

POLICY NOTE

THE HISTORIC ENVIRONMENT SCOTLAND ACT 2014 (COMMENCEMENT No. 2) ORDER 2015

SSI 2015/31 (C. 6)

1. The above instrument is made in exercise of the powers conferred by section 31(2) of the Historic Environment Scotland Act 2014 (“the 2014 Act”).

Policy objectives

2. The instrument forms part of an implementation package for the 2014 Act. The provisions in the 2014 Act are being commenced in stages, of which this is the second of three. The first commencement order (SSI 2014/368) came into force on 19th January 2015 establishing Historic Environment Scotland (“HES”) and bringing into force the provisions of schedule 1 to the 2014 Act which relate to the establishment of the body for the limited purpose of enabling Ministers to appoint the members (including the chair) of HES and allowing HES to appoint a chief executive. Ministers will bring forward a further commencement order establishing HES for all remaining purposes and conferring all remaining functions on HES later this year. The intended date when HES will take over its full functions is 1 October 2015.

3. This order establishes HES and brings into force the provisions of schedule 1 to the 2014 Act for further limited purposes. It commences sections 1 and 2 of schedule 1 to the 2014 Act only for the purpose of enabling HES to exercise any function conferred on it or by virtue of sections 9, 12, 13 and 19 of and schedule 5 to the 2014 Act. Section 9 makes provision in relation to the preparation of a corporate plan by HES. Section 12 relates to advice, information and assistance provided by HES. Section 13 relates to Ministerial directions which HES must comply with and guidance issued by Ministers which it must have regard to and section 19 of and schedule 5 relate to the transfer of staff and property to HES.

4. Sections 9, 12, 13 and 19 of and schedule 5 to the 2014 Act are brought into force conferring the relevant functions on both HES and the Scottish Ministers. Under section 9, Ministers will be able to set the first planning period by order (the intention is to set this period as 1 April 2016 to 1 April 2019). Under section 12 HES will be required to provide advice, information and assistance to Ministers on request, and enabled to provide advice, information and assistance to Ministers or others as it sees fit. Under section 13, Ministers will be able to give directions and issue guidance to HES. Under section 19 and schedule 5, Ministers will be able to make staff or property transfer schemes to HES.

5. Sections 15 and 16 and schedules 2 and 3 together with sections 23 and 21 are commenced, for the limited purposes of allowing Ministers to make regulations or directions in connection with functions relating scheduled monuments, listed buildings and conservation areas. It is anticipated that all of the regulations under these sections, which are required to be in force by 1 October 2015, will be laid before Parliament in May 2015, following the conclusion of a public consultation which is scheduled to close on 27 March 2015.

6. Section 28 and schedule 6 are commenced in full. The provisions in schedule 6 add HES to the appropriate schedules of 6 Acts, so that HES is subject as appropriate to the provisions of the Ethical Standards in Public etc. (Scotland) Act 2000, the Scottish Public Services

Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002, the Public Appointments and Public Bodies etc. (Scotland) Act 2003, the Public Services Reform (Scotland) Act 2010 and the Public Records (Scotland) Act 2011. The policy intention is that HES should conduct all of its business, from its earliest preparatory work through to its assumption in due course of full operational responsibilities, within the terms of these Acts.

Commencement

7. Article 2 of this Order appoints 27 February 2015 as the day for the coming into force of the provisions of the Historic Environment Scotland Act 2014 (as far as not already in force) set out in the Schedule to the order, but in some cases these will be commenced only for limited purposes, which are also set out in the Schedule to the order.

8. In detail, these commencements and the intentions are as follows.

- Sections 1, 2 and schedule 1 (establishment and general functions) are partially commenced.
- Section 9 (corporate planning) is commenced in full.
- Section 12 (advice, information and assistance) is commenced in full. Section 13 (directions and guidance) is commenced in full.
- Section 14 (interpretation of part 1) is commenced in full.
- Sections 15 and 16 and schedules 2 and 3 together with section 23 are commenced, for the limited purpose of allowing Ministers to make regulations or directions, and section 21 is commenced for the purpose of allowing Ministers to make regulations, all in connection with functions relating scheduled monuments, listed buildings and conservation areas.
- Section 19 and schedule 5 (transfers of staff and property) are commenced in full.
- Section 28 and schedule 6 (consequential modifications) are commenced in full.

Directorate for Culture and Heritage

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