

This document relates to the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill (SP Bill 13) as introduced in the Scottish Parliament on 18 May 2017 17 May 2017

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

Promoter's Memorandum

Introduction

1. This document relates to the Writers to the Signet Dependants' Annuity Fund Amendment (Scotland) Bill introduced in the Scottish Parliament on 18 May 2017. It has been prepared by Brodies LLP on behalf of the promoter, the Trustees of the Writers to the Signet Dependants' Annuity Fund ("the Trustees"), to satisfy Rule 9A.2.3(b) of the Parliament's Standing Orders. The contents are entirely the responsibility of the promoter and have not been endorsed by the Parliament.
2. The following other accompanying documents are published separately by the Parliament:
 - statements on legislative competence by the Presiding Officer and the promoter (SP Bill 13–LC);
 - Explanatory Notes (SP Bill 13–EN);
 - a Promoter's Statement (SP Bill 13–PS).
3. The Promoter's Statement includes information about where these documents and other documents that are relevant to the Bill (but are not accompanying documents) can be inspected or purchased.

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Background

The fund

4. The Fund was originally established, under the name of the Writers to the Signet Widows' Fund, by Act of the UK Parliament of 1803 (43 Geo. 3 chapter cvii) as amended by an Act of 1818 (58 Geo. 3 chapter lxxiv). It was established to make provision for widows of members of the Society of Writers to His Majesty's Signet in Scotland, specifically by providing for the payment of annuities to such widows.

5. The legislative regime governing the Fund has been updated by private Act of Parliament from time to time, in particular by the Writers to the Signet Widows' Fund Order Confirmation Acts 1955 and 1965 and the Writers to the Signet Dependants' Annuity Fund Order Confirmation Act 1982 ("the 1982 Act"). The 1982 Act provided for the change of name of the Fund from the Writers to the Signet Widows' Fund to the Writers to the Signet Dependants' Annuity Fund, recognising that women were by then admitted as members of the WS Society and to reflect the opening up of the Fund to orphans as well as widows and widowers.

6. As at 5 April 2016 the value of the Fund was £55,505,185. There were 572 contributors to the Fund and the number of annuitants at that date was 141. The annual value of an annuity was £6,800, rising to £8,400 on 28 May 2016.

The collector

7. The 1982 Act and regulations made by the Trustees under and in terms of the 1982 Act impose various duties on the collector of the Fund. Those include the obligation to keep regular books under the inspection and direction of the Trustees; to prepare accounts; to have those accounts audited; and to lay the accounts annually before the Trustees.

8. The collector is required to fulfil other administrative tasks in relation to the Fund, may pursue contributors who are in arrears and must either give security to the Trustees in respect of his or her management of the Fund or hold adequate professional indemnity insurance. The 1982 Act confers powers on the Trustees and members as to suspension, removal and replacement of the collector.

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9. Section 10 of the Order forming the Schedule to the 1982 Act provides that the collector “shall be a contributor” to the Fund.

10. Regulation 19 of the regulations made under and in terms of the 1982 Act provides that the collector shall not hold office beyond the annual general meeting first occurring ten years after his or her first election or after he or she attains 65 years of age whichever be the earlier.

11. The current collector was elected in 2013. He is eligible to remain in office until December 2023 at the latest. The number of contributors to the Fund as at the date of introduction of the Bill was 561 and the youngest was 50 years old. The number of contributors under the age of 65 was 194.

12. By special resolutions of the contributors passed in 1989 the Fund was closed to new contributors. The pool of contributors from which a new collector can be elected is diminishing and will continue to diminish. In the year to 5 April 2016, six contributors died and in the year to 5 April 2017, six contributors died.

13. The Trustees agreed at meetings in 2015 and 2016 that the requirement that the collector be a contributor should if possible be removed and they further agreed that legislative amendment would be needed to achieve that. The Trustees also wished to have the consent of the contributors to the Fund to the proposed change. At their annual general meeting on 8 December 2016 the contributors of the Fund agreed with the Trustees’ proposal to see the definition of collector amended so as to remove the current requirement that the collector be a contributor. The members also agreed that the collector ought to be an individual: the definition of collector should not be expanded to include non-natural persons such as companies and limited liability partnerships or unincorporated associations.

Objectives of the bill

14. The first objective of the Bill is to remove the requirement that the collector is a contributor to the Fund and to substitute a new requirement that the collector shall be an individual. The change does not affect the provisions on election of the collector contained in the 1982 Act and does not otherwise affect the role or functions of the collector.

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15. This change protects against the risk that the pool of available persons eligible to be elected as collector will be reduced to zero. It also widens the pool of eligible individuals, giving the members of the Fund the opportunity to elect an individual with relevant experience and expertise notwithstanding that individual is not a contributor to the Fund. It is highly desirable that the collector is a person who remains in professional practice, has access to professional services and access to professional indemnity insurance.

16. The second objective of the Bill is to modernise one provision of the 1982 Act to reflect the merger of the Faculty of Actuaries in Scotland and the Institute of Actuaries in 2011. The definition of 'actuary' in the 1982 Act refers to a Fellow of the Faculty of Actuaries in Scotland or a Fellow of the Institute of Actuaries.

17. The Faculty of Actuaries in Scotland and Institute of Actuaries became the Institute and Faculty of Actuaries on 1 August 2011. The appropriate description of a Fellow is either as a Fellow of the Faculty of Actuaries or as a Fellow of the Institute of Actuaries.

18. The definition of actuary in the 1982 Act is relevant to the provisions of the 1982 Act for periodic investigation of, and reporting, on the affairs of the Fund.

Alternative approaches

Alternative approaches relating to the identity of the collector

19. There is no alternative to primary legislation if the requirement that the collector is a contributor to the Fund is to be removed.

Alternative approaches to the definition of actuary

20. It would be possible to take no action to amend the definition of actuary in the 1982 Act and to rely on the principle of statutory construction that parliaments intend the courts and others to apply to legislation a construction that allows for changes since that legislation was initially framed. The amendment is proposed for the avoidance of doubt.

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Consultation

21. On 11 November 2016 the collector on behalf of the Trustees wrote to all contributors to the Fund giving notice that the annual general meeting of the contributors to the Fund would be held on Thursday 8 December 2016. That notice included the proposed agenda for the AGM, one item on which was discussion of the proposal for amendment of the 1982 Act. Contributors were also sent, with the notice, a copy of the draft minutes of the previous AGM which had taken place on 10 December 2015, which minutes recorded the need to amend the 1982 Act. The issue had earlier been discussed at the AGM which took place on 11 December 2014. Contributors were also sent, with the notice of 11 November 2016, an explanatory note describing the purpose of the Bill and a document setting out an indicative timeline for the introduction and passage of the Bill.

22. The AGM of the contributors to the Fund took place on Thursday 8 December 2016 in Edinburgh. The AGM was attended by five of the Trustees, by the current collector of the Fund and by six contributors to the Fund. Apologies had been received from eight contributors and no proxies had been lodged. The proposed Bill was discussed and at the conclusion of the discussion the contributors present at the AGM expressed their unanimous approval of the introduction of the Bill.

23. On 20 January 2017 the collector wrote on behalf of the promoters to each of the 141 annuitants who receive an annuity from the Fund. The letter sent to each of them explained the background to the promoter's conclusion that the Bill was necessary, the amendments proposed and the expectation that the Bill would be duly advertised and introduced. The collector received one response from an annuitant living in New Zealand who expressed no view on the proposed changes.

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