

Scottish Register of Tartans Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 76-EN. A Policy Memorandum is printed separately as SP Bill 76-PM.

Scottish Register of Tartans Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish a Scottish Register of Tartans and to provide for the appointment and functions of the Keeper of that Register.

Scottish Register of Tartans and the Keeper

1 The Register

- 5 (1) There is to be a Scottish Register of Tartans (in this Act referred to as “the Register”).
- (2) The purpose of the Register is only to provide a depository or archive of tartans for reference and public information purposes.
- (3) In particular, this Act does not create any rights to, or in connection with the use of, any tartans registered in the Register and does not require any person to have a tartan registered before that person can weave, sell or otherwise deal with it.
- 10

2 The Keeper

- (1) There is to be a Keeper of the Register (in this Act referred to as “the Keeper”).
- (2) The schedule makes further provision about the Keeper.

3 Definition of tartan

15 For the purposes of this Act, a tartan is a design made with two or more alternating bands of colour which combine, vertically and horizontally, to form a chequered pattern or sett.

Application for registration

4 The application

- 20 (1) Any person may apply to the Keeper for registration of a tartan.
- (2) An application for registration of a tartan must be in writing and signed by the applicant.
- (3) The applicant must—
- (a) request and authorise the Keeper to register the tartan, together with the other particulars relating to it;

- (b) certify that the applicant has the right so to authorise the Keeper or that, so far as can reasonably be ascertained, there appears to be no other person who has that right; and
- (c) indemnify the Keeper from any liability to meet any damages or expenses incurred as a result of or in connection with the registration of the tartan and its particulars.
- (4) An application must be in such form as the Keeper may specify and different forms may be specified for different purposes.
- (5) The application must include—
- (a) the name of the tartan to be registered;
- (b) a woven textile sample of the tartan of such size and in such form as the Keeper may specify;
- (c) a coloured photograph or drawing of the tartan, together with a detailed description of the tartan, including its colours, thread count and sett;
- (d) the name and address of the applicant;
- (e) the name of the owner and designer of the tartan if different from the applicant and if they have consented to their name being included in the register; and
- (f) such further information as the Keeper may specify.
- (6) The application must be accompanied by the appropriate fee.

5 Consideration of application

- (1) The Keeper may accept or reject an application and must notify the applicant in writing of that decision and the reasons for it.
- (2) The Keeper may request the applicant to submit such further information or documents as the Keeper considers necessary or expedient.
- (3) Subject to subsection (4), the Keeper must accept an application unless satisfied that—
- (a) any of the requirements in section 4 has not been met;
- (b) the applicant has not provided any further information or documents requested under subsection (2); or
- (c) the application relates to a registered tartan.
- (4) The Keeper may reject an application where the Keeper considers that it gives rise to a question which it would be appropriate for the applicant to have resolved or clarified elsewhere (such as by a court).

6 Reconsideration following rejection

- (1) The applicant may request the Keeper to reconsider a rejected application.
- (2) Any such request must be made in writing within 2 months after the date when the applicant is notified of the decision under section 5(1) and must give the reasons why the applicant is dissatisfied with that decision.
- (3) Any such request must be accompanied by the appropriate fee.
- (4) Where the requirements in subsections (2) and (3) are met, the Keeper must reconsider that decision.

- (5) Section 5 applies to any reconsideration of the decision as it applies when the Keeper is considering an application.

Registration and amendment

7 Entry in the Register

- 5 (1) When an application is accepted, the Keeper must proceed to register the tartan.
- (2) There is to be a separate entry for each tartan registered containing the following particulars—
- 10 (a) the name of the tartan;
- (b) the woven textile sample of the tartan;
- (c) the coloured photograph or drawing of the tartan, together with a detailed description of the tartan including its colours, thread count and sett;
- (d) the name and address of the applicant and a description of the right, if any, which the applicant had to authorise the Keeper to register the tartan;
- 15 (e) where available, the name and address of the owner and designer of the tartan if different from the applicant; and
- (f) such other particulars relating to the tartan as the Keeper considers desirable.
- (3) The Keeper must send a copy of the entry to the applicant.

8 Amendment of the Register

- (1) Any person may request the Keeper to amend an entry in the Register.
- 20 (2) The request must set out in writing the reasons for the amendment and be accompanied by the appropriate fee.
- (3) Where the request is made by a person other than the applicant (“a third party”), the Keeper must send a copy of that request to the applicant and invite the applicant to submit written comments.
- 25 (4) The Keeper must send a copy of any comments received from the applicant to the third party and invite that person to submit further written comments.
- (5) Any comments under subsections (3) and (4) must be submitted, in each case, within such period, not being less than 28 days, as the Keeper may specify.
- 30 (6) The Keeper may request the applicant or the third party to submit such further information or documents as the Keeper considers necessary or expedient.
- (7) The Keeper may decide to accept or reject an amendment and, where an amendment is accepted, may determine how that entry is to be amended.
- (8) The Keeper may reject an amendment where the Keeper considers that it gives rise to a question which it would be appropriate for the applicant and any third party to have resolved or clarified elsewhere (such as by a court).
- 35 (9) The Keeper must notify the applicant and any third party in writing of the decision to accept or reject an amendment with reasons and (in the case of acceptance) enclose a copy of the amended entry.

- (10) In addition, the Keeper may, at any time, amend any entry relating to a tartan to correct any clerical or typographical error but must send a copy of the amended entry to the applicant.

Keeper's functions in relation to the Register

5 **9 Keeper's functions**

- (1) The Keeper has the general functions of preparing, keeping and publishing the Register.
- (2) The Keeper must take such steps as the Keeper considers appropriate for publicising the existence of the Register, the arrangements made for public access to the Register, any services provided by the Keeper and any fees payable.
- 10 (3) The Register must be kept in such form or forms as the Keeper considers appropriate but, where it, or any part of it, is kept otherwise than in documentary form, it must be in such form that, when printed or displayed, it shows what the Register contains.
- (4) The Keeper must make appropriate arrangements for the care and preservation of the Register and for cataloguing and indexing the Register.
- 15 (5) The Keeper may provide services to the public in connection with the Register on payment of the appropriate fee.
- (6) On payment of the appropriate fee, the Keeper may, in connection with the Register—
- (a) carry out research; and
 - (b) provide information and other educational material.

20 **10 Publication of the Register**

- (1) Subject to subsection (2), the Keeper must ensure that the Register is open to inspection by the public, on payment of the appropriate fee—
- (a) at such place and on such days and at such times as the Keeper may determine; and
 - 25 (b) on a website on the internet or by other electronic means.
- (2) The Keeper may determine when and by what means the textile sample of any registered tartan is to be available to inspection by the public and may impose such restrictions on public inspection of such a sample as the Keeper sees fit.

11 Fees

- 30 (1) Subject to subsections (2), (3) and (4), the Keeper must charge fees of such amount and for such matters as may be approved by the Parliamentary corporation.
- (2) Different fees, including nil fees, may be approved by the Parliamentary corporation for different purposes.
- 35 (3) No fee shall be charged for an application for registration of a tartan where it is made by the owner or keeper of an existing collection of tartans and relates to a tartan from that collection.
- (4) The Keeper may waive the fee payable in such circumstances as the Keeper may, with the approval of the Parliamentary corporation, specify.

*Reports***12 Annual report**

- (1) The Keeper must lay before the Parliament at the end of each financial year a general report on the exercise of the Keeper's functions during that year.
- 5 (2) The report must include—
- (a) a summary of the action taken by the Keeper in the exercise of the Keeper's functions;
 - (b) information about the operation of the Register;
 - (c) information about the fees chargeable by the Keeper;
 - 10 (d) a financial statement based upon the annual accounts; and
 - (e) a summary of the action proposed to be taken by the Keeper during the next financial year.
- (3) In preparing a report under this section, the Keeper must comply with any directions given by the Parliamentary corporation as to the form and content of the report.

13 Publication of reports

- 15 (1) The Keeper must arrange for the publication of the annual report referred to in section 12(1).
- (2) The Keeper may publish other reports on matters relevant to the Keeper's functions.

*Supplementary***14 Interpretation**

- 20 (1) In this Act—
- “amend”, in relation to an entry in the Register, includes the deletion of that entry or any particulars in it;
 - “applicant” means the person who applied for registration of a tartan;
 - 25 “appropriate fee”, in relation to a matter, means such fee, if any, as is charged for that matter under section 11;
 - “colour” includes chromatic and non chromatic colour;
 - “existing collection of tartans” means tartans held in an archive or register which existed before the date of Royal Assent of this Act;
 - 30 “financial year”, in relation the Keeper, means—
 - (a) the period beginning with the date on which the first Keeper is appointed and ending with the 31st of March next following that date; and
 - (b) each successive period of twelve months ending with the 31st of March; - “person” includes any body of trustees;
 - 35 “Keeper” means the Keeper of the Register;
 - “the Register” means the Scottish Register of Tartans established by section 1 and ancillary expressions, such as “to register” or “registered”, shall be construed accordingly;

“tartan” has the meaning given by section 3; and

“thread count” means the number of threads of each colour contained in a tartan when woven in a textile.

- 5 (2) Any reference in this Act to the Keeper sending to a person a copy of an entry or amended entry relating to a tartan does not include sending a copy of the woven textile sample, photograph or drawing of that tartan.

15 Short title and commencement

- (1) This Act may be cited as the Scottish Register of Tartans Act 2006.
- (2) The provisions of this Act, except for this section, come into force as follows—
- 10 (a) sections 1, 2, 3, 14 and the schedule come into force at the end of the period of six months; and
- (b) the other provisions of this Act come into force at the end of the period of nine months,
- beginning with the date of Royal Assent.

SCHEDULE
(introduced by section 2(2))

THE KEEPER OF THE SCOTTISH REGISTER OF TARTANS

Appointment

- 5 1 (1) The Keeper is to be an individual appointed by Her Majesty on the nomination of the Parliament.
- (2) A person is disqualified from appointment as the Keeper if that person is, at the date when the appointment is to take effect, or in the year prior to that date has been—
- 10 (a) a member of the Parliament;
- (b) a member of the House of Commons; or
- (c) a member of the European Parliament.
- (3) The Keeper is to be appointed for such period, not being more than five years, as the Parliamentary corporation may determine.
- 15 (4) A person who has been appointed for one period as the Keeper, may be appointed for a further period or periods.

Removal

- 2 (1) The Keeper may be removed from office by Her Majesty if—
- (a) the Keeper so requests; or
- (b) the Parliament has passed a resolution for removal on the ground—
- 20 (i) that the Keeper has breached the terms of appointment; or
- (ii) that the Parliament has lost confidence in the Keeper's willingness, ability or suitability to carry out the functions of the office.
- (2) A resolution for removal of the Keeper, if passed on a division, must be voted for by not less than two thirds of those voting.

25 *Status*

- 3 (1) Neither the Keeper nor any member of the Keeper's staff is to be regarded as a servant or agent of the Crown or as having any status, immunity or privilege of the Crown.
- (2) The Keeper's property is not to be regarded as property of, or property held on behalf of, the Crown.

30 *Independence*

- 4 Except as provided expressly in this Act, the Keeper is not subject to the direction or control of—
- (a) any member of the Parliament;
- (b) any member of the Scottish Executive; or
- 35 (c) the Parliamentary corporation.

Validity of actings

- 5 The validity of any actings of the Keeper is not affected by—
- (a) any defect in the nomination by the Parliament for the Keeper's appointment; or
 - (b) any disqualification from appointment as Keeper.

5 *Remuneration and terms of appointment*

- 6 (1) The Keeper is entitled to—
- (a) a salary of such amount; and
 - (b) such allowances,
- as the Parliamentary corporation may determine.
- 10 (2) The appointment of the Keeper is otherwise on such terms as the Parliamentary corporation may determine.
- (3) The terms may include provision as to the circumstances in which the Keeper may hold any other office or appointment.

Pensions etc.

- 15 7 (1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, any person who has ceased to hold the office of Keeper.
- (2) The Parliamentary corporation may, in particular—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities; and
 - (b) establish and administer one or more pension schemes.
- 20

General powers

- 8 (1) Subject to sub-paragraph (3), the Keeper may do anything which appears to the Keeper to be necessary or expedient for the purposes of, or in connection with, the exercise of the Keeper's functions.
- 25
- (2) Without prejudice to that generality, the Keeper may, in particular—
- (a) enter into contracts; and
 - (b) consult, act jointly with, co-operate with or assist any other person in matters relevant to the exercise of the Keeper's functions.
- 30
- (3) The Keeper may only acquire and dispose of land and property with the consent of the Parliamentary corporation.

Staff

- 9 (1) The Keeper may, with the consent of the Parliamentary corporation as to numbers, appoint staff to assist in carrying out the Keeper's functions.

- (2) The Keeper may, with the consent of the Parliamentary corporation, determine the terms of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Keeper.

5 *Delegation of authority*

- 10 The Keeper may authorise any person to exercise functions on behalf of the Keeper to the extent specified in the authorisation, but any such delegation of authority does not affect the responsibility of the Keeper for the exercise of the functions.

Financial provision

- 10 11 The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Keeper; and
 - (b) any expenses properly incurred by the Keeper in the exercise of the Keeper's functions.

Accountable officer

- 15 12 (1) The Parliamentary corporation is to designate the Keeper or a member of the Keeper's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) signing the accounts of the expenditure and receipts of the Keeper;
 - (b) ensuring the propriety and regularity of the finances of the Keeper;
 - 20 (c) ensuring that the resources of the Keeper are used economically, efficiently and effectively; and
 - (d) where the accountable officer is not the Keeper, performing the duty set out in sub-paragraph (4).
- (3) The accountable officer is answerable to the Parliament for the exercise of those
- 25 functions.
- (4) The duty referred to in sub-paragraph (2)(d) is a duty, where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—
- (a) obtain written instruction from the Keeper before taking the action; and
 - 30 (b) send a copy of that instruction as soon as possible to the Auditor General for Scotland.

Accounts and audit

- 13 (1) The Keeper must keep proper accounts at all times and prepare annual accounts in respect of each financial year.
- 35 (2) The Keeper must send a copy of the annual accounts to the Auditor General for Scotland for auditing.

- (3) If requested by any person, the Keeper must make available at any reasonable time, and without charge, in printed or electronic form, the audited accounts, so that they may be inspected by that person.

Appointment of acting Keeper

- 5 14 (1) Where there is no Keeper for the time being, or the Keeper is unable to act, the Parliamentary corporation may appoint a person (whether or not a member of the Keeper's staff) to discharge the Keeper's functions until a new Keeper is appointed or the Keeper is again able to act; and a person so appointed is referred to in this Act as the "acting Keeper".
- 10 (2) A person who is disqualified from appointment as the Keeper is also disqualified from appointment as acting Keeper.
- (3) While holding office as such, the acting Keeper is governed by the provisions of this Act applying to the Keeper, subject to the following modifications—
- 15 (a) in paragraph 2(1) of this schedule for the reference to Her Majesty substitute a reference to the parliamentary corporation; and
- (b) paragraphs 5(a) and 7 of this schedule shall not apply.

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[AS INTRODUCED]

An Act of the Scottish Parliament to establish a Scottish Register of Tartans and to provide for the appointment and functions of the Keeper of that Register.

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