

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 1 – Simplification of Public Bodies

Transfer of functions

Section 1 - Transfer to Scottish Natural Heritage (“SNH”) of functions of the Deer Commission for Scotland (“DCS”)

5. This section transfers all of the functions of DCS under the Deer (Scotland) Act 1996 and other legislation to SNH, and dissolves DCS and transfers its property, rights, liabilities and obligations to SNH. It also provides that where something has been done by or in relation to DCS then it will be treated as if it was done by or in relation to SNH after this section comes into force, and it gives effect to schedule 1 which makes consequential amendments to other legislation including the provisions of the Deer (Scotland) Act 1996.

Section 2 - Transfer to Scottish Natural Heritage (“SNH”) of functions of Advisory Committee on Sites of Special Scientific Interest (“ACSSSI”)

6. This section dissolves ACSSSI (also referred to as “the Advisory Committee” in the Nature Conservation (Scotland) Act 2004) and transfers its property, rights, liabilities and obligations to SNH. It also repeals the provisions of the Nature Conservation (Scotland) Act 2004 relating to ACSSSI and the requirement on SNH in paragraph 11 of schedule 1 to the 2004 Act to provide a copy of any advice given by ACSSSI to a person who has made a representation as this will no longer be relevant once ACSSSI ceases to exist, and it repeals references to ACSSSI in the Freedom of Information (Scotland) Act 2002 and in the Public Appointments and Public Bodies etc. (Scotland) Act 2003.
7. Subsection (3) also amends section 21(8) of the 2004 Act so that it places a duty on SNH to consider any representations made in accordance with section 21(6) and (7) of that Act, and take such action as it thinks fit in reaching a decision on whether to confirm or withdraw the notification of a site of special scientific interest. Subsection (3) also sets out various amendments that are required to be made to paragraphs 9 and 12 of schedule 1 to the 2004 Act so that they apply in relation to the duty to be placed on SNH to consider any representations, and to take such action as it thinks fit.

Section 3 – Transfer to certain bodies of functions of Waterwatch Scotland

8. This section dissolves the Water Customer Consultation Panels and abolishes the position of their convener. The panels and their convener (known together by the operating name of Waterwatch Scotland) perform complaints-handling and representative functions in relation to customers of Scottish Water. The representative and complaints-handling functions of the panels and their convener are to be taken over

by the National Consumer Council (NCC) and the Scottish Public Services Ombudsman (SPSO) respectively.

9. Subsection (2) adds Scottish Water to schedule 2 (*Listed Authorities*) of the Scottish Public Services Ombudsman Act 2002. This permits the SPSO to handle complaints about Scottish Water. Subsection (4) requires the NCC to exercise its functions under the Consumers, Estate Agents and Redress Act 2007 in relation to services provided by Scottish Water. These functions include the power to represent consumers and to give advice and make proposals in relation to consumer matters. Subsections (6) and (7) introduce schedules which make further provision in consequence of this section.

Dissolution of bodies

Section 4 - Dissolution of Scottish Records Advisory Council (“SRAC”)

10. This section dissolves SRAC and transfers its property, rights, liabilities and obligations to the Scottish Ministers. It also repeals references and provisions relating to SRAC in the Public Records (Scotland) Act 1937, the National Heritage (Scotland) Act 1985, the Freedom of Information (Scotland) Act 2002, the Public Appointments and Public Bodies etc. (Scotland) Act 2003, and the Scottish Register of Tartans Act 2008.

Section 5 - Dissolution of Scottish Industrial Development Advisory Board (“SIDAB”)

11. This section dissolves SIDAB and repeals references and provisions relating to SIDAB in the Scottish Development Agency Act 1975, the Enterprise and New Towns (Scotland) Act 1990, the Freedom of Information (Scotland) Act 2002 and in the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

Section 6 - Dissolution of Building Standards Advisory Committee (“BSAC”)

12. This section dissolves BSAC and repeals references and provisions relating to BSAC in the Building (Scotland) Act 2003 and in the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

Section 7 - Historic Environment Advisory Council for Scotland (“HEACS”)

13. This section dissolves HEACS (also referred to as “the Advisory Council” in the Public Appointments and Public Bodies etc. (Scotland) Act 2003) and transfers its property, rights, liabilities and obligations to Scottish Ministers. It also repeals references and provisions relating to HEACS in the Public Appointments and Public Bodies etc. (Scotland) Act 2003 and the Freedom of Information (Scotland) Act 2002.

Section 8 - Dissolution of Regional Boards of the Scottish Environment Protection Agency

14. This section dissolves the Regional Boards of the Scottish Environment Protection Agency and repeals provision relating to these Boards in the Environment Act 1995.

Delegation of functions

Section 9 - Delegation of Ministerial functions under section 7 of the Industrial Development Act 1982

15. This section inserts subsections (4A) to (4E) into section 7 of the Industrial Development Act 1982 (selective financial assistance for industry in assisted areas). Section 7 of that Act allows Scottish Ministers to award Regional Selective Assistance grants and relates to financial and other assistance to industry.

16. Subsection (4A) enables the Scottish Ministers to delegate their functions relating to provision of financial assistance to such persons as they may determine. Subsection (4B) provides that where the Scottish Ministers delegate under subsection (4A), they may also delegate to the same person their function of being satisfied that assistance cannot, or cannot appropriately, be given in any other way. Subsection (4C) provides that it is not possible for the delegate to use a pre-existing company which the delegate has not set up as a vehicle to invest in another company. The delegation may be to such extent and subject to such conditions as the Scottish Ministers think appropriate.
17. Subsection (4D) provides that if the Scottish Ministers delegate under subsection (4A) or (4B), the Scottish Ministers can still carry out the function themselves, that is, the power is to be shared between the delegate and the Scottish Ministers. Subsection (4E) provides that a delegation under subsection (4A) or (4B) can be varied or revoked at any time.

Section 10 - Delegation of Ministerial functions under section 5 of the Science and Technology Act 1965

18. This section inserts subsections (1A) to (1D) into section 5 of the Science and Technology Act 1965 (further powers of the Scottish Ministers). Section 5 of that Act enables the Scottish Ministers to make certain financial provision in relation to scientific research.
19. Subsection (1A) enables the Scottish Ministers to delegate their functions which are set out in section 5(1)(a) to (c) of the 1965 Act to such persons as they consider appropriate. Any expenses incurred by such persons in such activities can be paid out of the expenses defrayed by the Scottish Ministers out of monies provided by Parliament.
20. Subsection (1B) provides that where the power in paragraph (c) of subsection 1 is delegated, which relates to expenses incurred in specified payments to or in respect of any advisory body established for the purpose of assisting the Secretary of State or, in matters connected with scientific research, the Minister of Agriculture, Fisheries and Food, the paragraph is to be read with the words “Secretary of State” being replaced by reference to the delegate.
21. Subsection (1C) provides that if the Scottish Ministers delegate under subsection (1A), they can still carry out the function themselves. Subsection (1D) addresses the potential limitations on the exercise of a delegate’s functions at the ‘conferring end’. This means that should a body be delegated the power, any restriction on its functions which might otherwise prevent it from exercising the power will not prevent the delegated power being exercised.

Section 11 - Delegation of certain functions of Forestry Commissioners under Forestry Act 1967

22. This section inserts new sections 7B and 7C into the Forestry Act 1967. New section 7B provides that the Forestry Commissioners may delegate functions relating to the management of the forest estate in Scotland where land is let to a community body. New section 7C defines community bodies for this purpose.

Section 12 - Forestry Commissioners: joint ventures etc.

23. This section widens the application of section 7A of the Forestry Act 1967 to include Scotland. It also amends the Countryside (Scotland) Act 1967. This will allow the Forestry Commissioners to form or participate in bodies corporate, invest in bodies corporate, provide loans or establish charitable trusts for the purpose of exercising their functions in relation to land in Scotland.

Regulation of officers of court

Section 13 – Regulation of officers of court

24. This section gives effect to schedule 4 which contains detailed amendments, principally to Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (which is not yet in force) and Part V of the Debtors (Scotland) Act 1987.
25. Part 3 of the 2007 Act creates and defines the remit of the Scottish Civil Enforcement Commission (“the Commission”) to supervise the officers responsible to the courts for the enforcement of debts or diligence. The amendments in schedule 4 prevent the Commission from being brought into existence under the 2007 Act.
26. These amendments also retain, repeal and amend some of the regulatory controls introduced by Part 3 of the 2007 Act. In particular, Part 3 of the 2007 Act replaces officers of court (messengers-at-arms and sheriff officers) with judicial officers. These amendments revert all references to “judicial officer” in Part 3 of the 2007 Act so as to maintain the offices of messengers-at-arms and sheriff officers, usually with references to “officers of court”.