

POLICY NOTE

THE PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (TREATMENT OF CROWN ESTATE SCOTLAND (INTERIM MANAGEMENT) AS SPECIFIED AUTHORITY) ORDER 2016

SSI 2016/xxx

1. The above instrument was 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 (“the 2003 Act”) 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 the appointments to the Board of Crown Estate Scotland (Interim Management) to be regulated by the Commissioner for Ethical Standards in Public Life.
4. Section 36 of the Scotland Act 2016 devolves legislative competence for the management and revenue of the Crown Estate in Scotland to the Scottish Ministers through a Treasury Statutory Transfer Scheme. The Scotland Act also includes provision for an Order in Council to be made to establish an interim body to manage Crown Estate assets.
5. A new Public Corporation will be created by the Order in Council which will manage Crown Estate assets on an interim basis. The Order in Council will create the interim body and includes provisions for appointments to the Board of that body to be regulated under the 2003 Act. This Section 3(3) Order, under the 2003 Act, is required so that Crown Estate Scotland (Interim Management) will be treated as a regulated body ahead of the Order in Council being laid. This approach follows precedent set by a number of other new public bodies.
6. Scottish Ministers could make unregulated appointments to the Board of Crown Estate Scotland (Interim Management) meaning that this Order would not be necessary. However, it was deemed 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 was desirable in achieving this.
7. Audit Scotland¹ 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 by starting the recruitment now for the interim appointment of the Chair and Board. The Chair can also be involved in future appointments of the Board and Chief Executive. 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

Consultation

8. This Order simply allows for appointments to the new body to be regulated by the Commissioner for Ethical Standards in Public Life, so specific consultation on this instrument was not deemed necessary. We have sought views from the Scottish Government Stakeholder Advisory Group on the Crown Estate. Members of this group have generally expressed support for the interim arrangements. Consultation with stakeholders will continue through the development of the Order in Council.
9. It is our intention to also launch a web-based consultation on the proposals which are to be included in the Order in Council.
10. In parallel to the development of interim arrangements, Scottish Ministers will initiate a full public consultation on the options for long term management of the Crown Estate assets prior to including proposals for a new legal framework in a Scottish Bill.

Impact Assessments

11. 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.
12. 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. A draft Business and Regulatory Impact Assessment has been prepared to support the consultation outlined in paragraph 9.
13. We will carry out a full Equality Impact Assessment, Business Regulatory Impact Assessment, Child Rights and Wellbeing Impact Assessment and Privacy Impact Assessment, where appropriate, on the proposed interim arrangements for managing Crown Estate assets in Scotland and on the proposals to be contained in the Order in Council to establish the new body. We will also consider the potential environmental impacts of any proposals and consider whether a Strategic Environmental Assessment is required.

Financial Effects

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

Scottish Government
Marine Scotland Directorate
30 June 2016