POLICY NOTE

THE PUBLIC RECORDS (SCOTLAND) ACT 2011 (AUTHORITIES) AMENDMENT ORDER 2015

SSI 2015/XXX

1. The above instrument ("the Order") is to be made by Scottish Ministers in exercise of the powers conferred by the Public Records (Scotland) Act 2011 ("the 2011 Act"). The instrument is subject to the affirmative procedure.

Policy Objectives

2. The overarching policy objective behind the introduction of the draft Order is to ensure that all records created by certain named public authorities are properly managed by updating the schedule to the 2011 Act. The proposed draft Order aims to achieve this by adding bodies that have been created, modifying bodies that have changed their names, or removing bodies that have been abolished since the 2011 Act came into force.

3. The principal policy objective of the 2011 Act is to improve record keeping across the public sector. The provisions of the 2011 Act aim for improved records management so that decisions taken by public authorities in the performance of their functions are documented and that records of these decisions are properly managed throughout their lifecycle. This ensures that those exercising public functions are held accountable for their decisions and that important public records are safeguarded for future generations. To ensure that the policy objective of the 2011 Act is met, it is important that the list of authorities to which the 2011 Act applies is up to date and includes all relevant Scottish public authorities that create public records.

4. In accordance with section 2(3) of the 2011 Act, a listed body needs to be (i) a part of the Scottish Administration; (ii) a Scottish Public Authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 (c.46)); or (iii) a publicly owned company.

5. Section 2 of the 2011 Act provides Scottish Ministers with discretion to decide whether a body which meets the stated legal criteria, should be added to the schedule. In keeping with the principal policy objective of the 2011 Act, assessment of an authority's functions is key to determining whether a public authority should be listed under the schedule to the 2011 Act. This is because, when an authority is performing public functions, public records will be created in the exercise of those functions. Indicators that an authority is performing public functions include (1) inclusion on the Scottish Government's (SG) Directory of National Devolved Public Bodies (NDPBs), (2) an authority's legislative functions, and (3) whether an authority forms part of the Scottish Government, Scottish Parliament or the Scottish Judicial system.

6. The Order will add six public authorities to the schedule of the 2011 Act. The authorities and the policy basis for adding them is as follows:

Criminal Court Rules Council: This body's public functions include keeping under review the procedures and practices of the courts exercising criminal jurisdiction in Scotland. Their

public records need to be properly managed and safeguarded to show justification for the creation of rules that will affect the public.

Panel appointed under regulation 90C of the Council Tax Reduction (Scotland) Regulations 2012: The Panel has the public function of safeguarding an individual's right to administrative justice when their council tax has been reduced. It is therefore in the public interest that their public records are properly managed and safeguarded as they form evidence of how decisions relating to individuals are made.

Scottish Fire and Rescue Service: The Police and Fire (Reform) (Scotland) Act 2012 amalgamated the previous eight Scottish fire and rescue services into one body corporate. The body's public functions are set out in the Fire (Scotland) Act 2005 and it is also named as a public body on the SG's directory of NDPBs.

Scottish Civil Justice Council: This body's public functions are broadly defined by the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013. Their public records need to be properly managed and safeguarded to show justification for the creation of rules that affect members of the public.

TS Prestwick Holdco Ltd (SC462050) (Otherwise known as Glasgow Prestwick Airport): This publicly owned company is wholly owned and funded by the Scottish Government in like manner as David MacBrayne Ltd and Caledonian Maritime Assets Ltd, which are already included on the schedule. It is in the public interest for the public records of Glasgow Prestwick Airport to be properly managed and safeguarded as evidence of how public money is used. It is also named as a public body on the Scottish Government's (SG's) Directory of National Devolved Public Bodies.

Scottish Sentencing Council: This body's public functions are set out in the Criminal Justice and Licensing (Scotland) Act 2010. These functions include producing guidelines covering areas of sentencing, and publishing information on sentencing decisions. Their public records must be properly managed and safeguarded as they contain information about decisions that may affect the public. It is therefore in the public interest to include the Scottish Sentencing Council within the schedule to the 2011 Act. Provisions establishing the body came into force on 7th May (SSI 2015/177). It is expected to become fully operational in the autumn.

7. The Order will remove three authorities from the schedule. These authorities and the policy basis for removing them is as follows:

Children's Panel: Previously, there were thirty two Children's Panels which came under the scope of the 2011 Act. These were replaced by the Children's Hearings (Scotland) Act 2011 by one national Children's Panel which is established, managed and supported by The National Convener of Children's Hearings and Children's Hearings Scotland. Both authorities are already listed on the schedule.

Learning and Teaching Scotland: This body now forms part of Education Scotland and no longer exists as a stand-alone public authority.

Scottish Crime and Drug Enforcement Agency: This body was abolished following enactment of the Police and Fire (Reform) (Scotland) Act 2012. All functions were transferred to Police Scotland who are already listed on the schedule.

8. The Order will amend the entries of three authorities currently listed on the schedule following relevant changes to legislation. These authorities are:

Her Majesty's Chief Inspector of Constabulary and Her Majesty's Inspectors of Constabulary (appointed under section 33 of the Police (Scotland) Act 1967 (c.77))": To be changed to Her Majesty's Chief Inspector of Constabulary and Her Majesty's Inspectors of Constabulary (appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 8)).

Chief constables of Police Forces in Scotland: To be changed to the 'Chief constable of the Police Service of Scotland' (in relation to which see in particular section 7 of the Police and Fire (Reform) (Scotland) Act 2012).

Scottish Court Service: To be changed to the 'Scottish Courts and Tribunals Service' (see section 130 of the Courts Reform (Scotland) Act 2014).

Consultation

9. The Keeper of the Records of Scotland (the Keeper) carried out an informal consultation between December 2014 and May 2015. This consultation informed stakeholders of the Keeper's intention, on behalf of Scottish Ministers, to add, remove or amend their authority's entry on the schedule as appropriate and provided them with an opportunity to make any comments. Through this informal consultation process, agreement was reached with relevant authorities, who were content with the proposal to either add, remove or amend their authority's entry in the schedule to the Act. A list of the consultees contacted is provided in Annex A.

Financial Effects

10. The Order will make will make no new demands on the Scottish Consolidated Fund, so there is no net cost to the Scottish Government. Discussions with a representative sample of private and voluntary bodies, as part of the Business Regulatory Impact Assessment (BRIA) and the broader consultation process both undertaken during the Bill process of the 2011 Act, established that for those organisations who already have records management provision, there will be no significant cost as a result of being listed on the schedule to the 2011 Act. Any cost to the Scottish Administration by way of the Keeper's duties under the 2011 Act will be met from within his existing budget.

Keeper of the Records of Scotland
June 2015

ANNEX A: LIST OF CONSULTEES

Policy leads from all authorities or government departments affected by the proposed changes to the schedule to the 2011 Act were contacted via email. This included:

- Scottish Civil Justice Council
- Criminal Courts Rules Council
- Council Tax Reduction Review Panel
- Transport Scotland
- Children's Hearings Team, Scottish Government
- Scottish Tribunals Service
- Scottish Fire and Rescue Service
- Police Division, Scottish Government
- Education Scotland
- Criminal Law and Licensing Division, Scottish Government
- Scottish Court Service
- Lord President's Private Office
- Scottish Sentencing Council