POLICY NOTE

THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (AMENDMENT OF SPECIFIED AUTHORITIES) ORDER 2018

SSI 2018/

1. The above instrument was made in exercise of the powers conferred by section 3(42)(a) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 and all other powers enabling them to do so.

2. The instrument is subject to affirmative procedure.

Policy Objectives

3. The purpose of this instrument is to remove NHS Health Scotland and the Scottish Association Scottish Advisory Committee on Distinction Awards (SACDA) from the remit of the Commissioner for Ethical Standards in Public Life in Scotland.

SACDA

Background

4. Since the freezing of Distinction Awards (DA), the Board of SACDA has reduced from approximately fourteen members, to five, with its duties limited to the annual review of current DA holders. The most recent Chair demitted office at the end of February 2018, having completed the maximum number of years allowed by the Commissioner and an interim deputy-Chair has been appointed for six months, until 31 August 2018. However, it is still necessary to appoint new members.

5. Consequently, we have been in discussions with SACDA about how best to manage the way forward and it is anticipated that by removing SACDA from the Commissioner's remit, membership difficulties could be addressed either by reappointing previous committee members, or recruiting new members in a more timeous and cost-effective manner.

Consultation

6. A small-scale consultation exercise was carried out January-February 2018 with the six relevant bodies. We received replies from all, with a further three responses from associated groups. To summarise, of the nine responses, two respondents supported the move, notably SACDA themselves (with caveats) and the Management Steering Group (MSG). The MSG, which represents employers' interests, did not raise any issues. Six respondents rejected the move and one required additional information. However, it should be noted that all concerns were based on issues outwith the scope of the consultation.

7. SACDA sought reassurance on three key points: that SACDA continues to be composed of both medical and lay members; new appointments should be submitted

for approval by the Chair and Medical Director; all processes should have sufficient transparency to assure accountability for public money.

8. All appointments will still be subject to the Cabinet Secretary's approval, therefore we do not anticipate that these requirements will cause any issues, as we are equally keen to ensure and maintain transparency and accountability.

Health Scotland

Background

9. This instrument is laid as part of the transition towards a new public health body, and in light of a current non-executive Board appointment which was due to end at the end of May 2018.

10. NHS Health Scotland currently has a small Board of nine non-executive directors. A non-executive Board member was due complete his appointment at the end of May 2018. He was originally appointed in June 2009, and served two full terms. In 2017, we made a case to the Commissioner to extend the appointment until March 2019, given at that time we expected the new public health body to be established in April 2019. The Commissioner agreed to extend the appointment by 12 months, to May 2018, but not by the full year and 10 months that was requested.

11. We have been in discussion with NHS Health Scotland and colleagues about how best to manage the way forward. The Chair of NHS Health Scotland considers the continued appointment of the non-executive board member as highly valuable in the work of the Board.

12. After consideration of options regarding the best way forward, the Cabinet Secretary for Health and Sport agreed to a recommendation to remove NHS Health Scotland from the remit of the Commissioner for Ethical Standards in Public Life. Therefore, the Public Appointments and Public Bodies etc. (Scotland) Act, 2003 is to be amended with the effect that NHS Health Scotland is no longer within the remit of the Commissioner for Ethical Standards in Public Life. Such a move would be required as part of the dissolution of NHS Health Scotland in any event, but in the context of managing the organisation's transition over the last 12 months or so of its existence, it would seem to be proportionate to take this step now if it means that we can ensure the Board continues to provide good governance of the organisation.

The Commissioner has indicated that he is content for an extension to be made until the end of 2018 on the basis that there is now, subject to parliamentary approval, a clear timetable for the removal of the body from his regulatory remit. The Chair of NHS Health Scotland is clear that he would like to retain the non-executive Board member on the Board until NHS Health Scotland ceases to exist. The removal of NHS Health Scotland from the Commissioner's remit is a short-term measure to assist in the transition of NHS Health Scotland.

Consultation

13. The instrument simply provides for appointments to NHS Health Scotland not to be regulated by the Commissioner for Ethical Standards in Public Life in Scotland in the period before its abolition, so public consultation was not considered necessary. However, we did consult with NHS Health Scotland who support the policy aims of this SSI.

Summary

14. After consideration of options regarding the best way forward, the Cabinet Secretary for Health and Sport agreed to a recommendation to remove both Health Scotland and the Scottish Advisory Committee on Distinction Awards (SACDA) from the remit of the Commissioner for Ethical Standards in Public Life. It is now open to us to take forward an affirmative SSI to amend the Public Appointments and Public Bodies etc. (Scotland) Act, 2003 such that NHS Health Scotland and SACDA are no longer within the remit of the Commissioner for Ethical Standards in Public Life.

Impact Assessments

15. An Equality Impact Assessment is not necessary as the instrument in itself does not have any equalities impacts.

16. A Business and Regulatory Impact Assessment was not considered to be necessary for this instrument as the order itself does not create any new burdens on business, charities or the voluntary sector.

17. A Child Rights and Wellbeing Impact Assessment and a Privacy Impact Assessment are not necessary as the instrument in itself does not have any child rights or wellbeing or privacy impacts

Financial Effects

18. The Cabinet Secretary for Health and Sport confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Health Workforce and Strategic Change &
Directorate for Population Health

12 June 2018