POLICY NOTE

THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (TREATMENT OF POVERTY AND INEQUALITY COMMISSION AND SCOTTISH COMMISSION ON SOCIAL SECURITY AS SPECIFIED AUTHORITIES) ORDER 2018

SSI 2018/313

1. The above instrument, if approved in draft, will be made by the Scottish Ministers in exercise of the powers conferred by section 3(3) 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. This Order is designed to allow appointments to both the Poverty and Inequality Commission and the Scottish Commission on Social Security to be regulated by the Commissioner for Ethical Standards in Public Life.

4. Scottish Ministers could make unregulated appointments to the Poverty and Inequality Commission and the Scottish Commission on Social Security meaning that this Order would not be necessary. However, it is considered important for the appointments process to be as rigorous and transparent as possible and that the involvement of the Commissioner for Ethical Standards in Public Life is desirable in achieving this.

Poverty and Inequality Commission

5. The Child Poverty (Scotland) Act 2017 received Royal Assent on 18 December 2017. Section 8 of the Act provides for a Poverty and Inequality Commission to be established. The schedule makes further provision about the Commission, including that it be listed in the Ethical Standards in Public Life etc. (Scotland) Act 2003. These provisions take effect from 1 July 2019.

6. An Order under the Public Service Reform (Scotland) Act 2010, if approved in draft, will be made to expand the function and remit of the Commission and increase its minimum and maximum membership.

7. The Commission will undertake a number of advisory and scrutiny roles, including providing advice to Ministers on action to reduce child poverty, and scrutinising progress towards the 2030 income based targets contained in the Act.

8. Audit Scotland[1] advise that appointment of a Chair should take place at least 6 months ahead of the new public body taking on its full functions. The section 3(3) Order will allow us to meet this timeline for the Poverty and Inequality Commission by starting recruitment of the Chair in September 2018. The Chair can then be involved in future appointments of members. This Order is designed to meet this recommendation.

[1] The Audit Scotland report on merging public bodies, "Learning the Lessons of Merging Public Bodies" recommend that the leadership of merged and new bodies is in place 6 months ahead of the new body taking on its full functions.

Scottish Commission on Social Security

9. The Social Security (Scotland) Act 2018 section 21 makes provision for the establishment of the Scottish Commission on Social Security (SCoSS), and section 22 outlines its functions. Schedule 1 describes the operation, composition, etc. of the SCoSS, and Part 2 provides for it to be listed in various Acts (Ethical Standards in Public Life etc. (Scotland) Act 2000), Freedom of Information (Scotland) Act 2002, Public Appointments and Public Bodies etc. (Scotland) Act 2003 and the Public Services Reform (Scotland) Act 2010).

10. The Bill received Royal Assent on 1 June 2018 and will come into force on a date or dates to be appointed by regulations.

11. The SCoSS will provide independent, expert scrutiny of the Scottish social security system (including scrutiny of draft regulations proposed to be made under the Social Security (Scotland) Act) and report to the Scottish Parliament on the system's performance against the social security charter. Stakeholders who support and advise people using the system will also be able to submit evidence to this body for investigation if they believe the system is falling short of the standards set out in the charter (effectively a whistle-blowing function). Both Scottish Ministers and the Scottish Parliament may ask the SCoSS to review and report on any matter to do with social security, as they deem relevant.

12. The need for the SCoSS to be in place to scrutinise social security regulations as soon as reasonably practicable outweighs the desirability of meeting in full the recommendation in the Audit Scotland report on public bodies that a Chair be appointed 6 months in advance of a new public body taking on its full functions. The intention is that the SCoSS be set up to examine draft regulations from early 2019, it being for the SCoSS to determine exactly when it is ready to assume that role.

Consultation

13. Consultation was undertaken with the office of the CESPLS who agreed the desirability for this Order, to allow appointments to be regulated prior to relevant provisions commencing.

14. This Order simply allows for appointments to the new bodies to be regulated by the CESPLS. Additional specific consultation on this instrument was not deemed necessary.

Impact Assessments

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

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

Financial Effects

17. The instrument will have no direct financial effect as it merely allows for the regulation of the appointment process.

Scottish Government
June 2018