POLICY NOTE

THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (TREATMENT OF HISTORIC ENVIRONMENT SCOTLAND AS SPECIFIED AUTHORITY) ORDER 2014

SSI 2014/XXX

1. The above instrument was made in exercise of the powers conferred by section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

2. The instrument is subject to affirmative procedure

Policy Objectives

3. This order is designed to allow the appointments to the Board of Historic Environment Scotland to be regulated by the Commissioner for Ethical Standards in Public Life.

4. The Historic Environment Scotland Bill is currently being considered by the Scottish Parliament and passed Stage 1 on 19 June 2014. Its principal purpose is to create a new lead Non Departmental Public Body (NDPB) for the historic environment in Scotland through the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. It makes provision for the creation of Historic Environment Scotland and for appointments to the Board to be regulated under the 2003 Act.

5. It is proposed in the accompanying documents to the Bill that Historic Environment Scotland will be established in April 2015 and take up its functions in October 2015. In order for this timetable to be met, a Section 3(3) order under the 2003 Act will be required so that HES will be treated as a regulated body ahead of the Bill being passed by Parliament and coming into force.

6. Following the precedent set by a number of other new public bodies, this order is being laid following the conclusion of Stage 1 debate. This is to allow the recruitment of the Board to begin so that it will be in place by the start of 2015. This timetable will allow the Board to recruit the new Chief Executive of the organisation so that they can be in post before Historic Environment Scotland takes up its functions in October 2015. Audit Scotland's report on merging public bodies, "Learning the Lessons of Merging Public Bodies" recommends that the leadership of merged bodies is in place 6 months ahead of the merger taking place. This order is designed to help this recommendation to be met.

7. Scottish Ministers could make the appointments to the first Board of Historic Environment Scotland on an unregulated basis, meaning that this order would not be necessary. However, it was felt to be important for the appointments process to be as rigorous and transparent as possible during the establishment of this large NDPB and that the involvement of the Commissioner for Ethical Standards in Public Life was desirable in achieving this.

Consultation

8. On 8 May 2013 the Scottish Government launched a joint consultation on the Historic Environment Strategy For Scotland and the merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland. Consultation responses were published on the Scottish Government website. Overall the consultation responses were supportive of the merger.

9. Consultation with stakeholders has continued through the development of the Bill and the Parliamentary process. As there is general support for the establishment of Historic Environment Scotland and this order merely allows for the appointments to be regulated in line with the provisions of the Bill, specific public consultation on this instrument was not felt necessary. The Cabinet Secretary for Culture and External Affairs wrote to the Conveners of Parliament's Education and Culture Committee and the Delegated Powers and Law Reform Committee who are considering the Bill to inform them of the proposal to lay this order. The letter is available here: http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/74063.aspx

Impact Assessments

10. An equality impact assessment is not necessary as the instrument in itself does not have any equalities impacts. An equality impact assessment of the creation of Historic Environment Scotland was carried out in the development of the Bill.

11. 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 businesses, charities or the voluntary sector. A Business and Regulatory Impact Assessment covering the establishment of Historic Environment Scotland was undertaken in the development of the Bill. The BRIA and the EQIA are available here: http://www.scotland.gov.uk/Topics/ArtsCultureSport/arts/Historic-environment/HistoricEnvironmentLegislation/Impact-Assessments

Financial Effects

12. The instrument will have no direct financial effects as it merely allows for the regulation of the appointments process. Any costs incurred from the recruitment of the Board are covered in the Financial Memorandum to the Bill and are likely to be minimal.

Scottish Government
Directorate for Culture and Heritage
25th June 2014