

SPICe Briefing

National Galleries of Scotland Bill

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The National Galleries of Scotland Bill is a Private Bill aimed at removing certain legal obstacles to the plan to extend the Scottish National Gallery in Edinburgh into a small area of land which currently forms part of Princes Street Gardens.



Image courtesy of National Galleries of Scotland



CONTENTS

EXECUTIVE SUMMARY	3
THE BILL – PURPOSE AND PROCEDURE	4
THE PLANNED EXTENSION	4
<i>General.....</i>	<i>4</i>
<i>Impact of the extension.....</i>	<i>5</i>
<i>Funding of the extension.....</i>	<i>5</i>
<i>Consultation</i>	<i>5</i>
<i>Planning permission.....</i>	<i>6</i>
THE LEGAL OBSTACLES	6
1991 ACT	6
<i>General.....</i>	<i>6</i>
<i>Promoter's arguments.....</i>	<i>7</i>
COMMON GOOD LAND	7
<i>General.....</i>	<i>7</i>
1973 Act.....	8
<i>Promoter's arguments.....</i>	<i>8</i>
THE BILL.....	8
PROMOTER'S STATEMENT.....	9
OBJECTIONS.....	9
SOURCES	10
RELATED BRIEFINGS	12

EXECUTIVE SUMMARY

- The National Galleries of Scotland Bill (the Bill) is a Private Bill which relates to a plan to extend the [Scottish National Gallery](#) (the National Gallery) in Edinburgh into a small area of land (the land) which currently forms part of Princes Street Gardens (the Gardens).
- The extension is part of the [Scottish National Gallery Project](#) which is aimed at improving the display of the National Gallery's Scottish Collection and providing direct access to the National Gallery from the Gardens.
- The land is owned by the City of Edinburgh Council (Edinburgh Council) and would be transferred to the Board of Trustees of the National Galleries of Scotland (the Promoter).
- According to the Promoter, the land's legal status creates certain legal obstacles to this planned extension. These are:
 - Rules in the City of Edinburgh District Council Order Confirmation Act 1991 (1991 Act) which prohibit the construction of buildings on any part of the Gardens
 - The fact that the land is common good land as regards which a question arises as to the right of the Council to alienate it (i.e. to use it for a different purpose or to dispose of it) – the result being that court approval would be needed for the disposal of the land to the Promoter.
- The Bill is aimed at removing these legal obstacles by reclassifying the land (see details below).
- The period for lodging objections to the Bill was from 26 June 2015 to 24 August 2015. No objections have been received by the Scottish Parliament.

THE BILL – PURPOSE AND PROCEDURE

The [National Galleries \(Scotland\) Bill](#) (the Bill) is a Private Bill introduced in the Scottish Parliament on 25 June 2015 by the Board of Trustees of the National Galleries of Scotland (the Promoter). The Bill is accompanied by [Explanatory Notes \(and other Accompanying Documents\)](#), a [Promoter's Memorandum](#) and a [Plan of Relevant Land in relation to the National Galleries \(Scotland\) Bill](#) (the Plan).

The Bill relates to a plan to extend the [Scottish National Gallery](#) (the National Gallery) in Edinburgh into a small area (approximately 737 square metres) of land (the land) which currently forms part of Princes Street Gardens (the Gardens).

The land is owned by the City of Edinburgh Council (Edinburgh Council) and would be transferred to the Promoter. According to the Promoter, the land's legal status creates certain legal obstacles to this planned extension. The Bill is aimed at removing these legal obstacles.

The Bill is subject to the Private Bill procedure. Private Bills are different to other Bills as they involve measures sought in the private interests of the promoter, and to which others may object. In this case, the Promoter is the Board of Trustees of the National Galleries of Scotland. The role of the Parliament is to consider the Bill and to arbitrate between the promoter and objectors.

Private Bills are subject to a parliamentary process which includes scrutiny by a Private Bill Committee established for this purpose – in this case [the National Galleries of Scotland Bill Committee](#) which was established on 2 September 2015.

The Scottish Parliament has published detailed [Guidance on Private Bills](#) (Scottish Parliament 2015), which explains the process in more depth.

THE PLANNED EXTENSION

General

The extension is part of the [Scottish National Gallery Project](#) which is aimed at improving the display of the National Gallery's Scottish Collection and tripling the size of the relevant galleries. The project is also designed to provide direct access to the National Gallery from the Gardens (see Scottish National Gallery Project (2015))

The [Promoter's Memorandum](#) explains further that:

“A key component of the proposals is the expansion of the ‘Scottish Wing’ into the relevant land, creating approximately 500 square metres of new gallery accommodation in which the collection of Scottish art will be exhibited.... There are also proposals for a new landscaped public pathway and terrace at the Gardens level and a wider public precinct at the higher level. This revised configuration is expected to improve connectivity and amenity between the Gallery Complex, the Gardens, Princes Street, the Playfair Steps and the Edinburgh Old Town” (paragraph 8)

The [National Gallery's website](#) includes the following architect's impression of the new extension, landscaping and café terrace.



Source: Scottish National Gallery Project (2015)

The National Gallery's website also contains architect's impressions of the new interior after the redevelopment and also the new gallery foyer (see [here](#)).

Impact of the extension

The Promoter's Memorandum indicates that the reduction in open space will be minimal if the Bill is enacted, arguing that the land is a, "sloping grass embankment which is used only as an area of landscaping" (para. 24). It also argues that the loss of this area will be compensated by landscaping improvement and, "enhanced access within the National Gallery and also from the Gardens to the National Gallery" (para. 25).

Funding of the extension

The Promoter's Memorandum indicates that an application to the Heritage Lottery Fund for a grant of £4.94m has been made and that it was successful in achieving a Round 1 pass in April 2015.¹ It also explains that the Promoter intends to make a Round 2 application in November 2015 and that it is also undertaking an international fund-raising campaign directed at corporate and individual donors (para. 34).

Consultation

The Promoter's Memorandum explains that the Council consulted a number of organisations in relation to the proposed disposal, including the Cockburn Association, Historic Scotland, the Edinburgh Old Town Association and Edinburgh World Heritage (see para 26). The Council apparently received two responses to this consultation; one from Historic Scotland, confirming that it had no concerns and one from the Edinburgh Old Town Association which confirmed that it found the proposal acceptable (see paras 26 and 27).

The Promotor apparently also carried out its own consultation with key interested parties. From the Promoter's Memorandum it appears that Historic Scotland responded in positive terms as did Edinburgh World Heritage Trust who supported the Promoter's first stage application to the Heritage Lottery fund mentioned above (see paras 28–30).

¹ For details of the Heritage Lottery Fund process see: <http://www.hlf.org.uk/looking-funding/our-grant-programmes/heritage-grants>

The Promotor's Memorandum also indicates that the consultation process is an ongoing one and that the Board is currently displaying public exhibitions on the project within the National Gallery in order to obtain direct feedback (see para. 32).

Planning permission

Planning permission and listed building consent would still be required if the Bill was passed. The Promoter indicates that it has been in discussions with the Council's planning authority which has confirmed that it is supportive of the proposal in principle, subject to the detail of final designs (see Promoter's Memorandum, para. 33).

THE LEGAL OBSTACLES

According to the Promoter, there are two legal obstacles to the planned extension, namely:

1. Rules in the City of Edinburgh District Council Order Confirmation Act 1991 (1991 Act) which prohibit the construction of buildings on any part of the Gardens.
2. The fact that the land is common good land as regards which a question arises as to the right of the Council to alienate it (i.e. to use it for a different purpose or to dispose of it) – the result being that court approval would be needed for the disposal of the land to the Promoter.

These are explained in more detailed below.

1991 ACT

General

Section 22 of the Schedule to the 1991 Act contains a statutory restriction on the construction of buildings in various Edinburgh parks (including the Gardens).² It reads as follows:

“Subject to the provisions of this Order there shall not be constructed in any of the parks specified in the first column of the following table any permanent buildings other than buildings of the description specified in the second column of that table in relation to such park.”

There are, however, limited exceptions (see column 2 of the table to Section 22 of the Schedule to the 1991 Act). In the case of the Gardens, these are: lodges for gardeners and keepers, hothouses and conservatories, monuments, bandstands, public conveniences, police boxes and buildings for housing apparatus for the supply of electricity and gas.

The Promoter's Memorandum explains that the 1991 Act is the most recent provision restricting building in the Gardens. It also outlines that the various rules have been amended by statute over the years:

“as occasion has demanded, and in response to changing public needs and expectations, while preserving the Gardens' position as an important public space” (para 16).

In this regard, the Promoter's Memorandum refers to the extension of the Edinburgh to Glasgow railway in the 19th Century to North Bridge, the buildings of bandstands, lavatories etc. in the Gardens and, in 2003, the [“Playfair Project”](#) which involved the most recent major renovation of

² The other areas covered are: the Bruntsfield Links, the Meadows, Leith Links and Calton Hill

the National Gallery including the creation of the current “Garden Entrance” linking the National Gallery to the Gardens. The Playfair Project also involved the Scottish Parliament disapplying section 22 of the above Schedule by means of a Private Bill which led to the National Galleries of Scotland Act 2003 (2003 Act) (see Scottish Parliament 2003 for details).

For the avoidance of doubt, the 1991 Act does not allow one to apply to the courts in order to build in the parks in question. The result is that legislation is required if construction is needed.

It should be noted that there are other instances where the Council appears not to have considered it desirable to promote private legislation to change the use of parkland covered by the 1991 Act. For example, when considering the possible location of a new skate park in 2003, the Council appears to have discounted the Meadows (its preferred site) on the basis that the 1991 Act would prohibit its building there. It appears that one of the Council’s concerns in this instance was that achieving a change in the status of the land in the Meadows through a Private Bill would have been a long process which would have led to a large number of objections (City of Edinburgh Council (2004)). As a result, the skate park was ultimately built in Saughton after a local campaign led to the alternative location in Inverleith Park being blocked at the planning stage (Kirkintilloch Herald 2006).

Promoter’s arguments

The Promoter’s Memorandum indicates that, if the land was to be transferred to the Promotor, it would still remain part of the Gardens and would, therefore, still be subject to the restriction on construction in the 1991 Act (see para. 17). The Promoter’s Memorandum indicates that:

“the Bill is therefore necessary to remove the relevant land from the Gardens and hence to disapply section 22 in respect of that land.” (para. 17)

COMMON GOOD LAND

The Promotor’s Memorandum indicates that the land is common good land and that it also relates to land, “with respect to which a question arises as to the right of the Council to alienate” (i.e. to use for a different purpose or to dispose of) under the Local Government (Scotland) Act 1973 (1973 Act).

General

Common good land is a common law principle (i.e. based on case-law) which has its origins in the Scottish burgh system, where burghs administered land on behalf of their inhabitants.

In simple terms, it can be thought of as land which, unlike private land, has a public purpose and where title is held by a local authority subject to fiduciary obligations (in other words, to administer the land on behalf of the community).

From a legal perspective, the position can be complex. Assessing the nature of common good land generally involves an analysis of, amongst other things: the title deeds, the local authority’s actions as regards the land and the use to which the land has been put over time.³

In this respect, there is a large body of case law which is largely focussed on two main issues:

1. whether land held by a local authority can be considered to be common good land and, if so;

³ See, for example, *Murray v Magistrates of Forfar* (1893) 20 R 908 at 918–919

2. whether common good land can be considered to be what is known as “inalienable” - i.e. whether there is a prohibition on it either being disposed of (e.g. sold) or used for a different purpose (i.e. appropriated).

For more details on common good land and relevant case law see Scottish Parliament 2013.

1973 Act

The 1973 Act altered the common law framework outlined above, giving local authorities certain statutory rights to appropriate common good land.

The provisions in the 1973 Act are complicated. However, the key provision in this case is section 75(2) which provides that if, “a question arises as to the right of an authority to alienate” common good land (i.e. it is inalienable) it can only be disposed of (e.g. sold off) if the Court of Session or sheriff court first gives its authorisation.

In contrast, Section 75(1), read with section 74, allows local authorities to dispose of or appropriate common good land for another use where it is considered to be “alienable.”

As indicated, whether land is “alienable” or “inalienable” depends on the case law mentioned above.

For more details on the 1973 Act, see Scottish Parliament 2013.

Promoter’s arguments

The Promoter’s Memorandum explains that consideration was given to applying to the Court of Session under section 75(2) of the 1973 Act for authorisation for the common good land to be disposed (see para. 20). However, it argues that the Private Bill procedure has certain advantages, including:

- The possibility of dealing with the 1991 Act issues and the common good issues together in one process, with one promotor, rather than having to wait for court authorisation for disposal (led by the Council) prior to the Promotor starting a Private Bill process to deal with the issues under the 1991 Act (paras 22 and 23)
- The likelihood that the Private Bill process will be a cheaper and less intimidating process for members of the public, as well as one which is, “more open, inclusive and transparent.” (para. 22)
- The fact that the Private Bill process contains, “significant consultation and notification requirements which will ensure that interested parties are properly informed.” (para. 22)

THE BILL

The relevant provisions of the Bill are as follows:

- **Section 1(1)** – This provides that the land will be deemed to be alienable common good land for the purposes of the 1973 Act. This allows the Council to use section 75(1) of the 1973 Act to dispose of the land.
- **Section 1(2)** – This limits the scope of section 1(1) to the disposal of the land to the Promotor for the purpose of extending the National Gallery (the Council cannot therefore use this provision to dispose of the land to another party, or for other purposes, without court approval or further legislation).

- **Section 2** – This provides that, when the Bill is enacted and comes into force, the land shall cease to form part of the Gardens with the result that the restriction on construction in section 22 of the Schedule to the 1991 Act shall cease to apply.
- **Section 3** – This defines the land by reference to grid references. It also defines “the Council”.

PROMOTER’S STATEMENT

The [Accompanying Documents to the Explanatory Notes](#) include a Promoter’s Statement which includes information on various notifications/notices required under the Scottish Parliament’s Standing Orders (see paras 1–10).

OBJECTIONS

As indicated above, the Private Bill process allows those who consider that their interests would be adversely affected to object (see Scottish Parliament for more details)

The period for lodging objections to the Bill was from 26 June 2015 to 24 August 2015. According to [the Scottish Parliament’s website on the Bill](#), no objections were received.

SOURCES

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RELATED BRIEFINGS

[SB 13–29 The City of Edinburgh Council \(Portobello Park\) Bill \(544KB pdf\)](#)

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