

# Scottish Register of Tartans Bill

[AS INTRODUCED]

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**ACCOMPANYING DOCUMENTS**

**Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 8-EN. A Policy Memorandum is printed separately as SP Bill 8-PM.**

# Scottish Register of Tartans Bill

## [AS INTRODUCED]

An Act of the Scottish Parliament to establish a register of tartans; and for connected purposes.

### *The Scottish Register of Tartans*

#### **1 The Register**

- 5
- (1) There is to be a Scottish Register of Tartans (in this Act referred to as “the Register”).
  - (2) The purposes of the Register are—
    - (a) to be a repository for the preservation of tartans, and
    - (b) to be a source of information about tartans.
  - (3) The Register is to be kept in electronic form.

#### **2 Meaning of “tartan”**

10 For the purposes of this Act, a tartan is a design consisting of two or more alternating coloured stripes which combine vertically and horizontally to form a repeated chequered pattern.

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

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- (1) In this Act, the “Keeper” means the Keeper of the Records of Scotland; but when carrying out any function in relation to the Register, the Keeper is to be known as the Keeper of the Scottish Register of Tartans.
  - (2) Any document or other physical thing in relation to which the Keeper’s duty of care and preservation under section 4(2)(b) applies is not to be treated as a record for the purposes of sections 8 to 12 of the Public Records (Scotland) Act 1937 (c.43) (functions of the Keeper and others in relation to records transmitted to the Keeper).
  - (3) Any functions transferred to and vested in the Keeper under section 1(3) of the Public Registers and Records (Scotland) Act 1948 (c.57) (functions with regard to the preservation of the public registers, records and rolls of Scotland) are not to be exercisable in relation to the Register.
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#### 4 Functions of the Keeper

- (1) The Keeper has the general functions of setting up, keeping and maintaining the Register.
- (2) The Keeper must—
  - (a) make the Register available on a website, or by other electronic means, to members of the public,
  - (b) make appropriate arrangements for the care and preservation of any document or other physical thing—
    - (i) sent to the Keeper in connection with, and relevant to, an application for registration of a tartan under section 6(1), or
    - (ii) otherwise acquired by the Keeper in connection with the carrying out of the Keeper's functions in relation to the Register,
  - (c) take such steps as are necessary to ensure that the Register is capable of being used efficiently and effectively.
- (3) The Keeper may—
  - (a) permit members of the public, on payment of the appropriate fee—
    - (i) to inspect any document or other physical thing in relation to which the Keeper's duty of care and preservation under subsection (2)(b) applies,
    - (ii) to make copies of any such document,on such days, at such times and under such conditions as the Keeper thinks fit,
  - (b) copy, or issue to the public copies of, any such document,
  - (c) in response to a reasonable request from a person who has paid the appropriate fee—
    - (i) provide information, or
    - (ii) carry out research,in relation to the Register,
  - (d) on payment of the appropriate fee, provide such other services to the public in relation to the Register as the Keeper thinks fit,
  - (e) take such steps as the Keeper considers appropriate to publicise the Register and encourage its use,
  - (f) in respect of matters within the Keeper's discretion, issue guidance on, or in connection with, the Register, and
  - (g) consult such persons as the Keeper considers appropriate before issuing such guidance.
- (4) 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 under this Act.
- (5) Paragraphs (a) and (b) of subsection (3) are without prejudice to section 12A of the Public Records (Scotland) Act 1937 (c.43) (duty to afford facilities for inspection etc. of certain records).

**5 Existing collections of tartans**

- (1) The Keeper may, with the consent of the owner or keeper of an existing collection of tartans, make entries in the Register in respect of tartans contained in such a collection.
- (2) Each entry is to contain such particulars as the Keeper thinks fit.
- (3) In subsection (1), “existing collection of tartans” means tartans held in a register or repository (whether kept in electronic form or otherwise) which existed before the coming into force of this Act, and includes any information or physical thing (including documents) relating to the tartans.

*Applications to register tartans***6 The application**

- (1) Any person may apply to the Keeper for registration of a tartan.
- (2) An application must be in writing and be signed by the applicant.
- (3) Where the applicant has the right to authorise the Keeper to register the tartan, the applicant must—
  - (a) so authorise the Keeper,
  - (b) certify that the applicant has such a right, and
  - (c) where another person who has such a right has given the applicant written consent to the inclusion of that person’s name and address on the Register, certify that such consent has been given.
- (4) Where the applicant does not have the right to authorise the Keeper to register the tartan, the applicant must certify that—
  - (a) the applicant does not have such a right, and
  - (b) so far as can reasonably be ascertained by the applicant, there appears to be no other person who has that right.
- (5) The applicant must indemnify the Keeper in respect of any liability to meet any damages or expenses incurred as a result of, or in connection with, the registration.
- (6) An application must be in such form as the Keeper may from time to time specify; and different forms may be specified for different purposes.
- (7) The application must include—
  - (a) the name and address of the applicant,
  - (b) a coloured photograph or other coloured pictorial representation of the tartan,
  - (c) a description of the tartan including its colours, thread count and sett,
  - (d) the name of the tartan and the nature of the applicant’s association with the name,
  - (e) where the applicant can certify as mentioned in subsection (3)(c), any name and address to which such certification relates, and
  - (f) such further information as the Keeper may specify.
- (8) No application may be made to register a tartan with a name which is the same as the name of a tartan in respect of which an entry in the Register already exists.
- (9) The application may include a woven textile sample of the tartan of such size and such form as the Keeper may specify.

- (10) An application must be accompanied by the appropriate fee.
- (11) Where an application is made by a person representing a group of persons which is not a body corporate, the person may—
- (a) include in the application—
    - (i) any capacity in which the person is acting,
    - (ii) any name and address of the group, and
  - (b) request and authorise the Keeper to record any such name and address in the Register.
- (12) In subsection (7)—
- (a) in paragraph (b), the coloured photograph or other coloured pictorial representation—
    - (i) may, in either case, be in electronic form, and
    - (ii) must comply with such requirements as the Keeper may specify,
  - (b) in paragraph (d) “association”, in relation to the name of the tartan, includes relationship to, connection with or interest in the name.

## 7 Determination of application

- (1) The Keeper may request an applicant to submit such further information or documents as the Keeper considers necessary or expedient.
- (2) The Keeper must refuse an application if—
- (a) in the view of the Keeper—
    - (i) any of the requirements in section 6 has not been met,
    - (ii) the application relates to a design which is not a tartan,
    - (iii) the application relates to a tartan which is the same as, or too similar to, a tartan in respect of which an entry in the Register already exists,
    - (iv) the applicant’s association with the name of the tartan is insufficient or insubstantial,
    - (v) the name of the tartan is undesirable, or
    - (vi) the application gives rise to a question which it would be appropriate for the applicant to have resolved or clarified elsewhere (such as by a court), or
  - (b) the applicant has not provided any information or documents requested under subsection (1) within a reasonable period (or such longer period as the Keeper may specify).
- (3) In any other case, the Keeper must accept an application.
- (4) The Keeper must notify the applicant in writing as to whether the application has been accepted or refused.
- (5) Where an application is refused, the Keeper—
- (a) must provide the applicant with reasons for the refusal, and
  - (b) may provide the applicant with advice in relation to any further application.

- (6) In reaching a view under subsection (2)(a), the Keeper may consult such persons as the Keeper considers appropriate.

## 8 Refused applications: reconsideration

- (1) Where an application is refused under any of sub-paragraphs (ii) to (v) of paragraph (a) of subsection (2) of section 7, or paragraph (b) of that subsection, the applicant may request the Keeper to reconsider the application.
- (2) Any such request must—
- (a) be made within 2 months of the date on which the applicant is notified of the refusal,
  - (b) state why the request is being made, and
  - (c) be accompanied by the appropriate fee.
- (3) Where the requirements in subsection (2) are met, the Keeper must reconsider the application.
- (4) Where an application is accepted following reconsideration under this section, the Keeper must reimburse the applicant in respect of the fee paid under subsection (2)(c).
- (5) Section 7 applies to an application being reconsidered under this section as it applies to an application being considered under that section.

## 9 Registration

- (1) Where an application is accepted, the Keeper must make an entry in the Register in respect of the tartan to which the application relates.
- (2) An entry is to contain such particulars as the Keeper thinks fit (including any information contained in the application to which the entry relates).
- (3) Following the making of an entry, the Keeper must send the applicant, in paper form, a certificate of registration.
- (4) The certificate is to contain such information as the Keeper may from time to time specify; and such specification may make different provision for different purposes.
- (5) On payment of the appropriate fee by the applicant, the Keeper may send the applicant a copy of the certificate of registration.

### *Amendment of Register*

## 10 Amendment of Register by request

- (1) Any person (a “requester”) may request the Keeper to amend an entry in the Register.
- (2) The requester must—
- (a) set out in writing the reasons for the amendment, and
  - (b) submit such further information or documents as the Keeper considers necessary or expedient.
- (3) Where the requester has the right to authorise the Keeper to amend the entry, the requester must—
- (a) so authorise the Keeper,

- (b) certify that the requester has such a right, and
- (c) where—
  - (i) the amendment relates to a person's name or address in relation to which certification was given under section 6(3)(c), and
  - (ii) that person has given the requester written consent to the amendment,certify that such consent has been given.

(4) Where the requester does not have the right to authorise the Keeper to amend the entry, the requester must certify that—

- (a) the requester does not have such a right, and
- (b) so far as can reasonably be ascertained by the requester, there appears to be no other person who has that right.

(5) The requester must indemnify the Keeper in respect of any liability to meet any damages or expenses incurred as a result of, or in connection with, the amendment.

(6) A request under subsection (1) must be accompanied by the appropriate fee.

(7) Where the requester represents a group of persons which is not a body corporate, the requester may include in the request—

- (a) any capacity in which the requester is acting,
- (b) any name and address of the group.

(8) The Keeper must refuse a request if, in the view of the Keeper—

- (a) any of the requirements in subsections (2) to (6) has not been met,
- (b) the request gives rise to a question which it would be appropriate for the person making the request to have resolved or clarified elsewhere (such as by a court).

(9) In any other case, the Keeper must accept a request if, having taken into account the reasons mentioned in subsection (2)(a) and all the other circumstances of the case, the Keeper considers it is appropriate to do so.

(10) Where the request is accepted, the Keeper must determine how the entry is to be amended and amend it accordingly.

(11) The Keeper must notify the requester of the decision to accept or refuse the request.

(12) Such notification must be in writing and include—

- (a) in the case of a refusal, the Keeper's reasons for the refusal,
- (b) in the case of an acceptance, notification of the amendment (by providing a copy of the amended entry or otherwise).

(13) In respect of any matter relating to a request, the Keeper may, in deciding whether to accept or refuse the request, consult such persons as the Keeper considers appropriate.

(14) Where the amendment requested is one which could be made by the Keeper under section 12(1), subsections (2) to (13) of this section do not apply.

## **11 Amendment of Register: request other than by applicant**

(1) This section applies where—

- (a) a request under section 10(1) relates to an entry made pursuant to an application by a person (the “original applicant”),
- (b) the request is made by a person (the “third party”) other than the original applicant, and
- (c) the request is in respect of an amendment other than one which could be made by the Keeper under section 12(1).

(2) The Keeper must where practicable send a copy of the request to the original applicant and invite the original applicant to submit written comments.

(3) The Keeper must send a copy of any comments received from the original applicant to the third party and invite the third party to submit written comments.

(4) Any comments under subsections (2) and (3) must be submitted, in each case, within such period (not being less than 28 days) as the Keeper may specify.

(5) The Keeper may request the original applicant to submit such further information or documents as the Keeper considers necessary or expedient.

(6) The Keeper must where practicable notify the original applicant of the decision to accept or refuse the request.

(7) Subsection (12) of section 10 applies to a notification under subsection (6) as it applies to a notification under subsection (11) of that section.

## **12 Amendment of Register: corrections**

(1) The Keeper may, at any time, amend an entry in the Register to correct any typographical, clerical or other administrative error.

(2) Where an amendment under subsection (1) is made, the Keeper may notify such persons as the Keeper considers appropriate as to the amendment.

(3) Where such an amendment relates to a tartan in respect of which a certificate of registration has been issued, the Keeper may issue an amended certificate of registration.

## **13 Certificates of registration following amendment**

(1) Subsection (2) applies where—

- (a) an entry in the Register is amended by virtue of a request under section 10(1), and
- (b) the entry was made pursuant to an application.

(2) The Keeper may, in appropriate cases and at the request of the applicant, send the applicant an amended certificate of registration.

(3) The applicant must pay the appropriate fee for such a certificate.

(4) Subsection (3) does not apply where the amendment is one which could have been made by the Keeper under section 12.

### *Miscellaneous and general*

## **14 Fees**

(1) The Scottish Ministers may by order specify—

- (a) the fee payable in respect of matters mentioned in this Act for which an appropriate fee is payable,

(b) other matters in relation to the Register in respect of which fees are payable and the amount of such fees.

(2) The power to make an order under subsection (1) is to be exercised by statutory instrument; and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(3) The Scottish Ministers must consult the Keeper before making an order under subsection (1).

(4) An order under subsection (1) may specify—

(a) different amounts for different purposes,

(b) circumstances in which no fee is payable.

(5) The Keeper may waive a fee specified under subsection (1) in such circumstances as the Keeper may, with the approval of the Scottish Ministers, specify.

## 15 Scottish Records Advisory Council

In section 7 of the Public Records (Scotland) Act 1937 (c.43) (constitution and functions of the Scottish Records Advisory Council), after subsection (3A) insert—

“(3B) The reference in subsection (3) to public records, and in subsection (3A) to records, do not include references to—

(a) the Scottish Register of Tartans established under section 1(1) of the Scottish Register of Tartans Act 2008 (asp 00), or

(b) any document or other physical thing in relation to which the duty of care and preservation under section 4(2)(b) of that Act applies.”.

## 16 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument 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.

(2) An order under subsection (1) may—

(a) make different provision for different purposes,

(b) modify any enactment.

(3) Subject to subsection (4), a statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) No order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

## 17 Interpretation

(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 a person applying, or (as the case may be) who has applied for, registration of a tartan under section 6(1),

“application” means an application to register a tartan under section 6(1),

“appropriate fee” means any fee specified by virtue of subsection (1)(a) of section 14 in an order under that section,

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

- (2) The requirement for signing in section 6(2) is satisfied by an electronic signature; and “electronic signature” is to be construed in accordance with section 7(2) of the Electronic Communications Act 2000 (c.7).

## **18 Short title and commencement**

- (1) This Act may be cited as the Scottish Register of Tartans Act 2008.
- (2) The provisions of this Act, except this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

# Scottish Register of Tartans Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish a register of tartans; and for connected purposes.

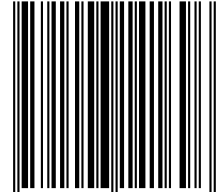
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