer, Education, Land and Pensions Division, Scottish Government and George MacKenzie, Keeper of the Records of Scotland.

**13th Meeting, 2008 (Session 3), Wednesday 4 May 2008**

1. **Decision on taking items in private:** The Committee decided to take items 3 in private and any future items relating to the draft report for the tourism inquiry and the stage 1 report on the Scottish Register of Tartans Bill in private.
4. **Scottish Register of Tartans Bill:** The Committee discussed a draft stage 1 report.



**ANNEXE D: ORAL EVIDENCE**

**10th Meeting, 2008 (Session 3), Wednesday 14 May**

**12th Meeting, 2008 (Session 3), Wednesday 28 May**

## Scottish Parliament

### Economy, Energy and Tourism Committee

*Wednesday 14 May 2008*

[THE DEPUTY CONVENER *opened the meeting at 09:30*]

### Scottish Register of Tartans Bill: Stage 1

**The Deputy Convener (Brian Adam):** Good morning and welcome to the 10<sup>th</sup> meeting in 2008 of the Economy, Energy and Tourism Committee, in session 3 of the Scottish Parliament. I remind people to switch off mobile phones.

Agenda item 1 is consideration of the Scottish Register of Tartans Bill. Our first witnesses are Michael McElhinney, who is head of manufacturing policy with the Scottish Government; Helena Janssen, who is a senior principal legal officer with the Scottish Government legal directorate; and George MacKenzie, who is the keeper of the records of Scotland. I understand that each of you will make opening statements.

**Michael McElhinney (Scottish Government Enterprise, Energy and Tourism Directorate):** I am grateful to the committee for inviting me to be here during its stage 1 consideration of the Scottish Register of Tartans Bill. I am happy to try to answer any questions that the committee may have.

As members are aware, the bill is a revision of a member's bill that Jamie McGrigor MSP introduced in the previous session of Parliament. The principles of that bill attracted good parliamentary support, but Mr McGrigor withdrew it to allow more work to be undertaken on the options for creating a Scottish register of tartans.

Since then, a range of work has been undertaken. Scottish Enterprise commissioned an economic impact study of the tartan industry in Scotland, which gives a clearer picture of the industry than existed previously, and indicates that the industry is more significant than previous estimates suggested. The study also reveals good industry support for the principle of a single Scottish register of tartans and highlights several issues, including that the tartan industry could be better at working collectively to market itself and its products.

Extensive joint working has taken place with public sector agencies, particularly colleagues in

the National Archives of Scotland, on the options for setting up and running a register, with the intention of building on existing expertise and capability and in the spirit of enhancing the range of public services that are on offer. George MacKenzie may want to say more on that.

Importantly for the tartans register project, our main approach has been to avoid adding to the public sector landscape by creating an additional public body. We are also mindful of the need to streamline the practical approach to the register, to avoid unnecessary bureaucracy and to use existing public sector resources and bodies where possible.

We have worked intensively and closely with the tartan industry and tartan experts in Scotland to refine and adapt the approach to the register, and we will continue to do that. That has involved individual and collective discussions with industry players, focused consultation of the industry on the principles of the bill, as part of the economic impact study, and on-going active engagement with key stakeholders. We are working with an industry sub-group to refine the detail of how the register will work.

The collaborative working and a thorough and robust project management approach have been valuable in helping to resolve practical issues with the proposals in the previous bill. That approach has also been useful in confirming some key points, including agreement by the holders of the existing privately held registers to share their data with the Scottish register. We have agreed the principles on which the register will operate and we have ensured that tartan experts in Scotland will be able to play a role in supporting the register.

With industry stakeholders, we are continuing to work through the detail of how the register will work. We are working on matters such as classification of tartans in the register to ensure that the categories of tartan are identified fairly and effectively, ensuring that the register is searchable, and ensuring that woven tartans are given appropriate recognition and prominence.

The committee may have seen in the written evidence on the previous bill and the current one that a range of diverging, long-held and passionate views exist on tartan and tartan registration. We are working to take those views into account. In refining how the register will work, we have been keen to build strong links between the register and the tartan industry in Scotland. The intention is to draw out the potential commercial opportunities that will flow from the register and the increased interest in, and promotion of, tartan. Our aim is to position the tartan industry in Scotland to capitalise on commercial opportunities, and to encourage the

industry to use the Scottish national register as a springboard from which to promote the high quality and high value of the Scottish tartan industry and its products.

The Scottish Government is pleased to support Mr McGrigor with his revised bill. We will work closely with him to develop and refine the proposals.

I invite George MacKenzie to say a few words from the National Archives of Scotland perspective.

**George MacKenzie (Keeper of the Records of Scotland):** Thank you very much for the opportunity to appear before the committee.

The National Archives of Scotland is an executive agency of the Scottish Government. It looks after the nation's records, which range from the early medieval charters to the modern registers of property and legal deeds. We are also the record keeper for the Scottish Government and the Scottish Parliament.

We have been working to support the Scottish Register of Tartans Bill for three reasons. First, holding and making available public information is what we do and what we are good at doing. Secondly, as we are an existing agency with record-keeping, project management and information and communications technology expertise, we could run the register more efficiently and at lower cost than if a separate body were set up to run it.

Thirdly, we believe that the register of tartans would fit very well into the business of the National Archives of Scotland. We are heavily promoting family history at the moment, and we are due to open a new centre for family history at Register house in July. Tartans and the register will fit nicely into Scotland's people centre. We believe that people who make visits for family history will also be instinctively interested in tartan. That is why we are delighted to support the bill.

**The Convener (Tavish Scott):** Gavin Brown will start the questions from members.

**Gavin Brown (Lothians) (Con):** I have read a comment—it has been alluded to here—that we were going to be listening to the experts of the tartan industry. The issue of the definition of tartan does not appear to have been conclusively fleshed out, however. Section 2 calls it the “Meaning of ‘tartan’”. I read two submissions from the two current registers, who certainly seem to be the experts. Their clear view is that tartan “must be woven” and cannot simply be printed out. Mr McElhinney spoke about giving priority to tartan being woven. Could the witnesses give us some feedback on the definition of tartan and the importance of its being woven?

**Michael McElhinney:** The definition of tartan is problematic, as evidenced in the previous bill and the present one. To find a definition that will be acceptable to everyone who has an idea about what defines tartan would be extremely difficult. We have tried to frame a definition that is to be used solely for the purposes of the bill; that is, for the keeper of the register of tartans to apply to new registrations for entry into the register. The definition is tight.

There are divergent views on whether a tartan is woven or whether it is a design. We have been persuaded towards the wider view, which is that tartan is a design rather than the iteration to which that design is put. That encompasses woven tartan, which constitutes the majority of tartans that are produced, as well as other types of tartans, such as those that are designed electronically, designed to be screen-printed on to a product or produced on another fabric. It can be argued that the wider commercial use of tartan is as valid a commercial use as the woven tartan.

We have deliberately gone for the wider definition. However, to take into account the views of some people in the tartan industry that tartan must be woven, we are working on a set of proposals whereby, in the classification of tartans in the register, the woven sample would be given due prominence. The woven sample would be distinct and prominent within the register as the woven product. However, scope would be left in the register to include other designs. The other rationale for including some other designs is that, if we are serious about using the register to promote interest in tartan, we will want to encourage people to get interested in the design of it. That opens it up to students and schoolchildren who, although they might not have the knowledge to weave, could be interested in design.

One of the other reasons why we are interested in the design of tartan is that it might bring about a commercial opportunity and spark off a set of questions: “I have—or I think I have—designed a tartan. Where can I have it woven?” It is, in a sense, about opening up the definition to try to draw some of that through. We are working with the industry players on the classifications, so that due prominence is given in the register to woven samples.

**Gavin Brown:** Sticking with that point, the submissions from the Scottish Tartans Authority and the Scottish Tartans World Register strongly argue the case for woven tartan. Which experts say that tartan does not have to be woven?

**Michael McElhinney:** You will hear later this morning from the STA and the STWR, and they will give you a more direct view than I can. The STA has previously included tartans that are

woven in its approach to registration, but it has also included other tartans for commercial usage, which encompasses the other forms of tartan production. The STWR has taken a more traditional line, in that it concentrates on woven samples. We have, with the tartan project, consciously tried to steer a course between both those views, and to bring them together to produce a workable proposal. That is why the definition in the bill would encompass woven samples and other samples. The practical application would mean that we can define a prominent place in the register for the woven sample.

**Gavin Brown:** From my reading of the submissions, the STA and the STWR are adamant. There does not seem to be a debate between the two on the issue and both suggest extremely strongly that tartan has to be woven. Have other experts and organisations given evidence to you or your team to say that the tartan's being woven is not crucial? I am keen to know who is pushing the other side of the argument, because both those registers appear to be pushing one side together—I do not see a distinction between the two.

**Michael McElhinney:** The Scottish Tartans Authority may be able to give you that view, because at the moment it has a more open approach to registration, in that it takes woven samples and tartans that are produced for commercial use. Was the evidence that you read from the Scottish Tartans World Register?

**Gavin Brown:** I am saying that the written submissions suggest that both organisations take a very strong view on tartan being woven. I am asking who is giving the contrary view, because both those registers appear to me—at least from their written submissions—to be singing from the same hymn sheet. Who is giving the opposite view that its being woven is not critical?

**George MacKenzie:** It is interesting that you say that there are two sides. My reading is that there are divergent opinions in the industry: there are those who insist that tartan has by definition to be woven, so if it is not woven it is not a tartan, and there are those who accept that tartan can be produced in other forms. We know that it can be, because you can see it in the shops printed on paper, shortbread boxes and so on.

It is true, however, that the existing registers can distinguish between woven and non-woven; the proposal in the bill would also allow that. There is no question that we are not going to make it clear whether a tartan has been woven or not, or whether there are opportunities for people to buy woven products in a tartan. It would surprise me if the Scottish Tartans Authority said that a tartan can only be woven, and that if it is not woven it is

not a tartan, but you will have to ask it.

**Michael McElhinney:** The Scottish Tartans Authority did not submit written evidence to the committee, on the basis that it is appearing to give evidence this morning, so it may give you a clearer view then.

**The Convener:** I was asking where the evidence is, and who are the bodies that are arguing that tartan does not need to be woven. That is what the committee is interested in.

**Michael McElhinney:** The STA might tell you that in its evidence.

**The Convener:** We are asking you—we will ask the STA later on. Do you not have any evidence to give us?

**Michael McElhinney:** We do. The discussions that we have had in the industry sub-group have suggested to us that we need to encompass both woven and non-woven samples. The industry sub-group consists of the Scottish Tartans Authority, the Scottish Tartans World Register, Kinloch Anderson Ltd from Leith, and other representations from the directors of the Scottish Tartans Authority.

09:45

**Christopher Harvie (Mid Scotland and Fife) (SNP):** I have a question about the comparability of woven and non-woven tartans. I recollect that Royal Stewart tartan, which was invented by Prince Albert from Balmoral tartan, appeared in wallpaper form, as well as cloth form, almost as soon as it was created.

I am rather unhappy about the sketchy nature of the historical introduction. There is an enormous controversy about that.

**The Convener:** Could we come back to that point later?

**Christopher Harvie:** Yes.

**David Whitton (Strathkelvin and Bearsden) (Lab):** I am not clear whether the register is to be a historical document or a commercial document. Which would you say it will be?

**Michael McElhinney:** The register is intended to be a repository of the tartan designs that are held in private hands at the moment. It will encompass all the designs that the STA and the STWR currently hold. We want to offer it to the industry. By taking on the function of registration and maintaining the repository, we want to help the industry and the industry bodies to develop the capability to use tartan as a marketing tool. However, that is something that the industry will have to take the lead on; it is not something that the register can do.

The links that the register will have with the industry will help to flag up the commercial opportunities that interest in the register might create. Again, however, it will be for the industry to pursue those opportunities.

**David Whitton:** Is that why we are having a bit of trouble defining whether tartan is a woven fabric or not? It seems that anyone can design a tartan, but there is an argument about whether it would be an authentic tartan.

**Michael McElhinney:** There have always been such arguments. There are strongly held views out there about what does and does not constitute a tartan. The bill seeks to implement a process around registration that the keeper will apply to new tartan registrations, to try to ensure that new tartan designs that come forward for registration are unique or sufficiently different from other tartans, that they have been properly designed and that they match the statutory definition. The bill is quite tightly defined in that regard.

**George MacKenzie:** My answer to the question whether the register will be historical or commercial is that it has to be both. For example, the register of deeds or legal transactions and the register of sasines, which is the older property register, have long historical antecedents but are still active registers that people use. The National Archives of Scotland hold both those registers, and I would regard the tartan register as being very much the same sort of register. It will be a repository of information about historical tartans, but it will also be a living register in which people can register new designs, as long as they fall within the specified criteria.

**Marilyn Livingstone (Kirkcaldy) (Lab):** The bill seeks to create an official register that will have legal authority. However, there are already other registers. What will happen to them? Could confusion be caused by the fact that various registers exist?

In his written evidence, Blair Urquhart points out that although the bill says that only one tartan can be registered under the same name, that has not been the case historically, so the provision would introduce all kinds of contention. Do you have a view on that?

**Michael McElhinney:** On the existing registers, the Scottish national register will contain the designs and samples that are currently held by the STA and the STWR. For the first time, they will be drawn together in one place, which is a more sustainable arrangement.

On the process of registration, we are working on a memorandum of understanding with the STA to the effect that it will stop providing the registration services that it previously provided. Any inquiries for registration that it gets will be

passed to the national register. The STA will also provide one of the main sources of expertise for the register, because the National Archives of Scotland does not have the depth of expertise that the existing private registers have. The Scottish Tartans World Register will also migrate all of its designs to the national register, so for the first time all the existing designs will be drawn together in one place.

The naming convention will be for the keeper to apply. The intention in saying that no two tartans can be registered with the same name is part of the test of the uniqueness of each design. There is scope for flexibility in the name—it could be McKay of Strathdon or McKay of Castlemilk, for example—to ensure that each is distinct.

**George MacKenzie:** I can add to that. The point about a new tartan not sharing an existing name relates to new registrations. It is almost certainly true that, among the data that are held by existing registers and in the historic iterations of tartan, there will be cases in which the same name has been given to an almost identical piece of weaving. That is almost inevitable given the convoluted background and the long tradition of tartan weaving in Scotland.

I characterise that as part of the work that the National Archives of Scotland is starting to do—we will take on the data from the existing registers to pre-populate the new register if the bill is passed. Part of the work will be to clean up the data, which will be a long-term task that may take several years. In fact, I would not really like to give any indication of how long it will be before we can be certain about the definitions and names of particular tartans. It may be that the experts will remain in disagreement for a long time to come.

That is one reason why the register is a good thing to establish. It will be a starting point, and it will act as a stimulus to further academic research into tartans and how they have evolved.

**Dave Thompson (Highlands and Islands) (SNP):** I want to follow on from that point. It is the intention to prevent any new registers from being formed? Will we be able to prevent someone from establishing a new commercial tartan register of their own?

**Michael McElhinney:** It is beyond the scope of the bill to seek to do that. The bill builds in flexibility for existing or future collections to be incorporated in the register as they emerge. We are essentially working with the two main registers in Scotland. Looking forward, if there are other registers or repositories of tartan that the keeper deems may enhance or deepen the repository and value of the archive that the national register holds, there will be scope to take them into account and include them in the register.

However, there is no provision to stop anyone continuing to run a register, or to prevent someone from setting one up.

**Dave Thompson:** Someone could decide to set up another register. You are absorbing the two registers that exist—they are co-operating to create the new register—but if someone decided to set up a register in the future, there would be nothing to prevent their doing that.

How would you regard any power to compel people to register tartans with the new register, or will we remain in the situation in which commercial organisations and others can create tartans and not register them? There may be a plethora of tartans outwith the registration system.

**Michael McElhinney:** Registration of tartan will be entirely voluntary, as it is with the registers that exist at the moment. Registration does not confer any intellectual property rights, copyright or designer protection. There is no requirement to register a tartan with existing private sector registers. People come forward voluntarily to do so, and the new register will operate more sustainably and formally in the same spirit—albeit that it will be on a statutory footing—in the National Archives of Scotland.

**Dave Thompson:** If not everything will be co-ordinated, what advantage will we get from setting up a new register, at a cost of £100,000 a year, over what there is now and what might develop in the future?

**George MacKenzie:** As Michael McElhinney said, we cannot prevent the setting up of other registers in the future, nor can we compel people to register tartans. Our aim is to create a single official register that is efficient and definitive and which will attract the profile of being the preferred place to register tartans. We have to do things by encouragement rather than by compulsion. That is the way forward.

The success of the register will be determined by the fact that, in the future, it will be the only register. It will be the recognised one, and a cachet or kudos will attach to designs that are registered in it. I hope and expect that a tartan's registration number or the fact that it appears in the register of tartans will be used in the sales and promotional aspects of the tartan industry. Alongside "Made in Scotland" or "Woven in Scotland" will be the tartan's number in the official tartan register. That will show that we have been successful.

**Michael McElhinney:** There is no definitive register at the moment. The registers that are held in private sector hands are relatively inaccessible and piecemeal. They are also dominated by a narrow sectoral interest. If we accept the argument that the archives and repositories of tartan that

exist in those registers are a valuable national resource, there is an argument for putting them on a more sustainable footing. There is also an argument for making the information more accessible on a non-commercial basis than it is at the moment. We are trying to make the information more accessible and sustainable. Taking it into public ownership is intended to do that.

**Dave Thompson:** You expect to develop the definitive tartan register, but there will be nothing to prevent a commercial organisation from having a look at your register, pinching a tartan from it, calling it a name of their own, and running with it commercially.

**Michael McElhinney:** There is nothing to prevent that at the moment, and it happens. However, a company that did that might find itself open to the accusation that it had infringed a copyright interest in the design.

**Christopher Harvie:** The introduction seems to be dependent on Tom Devine's notion that Highlandism transmits to Scotland ideas that then become Scots. However, the research of people such as Krisztina Fenyo on Scots attitudes to the Highlands in the 19<sup>th</sup> century is sceptical about that. Until the middle of the 19<sup>th</sup> century, there was great contempt in southern Scotland for the Highlands. That had to be overcome. It was partly because of religious change.

There is also the counter-thesis of Hugh Trevor-Roper, who does not appear in the introduction. That thesis is very much Trevor-Roper being provocative, but it is the case that much of the popularity of tartans depended on the assiduous work of the Sobieski Stewart brothers, whose connections with Scottish history are as strange as their claim to have connections to the British monarchy.

I see the need for a rather more comprehensive, but also more reassuring, introduction. You must realise that the real inventor of Scottish tartan might have been the German chemist Josef Hoffman, in the middle of the 19<sup>th</sup> century, who perfected the aniline dye, which gave the shrieking colours of the modern Scottish tartan as opposed to the tweedier colours of the earlier ones. You must realise that things such as the rise of golf as a huge indicator of Scottishness in the late 19<sup>th</sup> century owed nothing at all to tartan. The introduction is slightly too general.

**The Convener:** Do you want to comment on the introduction, gentlemen?

**Michael McElhinney:** Through working on the project, I know that there are many passionately held views on the history of tartan, its production and how it should and should not be used. All that is valuable. By capturing all the tartan designs in

one place, the register will provide a definitive resource from which academic argument can flow. We are where we are, and we are trying to corral all the information in one place to create a sound basis for study.

10:00

**Lewis Macdonald (Aberdeen Central) (Lab):** Convener, it will not surprise you if I say that I entirely approve of the endorsement of symbols of the Highlands as symbols of Scotland. I have no difficulty with that.

However, to come back to the issue that Gavin Brown raised, I am a little bit concerned about the definition, particularly the issues around the woven element. The bill contains a minimalist definition of what constitutes tartan, which enables a broad approach to be taken, as has been described. Blair Urquhart's submission to the committee, more than any other, gives a detailed definition of what constitutes a tartan.

Under the minimalist definition that you have laid out, what then becomes the defining characteristic of a tartan as opposed to any other piece of creative design that includes vertical and horizontal stripes?

**Michael McElhinney:** The industry experts agree that the definition of tartan in the bill is the broadest possible definition and it encompasses the broadest possible design, whether woven or not. We have worked with the sub-group for several months to tie down that definition to basic principles, and we have the audit trail of that decision-making process, if it would be useful for the committee to have it.

The keeper will work with the industry experts to determine a definitive application of the statutory definition and criteria in the bill.

**George MacKenzie:** The defining characteristic, if you like, will be registration. The act of registration, the appearance in the register and the ability to quote the relevant registration number will be the definition of a tartan in the future. The fact that the Scottish Parliament proposes to legislate supports that point. That will be the unique selling point and, in the future, a tartan will be a tartan because it is in the Scottish register of tartans.

**Lewis Macdonald:** Will it therefore require to be capable of being woven, even if it has not yet been woven?

**Michael McElhinney:** One of the criteria that will support an application to register will be the thread count. We understand from our industry colleagues that the application of a thread count means that the tartan will be in a position to be woven.

**Lewis Macdonald:** If that is the case, why not make being woven a requirement? If the definition already requires a tartan to be capable of being woven, what is there to prevent that from being a requirement for full registration? Perhaps registration could be provisional prior to the tartan being woven. Is there any reason why full registration should not depend on the tartan being woven if it already depends on it being capable of being woven?

**Michael McElhinney:** No, there is not, but why would we close off the registration of a commercially designed tartan that might be used for something like screen printing? Is that a less valuable tartan than one that is woven? We do not think that the register of tartans should get involved in such judgments, which is why we have pitched the definition in the way that we have.

**Lewis Macdonald:** I understand that, but you have said that, for example, the screen print design is capable of being woven, so would it not resolve the dispute if it could be registered immediately, although full registration could require it to be demonstrated that the tartan can be or has been woven? You would not have to close things off, but equally, it does not seem to be necessary to exclude weaving as a criterion that gives a particular quality to the registration of a tartan as opposed to another design.

**George MacKenzie:** I do not think that we are excluding it. I take issue with the idea of provisional and full registration. We do not want to head off the possibility that a tartan might be designed and put into wallpaper or the tailfin of an aircraft, for example, but not be woven, or to say that that is a lesser tartan than one that has been produced in very small samples for the purposes of registration.

As I said, we intend that, when tartans have been woven, that will be shown as part of the registration process. Consumers who want to purchase tartan or to get tartan woven will be told where they can find information about whether a tartan has been woven. That information will be stated within the categories of registration instead of multiple tiers of status being created. We want a single status within which we can distinguish, for example, whether a design has been woven.

Continental Airlines recently registered a tartan. I do not know whether it will be painted on the outside of the aircraft, but that seems a perfectly reasonable and good thing to see. One would not expect woven tartan to be put on the outside of a plane—it would have to be done with paint.

**Lewis Macdonald:** I understand that, but you will acknowledge that Continental Airlines would have little difficulty in providing a woven sample if that were a requirement.

**George MacKenzie:** That is a reasonable point. However, we are trying to create a single tier of registration within which there are categories, rather than a multitiered approach in which there are first and second-class tartans.

**The Convener:** If you were to walk out of this building and turn left up the High Street, you would pass several shops selling any amount of tartan at very low prices. How does that fit in with your registration scheme? Do you think that the people who produce those designs will bother with registration when they are clearly selling tartan hand over fist to Italian tourists who walk past the door?

**Michael McElhinney:** The regulation of that kind of commercial activity falls outside the scope of the bill. That is the technical answer.

**The Convener:** Is that not a serious concern if we are to raise the profile of the industry and the product?

**Michael McElhinney:** It is a serious concern. You will hear from colleagues in the Scottish Enterprise textiles team, who will talk in more detail than I can about the work that they have in hand to help sectors and niche parts of the Scottish textiles sector collectively to promote and protect themselves. They are starting to tackle such issues of quality. Quality accreditation and the production of tartan products that are not of the quality that the Scottish end of the market can produce are on-going problems with which the industry struggles. We push that back to the industry as something that the industry collectively must start to address by marketing itself better.

**Gavin Brown:** I want to return to Marilyn Livingstone's point that there can be only one name for any one tartan. What safeguards does the bill contain in that regard? I know that there is a provision in section 7 dealing with insufficient association, but let me paint a scenario. A couple of football clubs have tartans. What is to prevent me from deciding that any football club that does not currently have a tartan should have one, then designing 30 or 40 tartans on a computer screen and registering them as such, thereby preventing those football clubs from registering their own club tartans? What can prevent that from happening?

**Michael McElhinney:** There is nothing to prevent people from doing that at the moment. One of the criteria for registration will be that an individual who claims an association with a name or an organisation must be able to demonstrate that they have a legitimate link to that name or organisation. There is nothing to prevent someone from producing a tartan for an organisation, but unless they can demonstrate that they have a viable and genuine link to the organisation, it will not be accepted for registration.

**Gavin Brown:** My question centres on your definition of what constitutes a genuine link. If I could prove that I was a supporter of a certain football club or that I was the president of the supporters club—as opposed to being part of the club itself—would that qualify? The bill does not define what constitutes a sufficient link.

**George MacKenzie:** It would be difficult to go much beyond the definition that we have. You raise an interesting case, which I—as, I hope, I hope, the keeper of the register—may have to deal with. We must look for evidence of connection, but it is not possible, at this stage, to define what that might be. You have delineated a case in point. My initial feeling is that, if the president of the supporters club wanted to register a tartan, it would be perfectly reasonable for that to be registered as the supporters club's tartan. If they told me that they wanted to register the club's own tartan, I would expect them to prove that they had official approval from the club. That is my immediate take on it. Your example is quite a good one. I do not see how we can define a mechanism in the bill for that. There has to be a discretionary power—the keeper will have to deal with it case by case.

**Michael McElhinney:** On current levels of registration, we are not talking about huge numbers of tartans. We estimate that about 120 new tartans come forward for registration every year. The keeper should be able to consider each case on its merits and encourage people to demonstrate that kind of link.

**David Whitton:** I want to pick up on a point that was raised by Lewis Macdonald. Section 6(7) says that the application must include

“a description of the tartan including its colours, thread count and sett”.

How does Continental Airlines justify producing a tartan that will be stuck on a plane and will not have a thread count?

**George MacKenzie:** Thread count has been described to us by the industry as the DNA of tartan. Every tartan can be interpreted as a thread count, which refers to the thickness of the bands of colour that occur both horizontally and vertically across the design. Tartans are defined by the thread count—there is a fairly complex way of doing that. Consequently, it would be quite possible to define the tartan for Continental Airlines as having a thread count. There would be no problem weaving the tartan, but it could also be rendered as a flat colour depiction by screen printing or by painting.

**David Whitton:** It comes back to Lewis Macdonald's point. Section 6(9) says:

“The application may include a woven textile sample”.



Why not say that it must include a woven textile sample?

**George MacKenzie:** We are not trying to close off the potential for commercially produced tartans that may not be woven. There are not many of them; the majority of tartans that are produced are woven. Why should we seek to close off the commercial opportunities?

**David Whitton:** That is what makes tartan unique. If it is a woven textile product, it can be turned into a kilt or a tie or whatever. That is what we should be looking for in a register of tartans, not some design that appears on the back end of an aeroplane.

**George MacKenzie:** I give the example of a shortbread tin. Would you say that if it is on a shortbread tin it is not a tartan?

**David Whitton:** Most of the shortbread tins that one sees in the shops up and down the Royal Mile, which the convener mentioned, claim to have the MacGregor or some other tartan on them, but it is a copy of a tartan. As far as I can see, those are not made-up tartans, unless you are going to tell me differently.

**Lewis Macdonald:** How will Continental Airlines calculate the thread count of its tartan?

**George MacKenzie:** I am not an expert in the design of tartans, but nowadays the design is done by computer programmes, which calculate the thread count as they would do for any textile design. Other experts whom you are seeing this morning are probably much better able to answer that question than I am. As I said, the thread count is the DNA that distinguishes one design from another. That could apply to other types of woven cloth.

**Dave Thompson:** It would be quite easy for a major company to get a piece of tartan woven, but could you envisage a scenario in which someone who designs a tartan might not have the financial wherewithal to get it specially woven? Would that be a reason for not stipulating that tartan should be woven?

**Michael McElhinney:** Theoretically it would be.

**George MacKenzie:** A possible scenario would be a school in which there was a competition to design a tartan, the prize being registration. A school might not have the immediate wherewithal to get the tartan woven. It is worth emphasising that such a tartan would be capable of being woven.

**The Convener:** Will you describe to the committee the thinking behind the fees, the level that they are to be pitched at, and what that will achieve?

**George MacKenzie:** The fees will be prescribed by separate order. Our intention is to set a level of fees that will, on the one hand, prevent frivolous applications and, on the other hand, will not be a particular bar to people of limited means who wish to register. We will pitch the fees at approximately the same level as, or slightly lower than, the fees that are currently charged by either of the two registers.

10:15

**The Convener:** What are those fees?

**Michael McElhinney:** They range from £50 to £200.

**The Convener:** Is that per registration?

**Michael McElhinney:** Yes.

**George MacKenzie:** We calculate that the figure will be £80 to £100. The income from that will not cover the cost of running the register—there is no way in which it would cover the cost of 120 to 150 registrations a year. However, the intention is to have a fee that is a disincentive to frivolity but not a bar to the registration of genuine designs.

**Michael McElhinney:** May I make a further point on fees? The register will be a public record in the sense that it will make the tartan designs within it as accessible as possible, and access to the register for information purposes and the downloading of such information will be universally free.

**The Convener:** Thank you. I am sure that the panel appreciates that the committee's intention is to test why the bill is needed, given the busy legislative programme that we have. We thank you for coming along.

For our second panel, we welcome Mr Robin Blair, the former Lord Lyon King of Arms, who is joined by Brian Wilton, the director of the Scottish Tartans Authority, and Keith Lumsden, the director of the Scottish Tartans World Register. While our new guests take their seats, I remind colleagues that the member promoting the bill, Mr McGrigor, will be in front of us in due course, and it will be appropriate for us to ask him some of our questions on the bill.

Gentlemen, I give you a warm welcome and thank you for coming. You may say a couple of introductory words, if you want, otherwise we will move to questions.

**Brian Wilton (Scottish Tartans Authority):** I think that you have done that for us.

**Gavin Brown:** I will start with the word "classification", which we have not yet touched on. A number of written submissions mentioned

classification. Scotland already has good business from family history tourism, but that has much more potential than we have exposed so far. A point that arose from the submissions is that the classification of tartans, especially the prioritising of clan tartans, could help the industry and tourism for the future. Does the panel have views on what classifications ought to be included in the bill? If classifications should not be included in the bill, how should they be applied to the register?

**Brian Wilton:** Traditional categorisations or classifications have existed since academics first started looking at and recording tartans. The list is simple, and the Scottish Tartans Authority and the industry see no reason for changing the categories, although some fine-tuning could be done here and there. The categories are based on clan or family, but they are also corporate, geographical and military/regimental. Those basic categories could be expanded and subdivided, but we think that that would just create pointless extra work for the National Archives of Scotland. We would certainly like the tartans to be kept roughly in line with the historical classifications that have stood the test of time over the past century.

**Keith Lumsden (Scottish Tartans World Register):** You must make up your mind about what the classification is used for. What is its aim? If it is for reference, you will have to develop a system by which it can be referenced. A corporate tartan, for example, might also be a sporting tartan if the corporate body is a sporting body and it might also be a rugby tartan. There are three categories straight away. If the aim is reference, the tartan might be categorised in all those ways, so that if someone dialled up rugby one day, they could find all the rugby tartans on the register.

If the aim is just to have big subjects—to put all the corporate tartans together, for example—that would be fine, but I do not think that a register should work in that way. A register should have a reference system that everyone can use. If the register were to be pared back, dialling up corporate tartans would produce insurance companies and other companies, including tennis clubs.

**Gavin Brown:** That takes care of the question in a sense.

The idea that a tartan needs to be woven dominated the previous discussion and several organisations have made submissions on that point. How important is it for the definition in the bill to contain the word “woven”?

**Keith Lumsden:** I am at odds with my partners at the table, as I am a die-hard wovenist. Tartan has always been woven. In fact, one argument is about whether the origins of the name “tartan”

relate to the pattern or the cloth, but that is neither here nor there.

Tartan is three-dimensional. That three-dimensionalism, which is created by weaving, creates a pattern that can be expressed two-dimensionally. We should not get involved in that. Aeroplane tailplanes and this, that and the other are all two-dimensional, but that makes no difference to the original tartan. My register and the Scottish Tartans Society register have always demanded proof of weaving. Not including the word “woven” limits in some respects work for the weaving industry. It is important that tartan is woven and is seen as three-dimensional, as it always has been. I am at one end of the scale—I agree entirely with Mr Macdonald.

**Brian Wilton:** I am at the other end of the scale. I am a modernist—a printist. To the industry and certainly to the Tartans Authority, tartan is a pattern, which is made up on computers these days. In the old days of graph paper, a convenient method was to count by using threads to show the proportions of the colours. Perhaps that answers a question that was asked earlier.

Although tartan is woven most of the time, that should not close our minds to the fact that its origin is a two-dimensional design that can be interpreted in various ways, which are mostly woven but are frequently not woven.

A tartan that members might have seen recently in the press was for Colin Montgomerie, which I happened to design. The original intention was to use that tartan in a business logo on business literature. The authority accepted that proof of use—that is the most important element—when we were provided with copies of business literature that contained a segment of the tartan. The fact that Colin Montgomerie went on to have it woven is highly commendable.

That is how we approach the question. We do not necessarily ask for a woven sample, but we stipulate that we must have some evidence of a tartan’s serious use—its commercial production in some form. It is excellent that, most of the time, that proof is woven, but on odd occasions, a tartan is designed initially not for weaving but for graphic display.

Another good example is the tartan that we designed for O<sub>2</sub>, which languished purely as a graphic design on some of the company’s literature and in its Glasgow headquarters for a couple of years, but is now being woven. I agree with the first panel of witnesses that to insist that tartan must be woven would cut off potential avenues in which people design tartans and use them in a form other than the woven form, thereby promoting tartan and, given tartan’s connections

with Scotland, promoting Scotland. We are very much against a narrow definition of tartan.

**The Convener:** Mr Blair, do you have a view on the modernist versus wovenist divide?

**Mr Robin Blair:** I agree entirely with Brian Wilton. I can see the disadvantages of insisting that a tartan is woven before it is registered. There are a number of situations in which such an approach would be unfortunate.

**Gavin Brown:** I will explain why I am concerned about the issue. There has been a proliferation of companies that offer services such as naming a star after someone. For £10 or so, a person can have a star named after them for ever. The bill appears to contain nothing that would prevent a company from setting up and offering to produce a tartan named after a customer for £50 or whatever, depending on the registration fee. There could be thousands of new tartans—the latest Christmas gift could be to have a tartan named after someone. The register would end up being diluted and instead of creating a valuable register of authentic historical data on tartan—which is also a living product—we would have created a mockery of such a register.

**Brian Wilton:** For the past 40 years there has been no official register of tartans, but what you describe has not happened. There is no indication that the establishment of a register would change the situation. I think that the keeper will follow the lines that the Scottish Tartans Authority has followed, which is that we need to be convinced of the serious intent of the tartan's designer, so the situation will be no different.

Indeed, there will probably be a difference for the better when the register is established. People's understanding of the importance of having one's tartan accepted by the register will blossom overseas. People will want to know whether a tartan is a Scottish registered tartan, and if it is not, it will not sell.

**Christopher Harvie:** Various points that people have made lead me to think rather along the lines that Gavin Brown was thinking along. We might not yet have witnessed the full extent of the computer revolution. Given what I know about computers, it seems quite possible that a programme could be developed that would design and market tartans. We could face a tartan bonanza, in which people created tartans digitally and manufactured and marketed them. How would we cope with such a situation?

**Keith Lumsden:** We are already in such a situation. I could write you a computer programme that would turn out a new tartan every five seconds, if you wanted.

The prevention of trivialisation is behind my argument for woven tartan. The Scottish Tartan Society, for which I worked before I ran the world register, was firm on that point. Such an approach also prevents multiproduction of tartans, to some extent. Because each tartan has to be woven it requires a commitment, perhaps in time or in money, which involves having woven samples and proof of weaving.

**Lewis Macdonald:** I want to come back to the question whether a definition of tartan should stipulate that it is woven. The view has been expressed that a requirement for a woven sample might discourage the development of worthwhile and commercially interesting designs. As we heard earlier, the definition in the bill is minimalist. Michael McElhinney explained that the Government had taken advice to make it as minimalist as possible. What would be the impact if the definition required that a tartan was a design that had been or was capable of being woven?

10:30

**Brian Wilton:** Any design is capable of being woven.

**Keith Lumsden:** Not altogether.

**Lewis Macdonald:** I would be interested to hear the different views.

**Brian Wilton:** Let me qualify. Any tartan design is capable of being woven.

**Keith Lumsden:** Yes, because it stems from the definition that a tartan is woven.

**Brian Wilton:** I disagree, but I will not go into that.

The minimalist definition of tartan is essential. If you ask half a dozen tartan experts, there will be some common threads in the definitions that they provide, but there will always be differences. The industry sub-group wisely decided not to go down that route. Someone can insist that a tartan is symmetrical, but there are exceptions. Someone can insist that the warp is the same as the weft, but there are exceptions. With almost every definition of tartan, there are exceptions. We would soon end up with a complicated definition that covered half a page of A4. The best approach is the minimalist definition that the National Archives of Scotland has chosen. It will be up to the keeper of the Scottish register of tartans to interpret the definition in the light of his knowledge of design.

**Mr Blair:** I return to a point that was made earlier. It would be a disadvantage if the definition limited designs that could be registered to those which had been woven. One of the earlier witnesses mentioned the example of a school

competition. It would be impractical for all the designs that were submitted by the pupils to be created in a woven form before they decided which one to select. There are a number of other situations in which one would not be in a position to create something in a woven form before one registered it to ensure that the design was protected. It would be a great disadvantage to insist, for the purposes of registration, that a tartan must be a woven item.

**Lewis Macdonald:** In the example that you quoted, I presume that the teacher would distinguish between the designs that he or she regarded as tartan and other coloured designs. My question was not whether there should be a requirement for the design to be woven but whether there should be a requirement that it is capable of being woven.

**Mr Blair:** I accept that point. It needs to be capable of being woven in the sense that it is a design that is capable of being turned into a piece of woven material.

**Brian Wilton:** I am sure that, if a design was not capable of being woven, the keeper of the register would not accept it as a tartan. By the nature of the design of tartan, it is capable of being woven.

**Lewis Macdonald:** So such an amendment to the bill's definition of tartan would not have any negative consequences, in your view. It would simply reinforce what is already, inevitably, the case.

**Brian Wilton:** Yes, as long as it did not drift into a requirement for tartan to be woven. That would worry us. I give another good example of the importance of not having such a stipulation in the bill: under the determined to succeed programme, which the previous Government ran, a cluster of seven schools near where we are based ran a competition to design a tartan. The winning tartan was printed on notebooks, mouse mats and everything else that you might think of. The tartan was accepted for registration on the basis of that evidence and after that it was woven.

**Marilyn Livingstone:** I asked the previous panel a similar question to this one. The bill would bring the benefits of having a single register that had legal authority, but what would happen to the other registers? Would they simply disappear? Would there be confusion if they continued to operate?

**Brian Wilton:** That is not an easy question to answer. Much of the devil is in the detail of how existing registers might operate, if they continued in operation after the establishment of the new register. We have every intention of continuing our register, which is the industry standard, but we would ensure that it was exactly in tune with the

one that was run by the National Archives of Scotland.

I am sorry that I am being slightly hesitant. We have not gone into the issue in great detail. Our aim has been to lay down the ground rules on how the new register will operate.

**Marilyn Livingstone:** If the Parliament were to pass the bill and establish the new register, would the existence of other authoritative registers confuse the situation? I think that I would be confused. The public are not experts—that includes me—so how would we know which was the authoritative register on which we could rely?

**Brian Wilton:** The authoritative register would be the one that was run by the NAS. However, the NAS would not be equipped to answer the thousands of queries on tartan that come in from around the world. Therefore, the Scottish Tartans Authority would retain its register. I imagine that we would cross-refer with the official tartans register—almost daily. Our research on historical tartans, which would not stop because of the advent of a national register, gives us the information that enables us to upgrade the quality of the historical notes that we attach to our tartans and we would pass on such information to the NAS. There would have to be a continual two-way stream of information between the Scottish Tartans Authority and the NAS, which, in turn, would direct to us inquiries on tartans that it could not answer.

**Keith Lumsden:** My register would not register tartans after a national register was formed. The Scottish Tartans World Register was established to inform such a body and to maintain continuity of the service that the Scottish Tartans Society had offered.

The real question is what the world would be like if the bill were to be passed. As a result of the bill, tartans—or products that called themselves tartans—could be produced but not registered, because the hoop that people would need to jump through would have been set too high. However, money could be made from such non-registered tartans and someone might take it on themselves to run a register—or list, or index—of those tartans.

**Brian Wilton:** We have no intention of continuing to register tartans after the official register comes into being. I apologise if I gave that impression.

**The Convener:** I am not sure that you gave that impression, but you will have heard that some members raised questions about that particular point earlier.

**Marilyn Livingstone:** The submission from Blair Urquhart said that he disagrees with the bill saying

that only one tartan can be registered with the same name. The previous panel said that that was a historical issue and that it would not happen from now on. Could there be differences in the different registers?

**Keith Lumsden:** That is what I was saying. Let us say that a football club gets a tartan, which has happened, and two years later it decides that it does not like its tartan or that it did not sell very well, so it wants a new pattern. However, they still call the new tartan their football club tartan—I will leave names out of it—which leaves two tartans with the same name. That will go on.

**Brian Wilton:** We have employed an obvious solution to that for years. I will not mention names either, except to say that Rangers Football Club has something like four or five tartans. Its first tartan will have 1998 in brackets after the name. When the new chairman comes along and decides that he does not like it, the next tartan will be called “Rangers (1982)”. That is how one can differentiate.

Many tartans can have the same name, ostensibly, but one would always seek to differentiate between them. For example, there could be a Macintosh clan tartan, but Heidi Macintosh in New York might want a personal tartan, so that could be called “Macintosh, Heidi”. It is a simple administrative task.

**Marilyn Livingstone:** So you are saying that the two lists will be the same and there will be no confusion between them. The STA list will not include tartans that the new register does not include. All the lists will have the same information.

**Brian Wilton:** Exactly. At this stage, I would not like to say whether we will make our register available online. We will do everything that we can to co-operate with the NAS to ensure that there is absolutely no confusion. We have been working on the new register for five years, so we are determined that it will succeed.

**Brian Adam:** Given that both your organisations intend to continue to function if the bill is passed, what will they do if they are not registering tartans? How will they be financed? Will they charge fees, and will that detract from the work of the new keeper? How do you see your future relationship with the keeper of the register of tartans and each other?

**Brian Wilton:** Our function in life is not just to register tartans but to promote tartans globally, to provide an information service and to facilitate journalist and trade inquiries from around the world. The income from the registration of tartans is not very exciting; it would not keep us afloat for more than a few weeks in the year. Although we might lose slightly on one side of the scales, the

other side is that the new register will give added status to tartan on a global basis, which will filter down through the industry.

**Keith Lumsden:** There is still a need for a reference service and a place for finding information that falls outside the scope of an electronic register, as it will appear to the public. There will be questions, archives to be looked at and tartans to be looked up, so there will be plenty consultancy work. Registration does not make very much money, believe you me. We make money only out of the work we get as a result of inquiries. I am not saying that my register will continue, but I have another burden—looking after the Scottish Tartans Society’s archives.

**Brian Adam:** Given that the registers currently cost the public purse nothing and that the bill would cost the public purse money, could your organisations be perceived as dumping a difficult problem in the public lap, while you continue to deal with commercial aspects?

10:45

**Keith Lumsden:** The danger is that other people will produce tartan registers. There is nothing to stop somebody else having a register. Canada has threatened to produce a register and I can see Australia thinking in much the same way. Unless a Scottish register is established, the danger is that anyone else can start a register. That is the important point.

**Brian Adam:** My question is why the public purse should bear the cost of the register, which relates to commercial activity. Mr Lumsden and Mr Wilton have both said that registers are not a significant source of income to their organisations. I presume that if international competitors tried to provide a register as a public function rather than a commercial activity, they would have the same finding.

**Mr Blair:** One thread of the thinking behind having a national register was to ensure that it was not a commercial operation that risked disappearing if the operators could no longer keep it running. A great attraction of what the bill proposes is that the register would be public and not a private commercial enterprise. The justification for using public money to create a register is simply that a register would preserve what is thought to be an important aspect of Scottish culture for the nation in perpetuity rather than leave it at the mercy of a commercial operation.

**Brian Adam:** There is no great danger of tartan disappearing off the radar. I presume that the bill is not about preserving tartan. Whether having the definitive register in the public domain is of sufficient public interest for it to be paid for from

the public purse is an issue, but the argument that there will be no register if the Government does not pick it up is fairly weak. I have heard no substantive argument to suggest that we will not have tartans or that the purchasers of commercial products insist absolutely on knowing the provenance of and having the Government's imprimatur for a tartan before they buy it. As the convener was right to say, much of the activity up and down Edinburgh's High Street does not support your argument for a stamp of approval.

**Brian Wilton:** One overriding reason for having a publicly financed tartan register is evidenced by the experience of the Scottish Tartans Society. The society started to register and record tartans electronically in the mid-1980s, but it gradually fell to pieces, which meant that it stopped registering new tartans and that its database and historical records were no longer available. That register was owned and operated by a private sectoral interest, which we feel is wrong.

Our Scottish Tartans Authority is exactly the same type of organisation—it is a sectoral interest that is financed by the industry. We think that that is wrong. Tartan does not exist purely for the commercial world. It is wrapped up in Scotland's history from way before the 18<sup>th</sup> century.

There are fascinating historical facts in the existing registers. We preserve those, but we should not rely on the commercial world to safeguard that information. All that the commercial world is interested in doing is producing tartan, making money and keeping their people in employment. The history of tartans is of no great significance to the industry. If it is left to the industry or a privately owned body to maintain and operate a register, it will disappear one day, just as the Scottish Tartans Society one did. It was resuscitated only because Keith Lumsden thought, "We mustn't lose this." The same thing could happen to the Scottish Tartans Authority—we could be out of business next year. The creation of the Scottish register of tartans is essential.

**Dave Thompson:** What practical use will the register have, other than for academic study? Tartan employs about 7,000 people. It accounts for 3 per cent of manufacturing in Scotland and is worth about £350 million to our gross domestic product. What will the register add to that? How will it improve the commercial opportunities of tartan?

**Keith Lumsden:** We can put the benefits under the general heading of the provenance of tartans. The important thing is not just what a tartan is for us today but what it was in the past. If we lose that, we lose something that is particular to the design and therefore to the marketing drive, if it happens to be involved in one. It is important that the history is kept somewhere.

The information was put together with a lot of work by a lot of enthusiasts, but we have reached a point where it is in danger of disappearing. Basically, the Scottish Tartans Society archive is sitting in my house. I am not sure that that is the right place for it. I use it. I find it useful, and I manage to make a sort of living out of it, here and there.

**Dave Thompson:** You had better hope that you do not have a fire.

**Keith Lumsden:** Exactly. The archive is not being looked after properly. I do not have the time, and looking after it properly requires a lot of input. I hope that my comments do not make a mockery of it, but that is what I think.

**Brian Wilton:** About 1,000 people a day interrogate our website and all of them look at the tartan register. At the moment, we do not give them the historical details because, as a membership body, we need to provide membership benefits, one of which is that members can type in their password and get access to the historical notes. Despite the fact that we continue with that approach, we believe that it is wrong. The historical notes should be available to anyone who interrogates the database. That will happen with the national archive version. If the database was not available, there would be serious implications for the tartan industry.

**Keith Lumsden:** I was amazed when we first went on to the internet in 1997. In no time at all, we had thousands of hits a day and the interest was maintained continuously. We got interest from not just Scotland, but the world. There are sidelines. For example, one can give advice and charge for it. People ask, "Is there a patent or copyright on this tartan?" The information is wanted by the industry and by people who use tartan, so it must be kept somewhere. As I said, the important part of the information is the provenance.

**David Whitton:** One of the most interesting things about the bill is the number of submissions that we received on it. I am particularly drawn to the one from Mr Alastair Campbell of Airds—"Unicorn Pursuivant of Arms", it says on his submission. He states, quite comically:

"If there isn't already a Tesco tartan, there no doubt will be."

However, he also states:

"There is all the difference in the world between a duly authenticated Clan Tartan and one invented for purely commercial reasons."

He argues that the register should classify tartans. I assume that he means that they should be classified into historical tartans and the ones that

Mr Wilton designs for Colin Montgomerie or O<sub>2</sub>. What are your views on that?

**Keith Lumsden:** I stand by what I said about classification. It depends on how it is used. I do not believe that a clan tartan is more special than the O<sub>2</sub>—whatever that is—tartan. They do the same thing. The history of clan tartans shows that they are pretty dodgy, anyway. They are not that old, although they have a provenance as a result of what has happened to them. The O<sub>2</sub> tartan will have its provenance. I do not think that classification makes much difference. Classification can be a reference tool, but that might not be the keeper of the register's view.

**Brian Wilton:** There are those who like to preserve tartans in aspic. I sympathise with Alastair Campbell to a certain extent, but we have to accept that tartan is a living, evolving art form. We might sneer at some modern tartans but, as Keith Lumsden suggested, if a clan chief said to William Wilson & Sons of Bannockburn, "We've lost our clan tartan. Can you send us one? I'd like some green in it, please," the company would provide one. Tartans in those days were just as dodgy as some of those that we see now. The difference is that age lends respectability. Yesterday's terrorists are today's statesmen.

**The Convener:** We all believe that sentiment. I finish with a question for Mr Blair. The previous proposal was for the Lord Lyon and the Court of the Lord Lyon to hold the register. Is the current proposal a better way forward?

**Mr Blair:** Yes. When we looked into the details of how the previous proposal might work, we realised that the Lyon court is not constituted in a form that would enable it to hold the register. Legislation might be required at Westminster because a lot of the functions that are carried out by Lyon are not devolved.

Secondly, and perhaps more crucially, the Court of the Lord Lyon is a court of law. In Scotland, uniquely, heraldry is governed by a legal court. That does not happen anywhere else in the world. It would be difficult for a judicial operation to carry out the administrative function of registering tartans. If an application to register a tartan conflicted with the views of a clan chief, somebody would have to make a decision, and it would almost certainly be the Lord Lyon. The Lyon court would be in an impossible position.

We realised that it would be much better to go down the route that is now proposed—for the register to be handled by the NAS. There will be informal consultation with the Lyon office, because it holds a lot of information about historical relations with clans—names and so on. We are happy to provide the NAS with whatever assistance we can give.

**The Convener:** Good. Thank you for coming along this morning. That was helpful.

10:58

*Meeting suspended.*

11:03

*On resuming—*

**The Convener:** We continue our consideration of the Scottish Register of Tartans Bill with the final panel of witnesses this morning. We are joined by Kirsty Scott, the head of the Scottish Enterprise national textiles team, and Dr Nick Fiddes, the managing director of Scotweb.

For the avoidance of doubt, I should say that Kirsty Scott is my sister. Members can ask her all the tough questions they like—I have always wanted to do that, but I will not be allowed to.

**David Whitton:** What was he like as a child? [*Laughter.*]

**Lewis Macdonald:** What do the panel members consider to be the economic benefit of the creation of a register?

**Kirsty Scott (Scottish Enterprise):** The economic benefit will probably be an indirect benefit to the sector. We work with a lot of companies across the textile industry in Scotland and our sector groups have strong representation from tartan-related companies, primarily those in weaving and manufacturing. In general, they warmly welcome the bill because it recognises the importance of tartan as a national resource. Once the register is established, they will seek, individually and collectively, to use it as a profile-raising or promotional tool, in line with their global marketing efforts.

**Dr Nick Fiddes (Scotweb):** I will give a slightly different answer. As a company, Scotweb is all about marketing tartan. Our claim to fame is selling tartan and tartan goods worldwide. Our market is international; most of what we sell goes overseas. We deal daily with North Americans mostly, but also with others throughout the world.

It is very difficult to put figures on the economic benefit because so much of it will be intangible. If one were to produce a range of umbrellas or Wellington boots, one would make them in Black Watch or Royal Stewart tartan, or something like that, but most of our customers are looking for their family tartan, and obviously that involves thousands of different patterns. People are looking to buy into the Scottish identity, and, as I say, it is very difficult to put a figure on that.

Basically, the register will have the capacity to give greater depth and a greater feeling that it is

authoritative, historic and real. That is what people are buying into when they shop with us.

**Lewis Macdonald:** You might be aware that this morning, we have debated a number of issues that arise from the bill. Would a requirement that tied the definition of tartan more closely to its cloth or textile origins add to authenticity and economic opportunities, or would that create an unnecessarily bureaucratic obstacle?

**Dr Fiddes:** Speaking as a retailer, I do not think that that is a significant issue. I tend to side with the non-wovenists.

**The Convener:** The modernists.

**Dr Fiddes:** Yes—thank you. I do not think that a requirement that the tartan should be woven should be an essential part of the definition. A lot of the tartan goods that we sell are not necessarily woven—for example, tartan mugs or even quaichs. Normally, the tartans that we use for such goods can be woven, too, but the requirement that you raise is not an essential part of the definition.

**Brian Adam:** To what extent is tartan still woven in Scotland? If the register contains a pattern, what is to stop anyone using it?

**Dr Fiddes:** That is one of my concerns. During the discussions, I have argued that the full database of tartans, their thread counts and definitions should not be made easily accessible and freely available for fear that that would make it easier for overseas competitors to use that information to erode Scottish manufacturing further.

On the whole, I think that the official status of the register will help Scottish manufacturing because so many of the skills and so much of the capacity to produce such a large range of tartans is locked up here. However, we should not fool ourselves. We live in a time when overseas competitors are getting better at competing, sometimes in questionable ways that make manufacturing here more difficult. Our company specialises in supplying authentic local goods and we are consistently undercut by companies bringing in lower-quality stuff from overseas, often in dubious ways. That is a real problem. On balance, and as long as it is handled properly, the register will help to give tartan an official status that will provide a basis for work on that problem, but I do not think that it will be the be-all and end-all. It is a first important step.

**The Convener:** Are you saying that it will not stop Chinese manufacturers producing our tartan, slapping it on the top of the aforementioned shortbread tins and selling them on the Royal Mile?

**Dr Fiddes:** There is absolutely nothing to stop that. I would like to think that the Scottish Tartans

Authority, the Scottish Tartans World Register, Scottish Enterprise, trading standards and other agencies could do further work on the problem, because it is a real problem.

**The Convener:** What is the Scottish Enterprise view?

**Kirsty Scott:** I can comment on that, because it has been debated widely in the industry. As Nick Fiddes said, weaving is a global industry, and the sector here competes globally. Many of the big Scottish weavers who produce tartans also have interests in England and, in some cases, overseas, although the tartan cloth that they weave is primarily woven in Scotland.

The debate about protecting the industry in Scotland is long gone. The industry is interested in and is prioritising the ability to promote where possible the authenticity of a made in Scotland label. The general feeling is that the bill would contribute enormously to that. The register could be used as a tool for promoting a genuine Scottish article rather than for protecting the industry per se. For that positive reason, the industry welcomes the bill.

**Brian Adam:** Would not a mark like the tweed mark do more for the industry than a register would?

**Kirsty Scott:** That angle is slightly different. We are working with a wide sweep of the industry and not just with the tartan sector to discuss whether a made in Scotland trademark would benefit the industry as a whole. Individual companies—particularly those in the tartan sector—already use a made in Scotland label and there is debate about whether its use should be widened.

That idea and the register could go hand in hand. Whether to use a trademark for commercial reasons is a decision for individual companies and the sector to make—it concerns how they promote their product and whether retailers would use a trademark. However, the sector sees the bill as providing the basis for promoting the concept of the product's authenticity, so the ideas correlate.

**Marilyn Livingstone:** We heard evidence this morning from the Scottish Tartans Authority, which seems to be a widely accepted and respected body in the industry. The authority has made it clear that its register will continue. When we have the new register, what will be the benefits or disadvantages of having two lists? What will the new register add that is over and above the existing list?

**Kirsty Scott:** I am sorry that I could not hear the earlier debate, but I understand that the Scottish Tartans Authority has been extremely willing to ensure that, if a national register of tartans proceeds, it will be the ultimate authentic register.



The authority has expressed willingness to pass over its register's entire database and to work with the National Archives of Scotland to ensure that that happens.

Ultimately, having duplication of lists will not help, but while the National Archives of Scotland is building up the entire authentic register, I understand that the Scottish Tartans Authority will continue to operate its register, until it is appropriate to see the Scottish national register as the ultimate register.

**Marilyn Livingstone:** That was not my understanding from this morning's evidence. Your first comments matched my understanding, but we heard evidence that the authority would continue its register; it did not give a timescale for stopping that.

**Dr Fiddes:** I am wearing two hats today. I speak principally on a commercial basis as the managing director of Scotweb, but I am also a governor of the Scottish Tartans Authority and I have represented the authority's governors in discussions about the register. I do not want to second-guess what Brian Wilton said, but I think that his problem in speaking to the committee was that some of the detail has not been sorted out. We have all agreed to proceed on the basis that the detail will be sorted out and settled in due course.

My own take is that, over several years, there will not really be two registers; the register will gradually morph from one form to the other. What is called what at which stage remains to be sorted out but, from early on, continual two-way communication of details will take place and, in effect, one register will exist. I do not see that as a big problem in the public mind.

As a commercial company, Scotweb has access to the full Scottish Tartans Authority database. That is important to us, because—rather unusually—we make all the tartans available to be woven to order in small quantities. Having access to the definitions of tartans so that small Scottish weavers can weave them for people is important for us. I do not know how we will work with the new official register, which is a business-critical issue for me. I am just proceeding on trust that we will work out the basis on which the new register will work.

**The Convener:** We understood from the earlier evidence that the Scottish Tartans Authority would not register new tartans. I presume that its register would continue on the basis of what is already on file.

11:15

**Dr Fiddes:** Yes. I would not get too hung up on the concern about the existence of two registers.

**Dave Thompson:** Should the keeper of the Scottish register of tartans have a classification role? Would classifying tartans into different categories help marketing?

**Dr Fiddes:** Classifying in what regard?

**Dave Thompson:** In respect of clan tartans, commercial tartans, family tartans, sports tartans and so on.

**Dr Fiddes:** That level of classification already takes place under the STA. Tartans are allocated one of around 10 names. I think that there are still on-going discussions about how the National Archives of Scotland will handle classification. An element of classification is certainly useful, but the reality is that classification often ends up being arbitrary, because particular tartans can slot into several different categories. Classification is a helpful indexing guide, but is probably not an important part of the definition.

**Dave Thompson:** My understanding was that the bill does not cover classification.

**Dr Fiddes:** I do not think that it does. Rather, we are talking about a practical issue that arises after registration and which relates to the development of the records.

**Dave Thompson:** So the keeper may decide to classify. Do you think that that will happen?

**Dr Fiddes:** I do not think that that has been finally settled. There are arguments on both sides. I think that it would, rightly, be the keeper's right to get involved in classification if they wanted to do so.

**Dave Thompson:** Would a classified system help marketing?

**Dr Fiddes:** Anything that makes it easier for someone to find a tartan in which they are interested helps marketing.

**David Whitton:** From what you have said, you seem to be both a wovenist and a printist. If I heard you correctly, you said that you can get tartans woven to order in small quantities. That takes me back to a point that I made to another panel. Should the bill say that tartan samples "must", as opposed to "may", be provided?

**Dr Fiddes:** Commercially, weaving is very much the core of our business, and it will always be. I do not think that there is a particular conflict. Making it a necessary part of registration that tartan must be woven is not crucial. Basically, I side with Brian Wilton on that.

**David Whitton:** That may not be crucial, but it may be desirable for small weavers, who see weaving tartan as a nice little side trade.

**Dr Fiddes:** That might be so, but there are other forms of commercial production in Scotland—by printers, ceramicists and so on—for whom the issue is also important. Serious commercial use is an important criterion. It is important that the keeper has latitude and a fairly free rein to be able to say that they will or will not accept a tartan without fear of legal challenge. Attempting to define things more closely at this stage is possibly a recipe for disaster.

Reference was made earlier to the possibility of people wanting to register thousands of tartans speculatively. Our company might be tempted to want to do that. Our work is not necessarily directly to do with that, but we are developing technology that would make that easy for people to do. However, it would not be desirable for anybody to have tens of thousands of new tartans that have no serious use coming on stream. In my view, the only effective response to that problem is to let the keeper have a ruthless capacity to say “I just don’t believe that’s serious, and that’s that.”

**David Whitton:** Before we let Mr Brown rush off to copyright the idea that he expressed earlier, perhaps I can ask Ms Scott where Scottish Enterprise stands in the wovenist versus printist argument.

**Kirsty Scott:** The short answer is that we do not have a position. It is not an appropriate call for us to make. We would abide by and support whatever—

**David Whitton:** Sorry, you say that it is not an appropriate call for Scottish Enterprise to make, but surely your reason for being is to encourage the Scottish textile trade, and taking a wovenist position would help that trade.

**Kirsty Scott:** We want to encourage the textile trade, but many of the Scottish textile companies involved in tartan have interests outside woven cloth, and therefore see benefit in other product categories, as Nick Fiddes outlined. There is a view that woven cloth is the focus of the textile industry, which is the primary interest group at stake in the bill. However, textile companies and the wider business community derive greater benefit from considering tartan in a broader sense.

**David Whitton:** But you also said that most of the tartan is woven here in Scotland. Would it not encourage more tartan to be woven here if people who registered a tartan were obliged to produce at least some swatches of cloth?

**Kirsty Scott:** If that was part of the criteria, the hope would be that the cloth would be woven in Scotland, but of course there would be no

guarantee that it would be woven here. It is a question for the Scottish Tartans Authority as to where the majority of registrations come from, but they obviously come from global sources—there are commissioned weavers worldwide. Having to provide swatches of cloth would not have a huge impact on the Scottish industry. The wider premise of the bill would have a benefit for the Scottish industry, but having to provide swatches of cloth when registering would not make a big impact.

**Dr Fiddes:** I have a point on the question of swatches.

**The Convener:** Can you define a swatch for those of us who might not be familiar with that term?

**Dr Fiddes:** A swatch is normally a small cloth sample of a few square inches. My point is that it is easy to run off a swatch quickly on a home loom, so providing a swatch would not necessarily indicate hard evidence of serious commercial use. That is why I would prefer to see a vaguer definition that would give the keeper more capacity to ask for further evidence beyond, for example, just receiving a swatch in the post.

**David Whitton:** But a swatch would provide evidence that the design could be turned into cloth.

**Dr Fiddes:** Any criss-cross design can be turned into cloth.

**David Whitton:** The definition in section 6(7)(c) of the bill states that an application for the register must include

“a description of the tartan including its colours, thread count and sett”.

I presume that a design must fulfil those criteria.

**Dr Fiddes:** But an applicant would not need to weave the design into cloth. We can look at a thread count and know that it will be weavable.

**David Whitton:** I will have to take your word for that because it is clear that you have more knowledge about it than I do.

**Dr Fiddes:** I think that that is what everyone has been saying this morning.

**The Convener:** You referred to serious commercial intent, Dr Fiddes, but there is no reference to that in the bill. Do you think that that aspect should be included in the bill? Is it important for the register to have regard to serious commercial intent?

**Dr Fiddes:** I would not like the word “commercial” to be included in the bill because it is legitimate for tartans to be woven by all sorts of organisations other than commercial companies. Including the concept that a tartan had to be commercial might put an undue bias in the bill.

Again, I feel that it would be best to brief the keeper on what the intentions are, then leave him to it.

**Gavin Brown:** I have just a couple of questions. One is about the economic benefits for Scotland as a whole from having a register of tartans. You could not put a precise figure on the benefits, which is fair enough. However, are you comfortable that the economic benefits of the register would easily beat its set-up costs and running costs? It is estimated that it will cost £100,000 to set up the register and £75,000 a year to run it. I presume that the register will provide benefits for the economy that will be comfortably bigger than those costs.

**Dr Fiddes:** I think that the benefits would go far beyond those figures. The figures were derived from measuring, as far as possible, the direct and indirect employment associated with the register. However, our experience tells us that the register's value would be greater than that.

I will go quickly down a little sidetrack and mention the reason why I got into the business. In 1995, I was lecturing in social anthropology at the University of Edinburgh and became aware of how fabulously stocked Scotland is with icons, symbols and reputation on the world stage and how commercial that can be in the Scottish diaspora and beyond. I keep coming across evidence of that way beyond our business. I remember that, a couple of years ago, when the Royal Bank of Scotland was opening a new headquarters on the east coast of the United States, the local bankers there said, "How brilliant these guys are to deal with. You can trust their word." There is some basis to that—on the whole, Scots are pretty straight as the world goes—but it also taps into a huge mythical wellspring of international reputation.

We have a fantastic range of icons, symbols and traditions that people buy into. They range from Celtic iconography to the whisky trade, which uses a wonderful, earthy natural product. I could go on about it for hours, but tartan is the apotheosis of that: it is one of the best internationally recognised symbols for Scotland and has deep roots of tradition, authenticity and naturalness. It is very difficult to put figures on that but, if we were to do more to promote Scotland's reputation for authenticity internationally, the spin-off would be huge. It would be worth billions, in some cases.

**Kirsty Scott:** I certainly agree that the initial cost of setting up a national register would be well outweighed by the continuing benefits, not only for the textile industry, for which the setting up of the register would underpin the promotion of an authentic product made in Scotland, but more widely for genealogy tourism and homecoming

events. A significantly wide variety of economic benefits can accrue from the register.

**Gavin Brown:** My second question is, in some ways, the opposite of that: what are the economic dangers of not having a Scottish register of tartans?

**Kirsty Scott:** That is more difficult to answer. The timing is important, in that there is a significant push to reposition the textile industry in key global markets—the United States, Japan, Italy, Germany and, increasingly, Russia—and at the high end of the market with authentic products and a largely unofficial made in Scotland label. The industry considers everything that can be done to underpin that to be vital for pushing out the message.

The textile industry in Scotland is no longer, and will not be, a big employer, but it is still an important element of the economy and we want to work to sustain it across the board. Like Italy, Scotland is known as a producer of luxury textile and cloth—in our case, largely tartans and tweeds. That has great importance in the global textiles industry. If we do not help to sustain that push on authenticity and Scotland's produce or put in place measures that augment it, we do not help growth.

I could not put a figure on the impact of not establishing a register, but there would be a huge benefit in having the register.

**Gavin Brown:** We have heard statements about the dangers of other countries producing registers of tartans. From what you know, is that a serious threat?

**Kirsty Scott:** It would certainly be a serious threat if anybody did it because it would mean that somebody else had taken ownership of tartan as a resource. Not only in the international textile trade but in other sectors, there is surprise that we do not already have a national register. It is time that we did. It is a good time for the industry because it is repositioning itself, but the move is widely felt to be timely as it is expected in all sorts of circles. Therefore, it is important that the register progresses.

11:30

**Christopher Harvie:** I want to make a general point about history. I found the historical section here to be very anecdotal. It misspells Scott's "Waverley", and I am still trying to find out what connection "The Heart of Mid-Lothian"—which is very much a lowlands story—has with tartan.

It seems to me that we could do things much better. We are talking about three areas here—whisky, tweed and tartan—all of which made an impact at roughly the same time, after the industrial revolution. If we are straight, and if we

tell the story as it is—in economic history terms as well as cultural history terms—we will establish a good legal case. We can think of tartan authenticity along the same lines as we think of whisky authenticity or Harris tweed authenticity, using them as precedents. If we do not do that, we will get caught up in the digital tartan revolution, and that would be a very awkward place to be.

**The Convener:** Just to be clear, were you talking about the parliamentary research document?

**Christopher Harvie:** Yes.

**The Convener:** I just wanted the witnesses to know what you were looking at.

**Christopher Harvie:** We should consider crucial things such as Queen Victoria and tartan, and the Crimean war and tartan.

**Dr Fiddes:** I can only agree with you.

I would like to go back to what I said earlier about how fast things are changing commercially with the overseas threat. I cannot overstate that. At the made in Scotland trade fair in Glasgow in January or February, it was conspicuous how thin on the ground new products were. The copying industry has taken off. Producers in Scotland can spend months and a lot of money on new products, but they have learnt that, if those products work and are successful, a few months later they will be knocked off in Pakistan or China and then products that tourists do not realise are of inferior quality are sold on the high street at a quarter of the price. That is killing important parts of living Scottish industry and tradition. It is a really important battle.

I know that I have gone off down a sidetrack, but the only effective response to the problem will be to emphasise history, tradition and authenticity. We have to put in place the building blocks from which we can respond in a clear voice. The new register will not be the be-all and end-all, but it will be a very important building block.

**Lewis Macdonald:** I want to go back to a comment that you made about the transfer of the register of the Scottish Tartans Authority to a new register. Section 5 of the bill provides for existing registers to be adopted by the keeper of the records of Scotland. Are discussions at an advanced stage? I was slightly concerned, because you appeared to be saying that it was not clear how and when the transfer of the records would happen.

**Dr Fiddes:** I was not expressing reticence; I was just pointing out that the details had not yet been worked out.

**Lewis Macdonald:** But is the process broadly understood?

**Dr Fiddes:** On the whole, I have been heartened by the positive way in which people have worked together on issues that could have been difficult for various parties. I see no reason why that should not continue.

**Lewis Macdonald:** Thank you for that answer—but the committee might want to come back to the issue at a later stage, convener.

**The Convener:** Indeed. That would be helpful.

That brings us to the end of today's consideration of the Scottish Register of Tartans Bill. I thank the witnesses for coming in and giving evidence this morning. We are very grateful to you.

## Scottish Register of Tartans Bill: Stage 1

11:15

**The Convener:** Item 3 concerns the Scottish Register of Tartans Bill. Once again, we have a shuffling of chairs at the other end of the table. We will take evidence on the bill at stage 1 from the poor, long-suffering Mr Mather, who must now deal with his third topic of the morning. This time, he will be joined by Mike McElhinney, the branch head of manufacturing policy in the Scottish Government, who gave evidence to us a week ago. We also have with us George MacKenzie, the keeper of the records of Scotland. Mr Mather, it might be helpful if you introduced your final colleague, because the committee is not aware of who he is.

**Jim Mather:** He is Neel Mojee.

**Lewis Macdonald:** We know now.

**Jim Mather:** The Government supports Jamie McGrigor's member's bill, which is a good example of the Parliament working on areas of consensus. We have taken a realistic and pragmatic approach, which is proof that, in the Parliament, we can engage, listen and learn and be persuaded by argument, not simply by force of majority. Since Jamie McGrigor's previous bill was introduced, some major issues have been resolved. The Scottish Tartans Authority and the Scottish Tartans World Register have agreed to share data with the Scottish register. That will avoid the need to create a new public body and will use public resources better and more effectively.

We are working with industry experts on the detail. Diverging views exist on what constitutes tartan, but we are working on that issue openly with the industry and on the classification of tartans for the register. The proposals are based largely on existing classifications and will involve giving due prominence to woven tartan. I am aware of the issues between the wovenists and modernists. We accept and respect the varying views on woven and non-woven tartans. The fact is that most tartan is woven, but not all of it is. Again, the issue is pragmatism, and we believe that we should maximise the commercial opportunities for non-woven tartans—through measures such as screen printing, their use on ceramics and printing on to fabric—by considering tartan to be the design or pattern and not purely the woven iteration of the design. That will maximise the register's relevance and potency.

The bill is a function of extensive on-going industry engagement. We continue to consult and

involve industry experts. Industry sub-groups are helping us to work out the details of how the register will function. We are working assiduously to take all the views into account.

The bill will fill a big gap because no genuine national repository of tartan exists in Scotland. The situation has been piecemeal and incomplete, perhaps dominated by interests that do not cover the entire sector. There is a risk that tartan records could be lost, that access to the records might not be as complete as we would want and that the records might not be commercially optimised for Scotland. The bill recognises tartan as a core part of our culture and a core brand. It is one of a few products or images worldwide that can broadcast effectively the nature and name of a country. The register promises to widen interest in tartan and to get more people thinking of it as a mechanism to get more product out there with tartan embedded in it. The register will help the industry to promote itself more effectively and will make a vivid statement to the diaspora out there that we are taking care of our birthright and maximising its potential.

I am most heartened by the fact that the keeper of the records and the National Archives of Scotland will be engaged in keeping the register, largely using existing resource, but using it better and ensuring that the Scottish Tartans Authority and the Scottish Tartans World Register and their accumulated wisdom, knowledge and data are cherished and managed for all time.

**Brian Adam:** You were right to mention the debate between the wovenists and the modernists. The bill will be of great interest to the two camps, which are why we currently have the two registers. What is to prevent further registers from being set up if there is another issue on which the industry cannot agree? There could be several more—we could end up with a whole series of splinter organisations. The evidence that we have heard so far has not contained an assurance from the two existing organisations that they will effectively wind themselves up. Where is the advantage to the public and to the country in having a single organisation under the public umbrella if the issue is not resolved and if there is the potential to have other organisations in the future?

**Jim Mather:** I see the situation marginally differently. I see both the existing registers as being willing to merge their data in with the national archive—

**Brian Adam:** At least one of them has said to us that it does not plan to wind up.

**Jim Mather:** Okay, but I think that we will see a consolidation of data in the national archive, with the power of its legitimacy, brand and capability

driving things forward. There will be a gravitational pull, whereby anybody who registers a new tartan will ensure that it is registered in that archive, because that will give increased legitimacy to that tartan and a better capability of getting it broadcast effectively to other people who might want to use that design.

**Brian Adam:** I would have hoped that the motivation for the bill would have been not just the commercial interest but the public interest. What is the public interest? What are the costs to the public purse of going down the route of agreeing to set up the register? There will be a cost to the public purse, will there not?

**Jim Mather:** Could you rephrase that? I am not sure that I understand.

**Brian Adam:** Quite appropriately, you plan to place the register that is to be set up in an existing public body. However, that will involve costs. What is the public benefit of having the register in the public sector? There will be a public cost. If we are going to do something of this sort, there has to be a clear public benefit.

**Jim Mather:** The public benefit is the added legitimacy and the increase in the number of jobs that will flow through the textile industry from the interest in tartan and from the motivation of more people to produce tartan goods. We think that the interest will be huge.

When we first launched the proposals, I had phone calls to make from my typically busy Friday surgery in Oban to the United States, Nova Scotia, Prince Edward Island and Vancouver in order to satisfy radio interests there. People in North America are interested in what is happening with tartan here. It is a matter of raising the profile of tartan and giving it legitimacy and a central domain that people can access and browse, allowing them to see designs and to motivate themselves to produce more. The key thing is building economic value from what has been very much a latent brand to date.

**David Whitton:** Are you a wovenist or a modernist?

**Jim Mather:** I am a pragmatist on the issue. As always, when looking for increased sustainable growth, I have an avaricious component to my thinking. I want us to maximise the potential return. I think that we can find a way of accommodating both sides—comforting the woven side that anything that is designed could be produced in woven format.

**David Whitton:** You have spoken about how iconic tartan is and about its close association with Scotland. It is a core brand. You have said that you want to secure more jobs in the textile industry.

Under the heading “Meaning of Tartan”, the written evidence that we received from the Scottish Tartans World Register states:

“A tartan is a woven pattern. This Register should be a Register of woven tartans.”

In our previous discussion of the issue, we had an interesting debate about whether any tartan should be woven material or whether it could be a design on the back of an aeroplane. If you want to protect and promote the textile industry and the jobs in it, should you not insist that any registered tartan must be a woven fabric?

**Jim Mather:** In my previous life, I was in the information technology industry, where I discovered that restrictions close down development and ultimate benefit. The sensible compromise is to ensure, as we will, that we seek a thread count for any design, so that it can be woven. If we were to do exactly what the member suggests, we might preclude designs that turn out eventually to be not only iconic woven designs but iconic woven designs that have a huge mass market. The next Burberry design that everyone wants to wear may appear on a mug or a ceramic of some other description.

**David Whitton:** Section 6(9) states:

“The application may include a woven textile sample of the tartan”.

Could the word “may” be changed to “must”? The person who designed the new Burberry tartan to which you refer—perish the thought—would then have to get a small textile company to produce a sample for them. Would that not boost jobs in the textile industry?

**Jim Mather:** At the moment I am spending a lot of time with Russell Griggs of the regulatory review group, who has been terrific. Russell and I meet on a three-weekly basis. Time after time, the message that I get from him is that I should take great care to ensure that any measures that we take do not have a negative impact on competitiveness and economic momentum.

**David Whitton:** How would it impact on competitiveness for us to insist that anyone who designs a new tartan must produce a woven textile sample of it? Surely that would increase business for textile producers.

**Jim Mather:** We should consider the case of the impecunious student or school that wants to produce a tartan. What about schools in overseas countries that might otherwise make connections to Scotland? The measure that you propose would act as a further barrier. The pragmatic approach is for us to seek a thread count for any design, so that it can be woven. We should not preclude the flow of imagination and ideas into which Scotland can tap. We are about to tap into a world of

potential generators of intellectual property called tartan that will flow into Scotland. It will include ideas that none of the 5.1 million people in Scotland can come up with. Let us not make the bar too high.

**Lewis Macdonald:** My question relates to the same point. You spoke about restrictiveness: I presume that you support the raft of very restrictive legislation that we have to protect Scotch whisky as a brand.

**Jim Mather:** I will seek to negotiate that dilemma. With Scotch whisky, I am always keen that Scottish provenance and value that is created here are maximised. Maximising the value that is created here is the common theme in the point that I have just made to Mr Whitton and in what I am saying to Lewis Macdonald. I am out to maximise value for Scotland. It is important for us to ask for a thread count for any design, to ensure that it can be woven and appear on a kilt, skirt or shawl, but much more important is the huge avalanche of ideas that can flow into Scotland and provide us with designs of which we have never thought and could never think.

**Lewis Macdonald:** I presume that when you had conversations with radio journalists on the other side of the Atlantic, they were all keen to be reassured that the register that is being promoted has the imprimatur of Scotland’s devolved Government and is an official Scottish tartans register, rather than simply a commercial opportunity.

11:30

**Jim Mather:** Absolutely. In essence, there are people overseas who are probably more forcibly Scottish than we are. They consider us to be the direct custodians of their birthright, and I am very keen to ensure that we make the best possible job of it.

**Lewis Macdonald:** What do you say to the suggestion that the requirement for a thread count and information on it puts in place a barrier—very small, but a barrier nonetheless—and that the requirement to weave that counted number of threads to form the tartan might be important to the credibility of tartan, since you describe it as precisely that?

**Jim Mather:** It is a compromise—going halfway and essentially forcing the issue of thread count establishes a link. It gets people thinking without creating a barrier that might lead them to say, for example, “Well, we have had this little academic exercise in class, but we will take it no further because that would mean that we have to have it woven, so we will just bin the exercise.” We might then lose the design that could end up being the kilt that everyone wants to wear in 2015.

**Lewis Macdonald:** Do you believe that a requirement to weave is a greater barrier than a requirement for a thread count in order to do the weaving?

**Jim Mather:** The barrier is slightly less with the thread count requirement, and it does not have the same cost implications, given the situation of the weaver who would struggle to make a commercial return on what would be a very small sample.

**Gavin Brown:** You talked about the fact that there will probably be an “avalanche” of designs from around the world. Is that desirable?

**Jim Mather:** It is probably desirable. That would make my iconic hunting Stewart kilt and other iconic tartans even more iconic—it gives them a cachet. The difference would be that the existing tartans have provenance that goes back in time; they are associated with certain parts of Scotland and certain names. I very much agree with the “Let many flowers bloom” idea.

I mentioned my enthusiasm for Eric Beinhocker earlier. He says that even in a business, you might want to have five or six competing business plans to maximise the chance of evolution. Having lots of new tartans coming forward would keep tartan alive and vibrant. It would work in other parts of the world with the Scottish connection—that Scottish provenance—to maintain what Michael Porter discovered when Russel Griggs had him working for Scotland the Brand: that 98 per cent of the people in the world know what Scotland is, which is something that only 15 or 16 other countries enjoy. I believe that although whisky and golf might play a part in that, tartan plays a bigger part.

**Gavin Brown:** I will resist the temptation to ask whether Eric Beinhocker is a modernist or a wovenist. I am hugely supportive of the principles of the bill: it is a great idea and we have to protect an iconic brand. You used the phrase “custodians of their birthright”. I agree with that, but I am more interested in the longer-term sustainable return for Scotland in tartan than in the kind of commercial “avalanche” that the minister mentioned. My concerns are that an avalanche of designs would dilute a very potent brand, and that that avalanche will then be on the official Scottish tartans register. Does that concern you?

**Jim Mather:** No, it does not. Vibrancy is important. I mentioned earlier Mr Beinhocker’s thought that stasis in the fitness landscape was a recipe for extinction. We need both that vibrancy and the custodianship of absolutely classic brands. I will still be wearing hunting Stewart.

**Gavin Brown:** That pleases me, minister.

During the previous meeting at which Mr McElhinney gave evidence I talked about

organisations that for £50 will name a star after someone, perhaps as a Christmas present. Given the fairly wide definition of tartan—an application would have to include the tartan’s thread count and sett, but I understand that that would not be a difficult hurdle to overcome—I am concerned that a number of companies might set up and offer to name tartans after customers for the cost of registration, which might be £70 or £80. Tens of thousands of people might decide that that would be a great Christmas present for someone and apply for a tartan. That would dilute a powerful brand. Is there anything in the bill that would prevent that scenario from happening?

**Jim Mather:** Instead of thinking about how to preclude such a scenario, it is worth thinking about the other side of the coin, whereby tens of thousands of people who have a direct association with a given tartan or an association with their town’s local tartan feel an affinity with Scotland, which makes them more likely to buy goods and services from Scotland. They might have Scottish forebears or skills that are appropriate to Scotland, which would make them more likely to come here.

A few years ago I remember hearing that Highland games were being run in east Germany and the Czech Republic. When the organisers were asked why they were doing that, they said, “The Scots are Celts and we are Celts, but their Celticism is cooler than ours and we want some of it.” We are not going to make it compulsory to be Scottish, but there are huge commercial advantages for us that go beyond the sale of tartan.

**The Convener:** We agree, but the bill would not make a blind bit of difference to any of that.

**Jim Mather:** With respect, I disagree. The fact that we are having this lively debate is indicative of the bill’s effect and if the bill is passed, as I hope it will be, the rest of the world will start to engage at a neat time, because during the year of homecoming we will be able to make the call even more vivid by saying, “Come back with your tartan tie and kilt or skirt.” Jamie McGrigor’s bill is exceedingly timely and there could be an explosion of material advantages to accrue from it.

**The Convener:** I am conscious of time, so I ask members to ask brief questions.

**Marilyn Livingstone:** We do not want to inhibit creativity. The important question is what should and should not be registered. What difference would the bill make? How would it ensure authenticity, so that there was not a plethora of tartans that had no meaning to anyone apart from the people who registered them? Surely we want the register to be meaningful.

**Jim Mather:** I ask officials to respond and add texture to the issue.



**Mike McElhinney (Scottish Government Enterprise, Energy and Tourism Directorate):**

Section 6 of the bill sets out criteria that the keeper of the register of tartans would apply in respect of each registration. For example, applicants would have to demonstrate the uniqueness of the design and provide the tartan's name and the association with the name that was claimed. The criteria would ensure that the tartans that were registered were sufficiently unique to warrant entry. Such an approach would militate against dilution of the authenticity or uniqueness of registered tartans.

**Marilyn Livingstone:** Are the criteria strong enough?

**Mike McElhinney:** The criteria in the bill more or less reflect the criteria that are applied by the current registers. By including them in the bill we would put them on a statutory footing. For the first time, there would be a statutory definition of tartan, against which new tartans that applied for registration would be tested. Over time, new tartans would be registered after being tested by the keeper against a set of criteria and against the first statutory definition of tartan to be passed by Scotland's Parliament.

**The Convener:** It is not, however, possible to trademark intellectual property rights.

**Mike McElhinney:** We cannot do that within the current devolved powers of the Scottish Parliament.

**The Convener:** Indeed. So, to pick up on the minister's earlier example, what is to stop Burberry just getting on with it? If it does not get a trademark out of this—one that it can then use to marketing advantage in the commercial world—I am at a loss to understand why, for the Burberry mug, it would even bother with the register.

**Mike McElhinney:** That is the prevailing situation. The register will take the existing tartan designs and put them on a more sustainable footing. At the moment, they are at risk. They are diverse and independently held, and access could be restricted. That became apparent during the previous session of Parliament. Now—for the first time—everything will be put on a statutory basis. If we accept the argument that tartan is an important part of Scotland's cultural heritage, the register will become a valuable national resource.

**Dave Thompson:** The bill includes no classification role for the keeper of the registers of Scotland. Would it be a good idea to define the difference between authenticated historical clan tartans and commercial tartans, whether sporting, corporate or whatever?

**Jim Mather:** Clearly, thought has been given to the options for classifying clan tartans, club tartans, corporate tartans and so on. However,

that adds complexity. I have spoken to Kinloch Anderson—lots of corporate bodies are beginning to take a tartan identity. Treating everything the same is tidier. The market, the clan societies and the families can handle classification by identifying themselves with the individual tartans.

**Dave Thompson:** We might end up with lots of tartans with the same name. That happens at the moment, but will we deal with it?

**Mike McElhinney:** The bill says that no two tartans with an identical name will be entered in the register. Part of the reason for that is to ensure that each registered tartan is sufficiently distinct.

Previous evidence showed how registration can work in practice. A sporting organisation or a commercial organisation might change its corporate tartan, so including the date of registration would be one possible way of ensuring that the entry was sufficiently distinct. Families might have branches in different parts of the world, so including an indication of where the family comes from would be another way of ensuring that the entry for the tartan was sufficiently distinct.

We have to take a commonsense approach. No two tartans will be identical; otherwise, people looking at the register would be confused. However, there will be flexibility to ensure that tartans are distinct.

**David Whitton:** I am sorry to hear you say that classification will add complexity. I fully support the idea of a register, but to me tartan has to do with family and clan and all the rest of it. We should try to protect that. My tartan is MacDonald of Clanranald, by the way.

**Lewis Macdonald:** Hear, hear.

**David Whitton:** I would have thought that the register should say, "These are the clan tartans of Scotland." We are talking about the year of homecoming for the diaspora. People want to be able to identify with their family tartan, and they will want to see the authentic tartan on the register.

If people want a kilt in a Rangers tartan or a Celtic tartan, that is fine, but those tartans should be listed under the heading of football club tartans. There should also be a separate heading for tartans such as a Royal Bank of Scotland tartan. Would it not be better to register the iconic brand of tartan as under the clan tartans of Scotland?

**Jim Mather:** I regularly meet with Fergie MacDonald at the hotel in Acharacle, and he is an assiduous protector of all Clanranald interests, so I am sensitive to this issue. I invite George MacKenzie to answer the question.

11:45

**George MacKenzie (Keeper of the Registers of Scotland):** The question is a good one and, essentially, the answer is yes. We require to classify tartans to allow people to find them. In this instance, our approach is not to put the provision in the bill but to make it part of the way in which the register will operate.

Classification is a means of helping people to understand where in the register they are likely to find an entry that interests them. As David Whitton said, people want to look up their clan tartan, so they will be distinguished as such in the register. Given that classification is a means of finding information, it is not appropriate to include it in the basic legislation.

**David Whitton:** If classification was in the legislation, surely that would protect the uniqueness of clan tartans.

**George MacKenzie:** On the other hand, that would also be rather inflexible. Classifications are likely to change over time and we cannot always predict what will happen. For example, we have seen a lot more recent interest in tartans from sporting clubs, which did not happen in the past. In the future, we could see greater commercial interest in registering tartans. By not including classification in the bill, we have the opportunity to change categories if necessary. We intend to take a simple approach to classification by minimising the number of categories under which tartans are classified. Essentially, classification is a means of finding information in the register.

**The Convener:** Bills can be amended, Mr Whitton.

I thank the minister for coming to committee this morning and for dealing with the three agenda items that were before us. We are grateful to you for your time, minister.

We move to take evidence from the member in charge of the bill, Jamie McGrigor. I am keen to finish at 12 o'clock, as many members are under pressure of time today. I ask colleagues to be sharp and pertinent with their points and questions.

Thank you for your patience, Mr McGrigor. We will go straight to questions, the first of which is from Mr Whitton.

**David Whitton:** Perhaps we can establish whether Mr McGrigor is a wovenist or a modernist.

**Jamie McGrigor (Highlands and Islands) (Con):** Am I not to give an opening statement before we move to questions, convener?

**The Convener:** We are keen to get on and put our questions, if that is all right, Mr McGrigor. In answering Mr Whitton's question, perhaps you will take the opportunity to make a statement.

**Jamie McGrigor:** All right, but my statement is of some length.

**The Convener:** We have 13 minutes before we finish. We would be grateful if you could be sharp and to the point.

**Jamie McGrigor:** In that case, I will not make my statement. I will simply answer questions.

The answer to the question whether I am a wovenist or a modernist is that I am both—I am a pragmatist. I want an all-encompassing register that takes in all forms of tartan.

**David Whitton:** Obviously, you are on the same wavelength as the minister. I think that that was exactly the answer that he gave.

You listened to the earlier exchanges. The last point that I made was on the protection of tartans on the register, including clan tartans. From what Mr MacKenzie said, it appears that classification will not be included in the bill. I would welcome your view on the matter.

**Jamie McGrigor:** In order to keep the bill simple, classification is not included. The national archive will show where tartans are kept. The keeper of the records answered the question quite well.

The difficulty in including classification is that some tartans may be both a clan and a sport tartan, for example. The sensible approach is not to make things inflexible by including classification in statute; it is better to have classification in the secondary stage, so to speak. The point at which a tartan should be classified is when people come to register it.

**Gavin Brown:** My question is similar to one I put to the previous witnesses. Is the wording of the bill, particularly sections 6 and 7, strong enough to protect the tartan brand?

**Jamie McGrigor:** I hope that it is. I will mention the thread count. On 14 May, the committee heard from Dr Nick Fiddes and Brian Wilton of the STA, who said that they know from a thread count whether a tartan is weavable and said that any sort of rectangular pattern is weavable. It is therefore not necessary to have in the bill wording along the lines of "something that is capable of being woven"; the point is made by including the words "thread count" in the bill.

In any application, a link will have to be shown through a coloured photograph or other coloured pictorial representation of the tartan, a thread count, the name of the tartan and the nature of the applicant's association with the name. That is the important point. It will be up to the keeper to decide whether an application is serious or frivolous, and he will be able to ascertain the applicant's link. For example, for a 2014

Commonwealth games tartan, the applicant would have to show a link to the organising committee. Otherwise, he could be a complete impostor.

**Dave Thompson:** Can you elaborate on the status of the existing registers? We have heard in evidence that one says that it will be merged and go out of business but the other appears to be saying that it will carry on. Will that have a detrimental effect on the new register?

**Jamie McGrigor:** I do not think that it will have a detrimental effect. From what I can gather, the STA and the STWR will not continue to register tartans. However, they will continue to be a great help to the new all-encompassing register, which they have been good enough to provide the broad base for by donating their existing registers. The new register will come from those people, who want a Scottish register.

The existing registers are in private hands and are paid for to a certain extent by the weaving industry, which is smaller than it used to be. The fact that the weaving industry has contracted puts the private registers in danger. It is high time that we in Scotland took the buck and started looking after our heritage, which is the point of an all-encompassing register.

**Mike McElhinney:** Both the STA and the STWR have indicated that they will not accept registrations once the national register becomes live. They will direct any queries for registration that they receive to the new register.

The articles of association of the Scottish Tartans World Register include the ambition to create a nationally held definitive register, as a *raison d'être*. That register will cease to exist in the future. The STA is different in that it has more of a trade-facing responsibility. Its move away from registration will enable it to free up capacity to concentrate on developing and enhancing its capability to represent the interests of the tartan industry. As we heard before, that involves trade, promotional and educational activity about tartans, including with retail outlets. The STA will move towards a more commercially oriented function than it performs at the moment.

**Marilyn Livingstone:** We heard from the minister the commercial considerations in respect of insisting on woven swatches, but I do not understand why we cannot include the phrase "capable of being woven" in the bill. Will you explain that?

**Jamie McGrigor:** I do not know whether it is good to have duplication in a bill, but I imagine that it is not: a bill wants to be as minimalist as possible. The reference in the bill to "thread count" means that a pattern will have to be weavable, so it is not necessary to include the phrase "capable of being woven."

**Marilyn Livingstone:** You and I both know that because we have sat here listening to the evidence, but do you not think that it would give the bill better status if it said that a tartan had to be capable of being woven?

**Jamie McGrigor:** Neel Mojee might like to comment on that.

**Neel Mojee (Scottish Government Legal Directorate):** There is a power under the bill for the keeper to issue guidance, and that may be the more appropriate place to make it clear that a tartan must be capable of being woven.

**Marilyn Livingstone:** So does the reference to "thread count" give better protection than the words "capable of being woven"?

**Neel Mojee:** I do not know whether I would describe it as giving "better protection", but the fact that there is a requirement in an application for a thread count means that the design must be capable of being woven.

**Marilyn Livingstone:** I am sorry to be pedantic about this but, although we accept the modernists' argument, why can the bill not just say that tartan must be "capable of being woven"? Would that not send a clear message?

**Jamie McGrigor:** The message would certainly be clear, but the question is whether it is necessary to put that text in the bill. The committee has heard from the experts Dr Fiddes and Brian Wilton, one of whom, I believe, qualified his original statement by saying that anything with a thread count is capable of being woven. All I can say is that this is how the bill has been drawn up. Should we say the same thing twice? Moreover, if tartan is so capable of being woven, do you really want to withdraw the phrase "thread count" from the bill?

**Brian Adam:** You have identified the potential risk to the two existing registers from commercial realities. I am anxious about the public purse. Do you plan to have full cost recovery in registering the tartans?

**Jamie McGrigor:** Will you repeat the last part of your question?

**Brian Adam:** Are you planning to have full cost recovery with regard to the charges that will be levied for registering a tartan? If not, the public purse will have to bear costs that were previously borne by the commercial industry.

**Jamie McGrigor:** The register will not involve any new money. It will be covered by the budget of the National Archives of Scotland, which will put up the £100,000 to set up the register and the £75,000 to run it.

Let me speculate for a moment on the second question. Anecdotal evidence suggests that the

existing register websites receive about 1,000 inquiries about tartan each day, or about 250,000 inquiries a year. If the proposed register increased levels of interest in tartan by 20 per cent, it would mean an additional 50,000 queries. If 10 per cent—or 5,000—of those additional queries resulted in a commercial opportunity such as a £100 or £200 purchase from the Scottish industry, the register could generate additional sales opportunities of between £500,000 and £1 million straight away. That is not a bad return on your £75K.

**Brian Adam:** It might not be a bad return for the industry, but is it a good return for the public purse, which currently does not have to bear any of those costs? I think that the answer to my question whether there will be full cost recovery is that there would not.

**George MacKenzie:** We do not intend to set charges to recover the full costs of operating the register. Of course, we cannot predict the number of registrations that will be made. You will recall that in our previous evidence we indicated that the charge will be around £80 to £100. At the moment, there are about 150 registrations, which would mean about £12,000 of income. As the expected cost of running the register will be nearer to £75,000 a year, there will be a shortfall.

However, I stress that the register fits extremely well alongside the National Archives of Scotland's family history business. As a result, we are keeping costs down remarkably and greatly limiting the net cost.

**Brian Adam:** The family history business is very much that—a business—that has full cost recovery and is not particularly commercial. In fact, it is in the public interest. Why should we offer the industry what amounts to a cross-subsidy from the National Archives of Scotland's activities when we are not offering it such a subsidy from the main part of the budget?

**George MacKenzie:** We offer a package of services. Some—but not all—the family history services recover their costs; some of the National Archives of Scotland's activities recover no costs at all. The internet service that we operate with the General Register Office for Scotland does make money, does cover its costs and does help to cross-subsidise the personal visitors who come to use our services.

**Brian Adam:** By the sound of it, it will also help to cross-subsidise this activity.

12:00

**George MacKenzie:** It is a matter of striking the right balance and having something that is attractive. It is about getting the price right in the

legislation so that it will not dissuade, as somebody said, the impecunious—someone who wants to register a design but does not have a lot of money. On the other hand, we want to set the price high enough to deter frivolous applications or the name-a-star type application. That balance has to be struck. We are setting the price at about £80 to £100.

**Brian Adam:** Given that we currently have two registers and they cost the public purse nothing, where is the money that it currently costs to do that going, and where will it go in the future?

**Mike McElhinney:** The economic impact study demonstrates that the tartan industry is a significant part of the Scottish textile sector. If you accept that argument, we work with a number of sectors to support, promote and grow them. The public investment that comes from putting this part of what the registers currently do on to a more sustainable, objective and independent basis, held in perpetuity for the Scottish nation, is a powerful argument for using it to support the industry to promote itself. There are two distinct issues. One is preserving the archive that exists in perpetuity for the Scottish nation.

**Brian Adam:** As I understand it, you have explained that the £100,000 set-up costs and the on-going £75,000 annual costs come out of an existing budget, which is nothing to do with the industry. You are saying that there is no new public money, so that money must come out of other activities in the general records office and the National Archives of Scotland, the Court of the Lord Lyon or whatever. If the industry will be the principal beneficiary, I fail to see why any subsidy should come out of, for example, the Scottish Enterprise budget. Why should it come out of a public budget when the principal beneficiaries are the commercial industries? The budget that it will come out of is one to which we do not currently provide a massive public subsidy. Some might argue that the public already have to bear full cost recovery in respect of genealogy-related activities, but that is not applying in this instance. It seems to be a strange way of going about things.

**Jamie McGrigor:** Minister, can I make a contribution?

**The Convener:** I am just a convener.

**Jamie McGrigor:** Sorry.

We heard an excellent report from a lady, Miss Scott—I think that she was from Scottish Enterprise—on what she thought the benefits of the bill would be. I think that it will provide a springboard to promote the Scottish tartan industry and I make no apology for that. I do not want to talk down the textile industry in Scotland and neither does my party, nor do most members of the Scottish Parliament. It remains an important

part of the Scottish economy. I see no harm in producing a register that will help the Scottish tartan industry. If there is a problem about that, please ask me another question.

**The Convener:** No one is arguing that. What Mr Adam is asking is where—

**Jamie McGrigor:** With respect, Mr Adam is arguing that.

**The Convener:** He is asking where the money will come from. We have previously been told that the £75,000 is coming from the enterprise budget. Is that true? Yes or no?

**Mike McElhinney:** Yes.

**The Convener:** Where will the £100,000 for start-up costs come from?

**Mike McElhinney:** The £75,000 is £75,000 each year for the next three years.

**The Convener:** Yes, but it is coming from the enterprise budget.

**Mike McElhinney:** It is coming from the part of the enterprise budget that supports innovative products to encourage—

**The Convener:** Where will the £100,000 for start-up costs come from?

**George MacKenzie:** That money has come from the National Archives of Scotland deferring other work to give this work greater priority.

**The Convener:** What other work are you deferring?

**George MacKenzie:** We will defer cataloguing of archive collections, on the ground that we are still promoting a joint service.

**Lewis Macdonald:** I have a brief supplementary. Mr MacKenzie said, if I understood him correctly, that all the existing tartans would be registered at a fee. I may have misunderstood him, in which case he can clarify the point.

**George MacKenzie:** The existing entries in the registers held by the Scottish Tartans World Register and the Scottish Tartans Authority will be taken on to the new register without a fee. We will not charge for that. New registrations after the register begins will be charged.

**Mike McElhinney:** There is discretion for the keeper to waive a fee for taking into the register new collections or existing collections elsewhere that we may come across as it goes forward, if we think that they will enhance and deepen the value of the register.

**The Convener:** Thank you for coming along, gentlemen. It is our job to test the legislation and we are grateful for your evidence.

12:05

*Meeting closed.*

**ANNEXE E: LIST OF WRITTEN EVIDENCE**

Copies of all other written and supplementary evidence received by the Committee can be found on the Scottish Parliament website ([www.scottish.parliament.uk](http://www.scottish.parliament.uk))

Alastair Campbell  
James Scarlett  
Blair Urquhart  
National Museums of Scotland  
The Kilt Makers Association of Scotland  
Dr Hugh Cheape  
Scottish Tartans World Register  
Deirdre Kinloch Anderson  
Jamie McGrigor MSP

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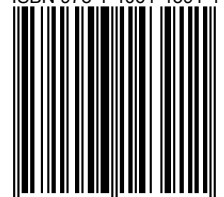
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