

## SCHEDULES

### SCHEDULE 1

Section 1

#### CONSTITUTION AND PROCEEDINGS ETC. OF SCOTTISH ENTERPRISE AND HIGHLANDS AND ISLANDS ENTERPRISE

##### *Incorporation*

- 1 Each of the two bodies—
- (a) shall be a body corporate; and
  - (b) shall have a common seal.

##### *Status*

- 2 Each of the two bodies shall be a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916.
- 3 Neither of the two bodies shall—
- (a) be regarded as a servant or agent of the Crown;
  - (b) have any status, immunity or privilege of the Crown;
  - (c) be exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local,
- and their property shall not be regarded as property of, or held on behalf of, the Crown.
- 4 Scottish Enterprise shall be treated for all purposes of corporation tax as if it were the same person as the Scottish Development Agency.

##### *Membership*

- 5 The members of Scottish Enterprise shall be—
- (a) not less than eight, nor more than eleven, persons appointed under this subparagraph by the Secretary of State (regard being had to the principle that equality of opportunity should be promoted as between men and women) from persons who appear to him to have knowledge or experience relevant to the discharge of the functions of the body; and
  - (b) the person who is for the time being the chief executive of the body.
- 6 The members of Highlands and Islands Enterprise shall be—
- (a) not less than six, nor more than eleven, persons appointed under this paragraph by the Secretary of State (regard being had to the principle mentioned in paragraph 5(a) above) from persons who appear to him to have knowledge or experience relevant to the discharge of the functions of the body; and
  - (b) the person who is for the time being the chief executive of the body.
- 7 The Secretary of State shall satisfy himself—

- (a) before he appoints a person under paragraph 5(a) or 6(a) above, that the person has no financial or other interest likely to affect prejudicially performance as a member of the body in question;
  - (b) from time to time that each person so appointed continues, and has continued, to have no such interest.
- 8 A person in respect of whom the Secretary of State requires to be satisfied as is mentioned in paragraph 7(b) above shall, whenever requested by the Secretary of State to do so, furnish the Secretary of State with such information as the Secretary of State may consider necessary for the purposes of that requirement.
- 9 Subject to the provisions of this paragraph and of paragraphs 10 and 11 below, each member of either body other than its chief executive—
- (a) shall hold and vacate office in accordance with the terms of the instrument under which he is appointed a member;
  - (b) may, by written notice to the Secretary of State, resign membership; and
  - (c) after ceasing to hold office shall be eligible for reappointment to the body.
- 10 The Secretary of State may remove a member, other than the chief executive, of either body from office if satisfied that the member—
- (a) has been adjudged bankrupt, has made an arrangement with his creditors, has had his estate sequestrated, or has granted a trust deed for his creditors or a composition contract;
  - (b) is incapacitated by physical or mental illness;
  - (c) has been absent from meetings of the body in question for a period longer than three consecutive months without the permission of that body; or
  - (d) is otherwise unable or unfit to discharge his functions as a member or is unsuitable to continue as a member.

#### *Chairmen and Deputy Chairmen*

- 11 (1) In respect of each of the bodies—
- (a) the Secretary of State shall appoint one of its members to be chairman; and
  - (b) after consulting the chairman, may appoint one (or more) of its members to be deputy chairman (or deputy chairmen),
- and a chairman, or as the case may be deputy chairman, shall hold and vacate the office in question in accordance with the terms of the instrument under which he is appointed to that office.
- (2) A member of either body may resign as chairman or deputy chairman of that body by written notice to the Secretary of State; but a chairman or deputy chairman of either body who ceases to be a member of that body (whether or not on giving notice under paragraph 9(b) above) ceases to be its chairman or deputy chairman.
- (3) Where a member of either body becomes, or ceases to be, the chairman or a deputy chairman of the body in question, the Secretary of State may vary the terms of the instrument under which he is appointed a member so as to alter the date on which office as a member is to be vacated.

#### *Remuneration, Allowances and Pensions*

- 12 (1) Each of the bodies shall pay to its chairman, deputy chairman (or deputy chairmen) and members, other than the chief executive—

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- (a) such remuneration as the Secretary of State may, with the approval of the Treasury, determine; and
    - (b) such reasonable allowances as may be so determined in respect of expenses properly incurred by them in the performance of their duties.
  - (2) Where a person (other than a chief executive) ceases to be a member of one or other of the bodies otherwise than on the expiry of his term of office and it appears to the Secretary of State that there are special circumstances which might make it right for the person to receive compensation, the Secretary of State may, with the approval of the Treasury, direct the body in question to pay to the person such amount as the Secretary of State may, with such approval, determine.
- 13 The Secretary of State may, with the consent of the Treasury, determine that in respect of any office held by a person as chairman, deputy chairman or member (other than the chief executive) of either of the two bodies, the body in question shall pay—
- (a) such pension, allowance or gratuity to, or in respect of, that person on his retirement or death;
  - (b) such contribution or other payments towards provision for such pension, allowance or gratuity,
- as may be so determined.

#### *Staff*

- 14 In respect of each of the bodies, the Secretary of State shall, after consultation with its chairman (or chairman designate) make the first appointment of its chief executive on such terms and conditions as the Secretary of State may, with the consent of the Treasury, determine; and thereafter the body in question may, with the approval of the Secretary of State, make subsequent appointments to the office of chief executive on such terms and conditions as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine.
- 15 (1) Subject to paragraph 16 below, each of the bodies may appoint on such terms and conditions as it may, with the approval of the Secretary of State given with the consent of the Treasury, determine, such other employees as it thinks fit.
- (2) Each of the bodies shall, as regards such of its employees as it may with the approval of the Secretary of State given with the consent of the Treasury, determine, make such arrangements for providing pensions, allowances or gratuities (to or in respect of those employees) as it may determine; and such arrangements may include the establishment and administration, by the body in question or otherwise, of one or more pension schemes.
  - (3) The reference in sub-paragraph (2) above to the provision of pensions, allowances or gratuities includes a reference to their provision by way of compensation for loss of office or employment or loss or diminution of emoluments.
  - (4) If a person employed by either body becomes a member of the body and was by virtue of that employment a participant in a pension scheme administered by the body for the benefit of its employees the body may determine that his service as a member shall be treated for the purposes of the scheme as service as an employee whether or not any benefits are to be payable to or in respect of him by virtue of paragraph 13 above; but if the body does so determine, then any discretion as to the benefits payable to or in respect of the person which the scheme confers on it shall be

exercisable only with the consent of the Secretary of State given with the approval of the Treasury.

- 16 (1) Not later than such date as the Secretary of State may determine—
- (a) Scottish Enterprise shall make an offer of employment by it to each person employed immediately before that date—
    - (i) by the Scottish Development Agency;
    - (ii) by the Training Agency to work wholly or mainly in such part of Scotland as is outwith the area mentioned in section 21(1) of this Act;
  - (b) Highlands and Islands Enterprise shall make an offer of employment by it to each person employed immediately before that date—
    - (i) by the Highlands and Islands Development Board;
    - (ii) by the Training Agency to work wholly or mainly within the area so mentioned,

except that if such a person by written notice to Scottish Enterprise, or as the case may be to Highlands and Islands Enterprise, has intimated that he does not require such an offer of employment to be made by the date so determined and, in the case of a person mentioned in paragraph (a)(ii) or (b)(ii) above, has not elected secondment under sub-paragraph (6) below, such an offer may instead be made under this sub-paragraph at a later date but, subject to sub-paragraph (8) below, shall in any event be so made within seven days of receipt, before the first transfer date by Scottish Enterprise or before the second transfer date by Highlands and Islands Enterprise, of any subsequent written notice from the person requiring that it be made.
- (2) In this and the following paragraph “the Training Agency” means the part of the department of the Secretary of State for Employment which is so known, other than so much of that part as is known either as the Skills Training Agency or as the Employment Rehabilitation Service.
- (3) The terms of any offer under sub-paragraph (1) above shall be such that they are, taken as a whole, not less favourable to the person to whom the offer is made than the terms on which he is employed on the date on which the offer is made.
- (4) Any question as to what persons are employed as mentioned in sub-paragraph (1) above and, in respect of any such person, the body by which an offer is (subject to the exception mentioned in the sub-paragraph) to be made under the sub-paragraph shall be determined by the Secretary of State, whose decision in the matter in question shall be final.
- (5) For the purposes of sub-paragraph (3) above, no account shall be taken of the fact that employment with Scottish Enterprise or Highlands and Islands Enterprise is not employment in the service of the Crown.
- (6) Instead of forthwith accepting or declining an offer made to him under sub-paragraph (1)(a)(ii) or (b)(ii) above, or if he has given notice that he does not require such an offer and none has been made, a person may (without prejudice to sub-paragraph (7) below) elect to be seconded to Scottish Enterprise, or as the case may be Highlands and Islands Enterprise, on such terms as the body in question may agree with him and with the Training Agency; but any such secondment shall end not later than three years after—
- (a) in the case of secondment to Scottish Enterprise, the first transfer date; and

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- (b) in the case of secondment to Highlands and Islands Enterprise, the second transfer date,  
and if during the period of secondment the person by written notice to Scottish Enterprise, or as the case may be Highlands and Islands Enterprise, requires that such an offer be made (whether or not the secondment followed such an offer), the body in question shall within thirty days of receiving the notice comply with the requirement.
- (7) An offer under sub-paragraph (1) above—
- (a) where made before the date determined under sub-paragraph (1) above, shall not be revocable during the period of three months commencing with the date on which made;
- (b) where made after the date so determined, shall not be revocable before—
- (i) in the case of an offer by Scottish Enterprise, the first transfer date;
- (ii) in the case of an offer by Highlands and Islands Enterprise, the second transfer date,  
or, if later, the date thirty clear days after that on which the offer is made,
- (c) where it is an offer whose recipient has elected secondment under sub-paragraph (6) above, shall not be revocable during the period of secondment (though it shall be superseded by any subsequent such offer to him).
- (8) Any such subsequent written notice as is referred to in sub-paragraph (1) above shall for the purposes of that sub-paragraph be disregarded if the person is, at the time of giving it, no longer an employee of the Scottish Development Agency or as the case may be of the Highlands and Islands Development Board or the Training Agency.
- 17 (1) Where a person becomes an employee of Scottish Enterprise or Highlands and Islands Enterprise in consequence of his acceptance of an offer made under sub-paragraph (1) of paragraph 16 above, then, for the purposes of the Employment Protection (Consolidation) Act 1978, his period of employment in the Scottish Development Agency (including any period of employment in the Scottish Industrial Estates Corporation or the Small Industries Council for Rural Areas of Scotland which, under paragraph 6 of Schedule 3 to the Scottish Development Agency Act 1975, falls to be regarded as continuous with that period of employment) or as the case may be in the Highlands and Islands Development Board or the civil service of the State shall count as a period of employment in Scottish Enterprise or as the case may be Highlands and Islands Enterprise; and the change of employment shall not break the continuity of the period of employment.
- (2) Where a person receives an offer under head (a)(i) or (b)(i) of sub-paragraph (1) of paragraph 16 above (whether or not by virtue of the exception to that sub-paragraph), none of the agreed redundancy procedures applicable to an employee of the Scottish Development Agency, or as the case may be of the Highlands and Islands Development Board, shall apply to him; and where the person ceases to be such an employee—
- (a) on becoming an employee of Scottish Enterprise or Highlands and Islands Enterprise in consequence of that paragraph; or
- (b) having unreasonably refused the offer,
- Part VI of the said Act of 1978 shall not apply to him and he shall not be treated for the purposes of any scheme provided or maintained by virtue of paragraph 10(2) of Schedule 1 to the Scottish Development Agency Act 1975 or paragraph 14(1)(b) of Schedule 1 to the Highlands and Islands Development (Scotland) Act 1965, as having been retired on redundancy.

- (3) A person who ceases to be an employee of the Training Agency on becoming an employee of Scottish Enterprise or Highlands and Islands Enterprise by virtue of paragraph 16 above, shall not be treated, for the purposes of any scheme under section 1 of the Superannuation Act 1972, as having been retired on redundancy.
- 18 (1) Any dispute as to whether an offer under sub-paragraph (1) of paragraph 16 above complies with sub-paragraph (3) of that paragraph shall be referred to and be determined by an industrial tribunal.
- (2) An industrial tribunal shall not consider a complaint referred to it under sub-paragraph (1) above unless the complaint is presented to the tribunal before the end of the period of three months beginning with the date on which the offer is made or within such further period as the tribunal considers reasonable in a case where satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.
- (3) Subject to sub-paragraph (4) below, there shall be no appeal from the decision of an industrial tribunal under this paragraph.
- (4) An appeal to the Employment Appeal Tribunal may be made only on a question of law arising from the decision of, or in proceedings before, an industrial tribunal under this paragraph.

#### *Proceedings*

- 19 The quorum of each body, and the arrangements for its meetings, shall be such as the body in question may determine.
- 20 (1) A member of either body who is directly or indirectly interested in—
- (a) a contract made or proposed to be made by it; or
  - (b) any other matter whatsoever which falls to be considered by it,
- shall as soon as is practicable disclose the nature of his interest at a meeting of the body; and the disclosure shall be recorded in the minutes of the meeting.
- (2) In the case mentioned in—
- (a) head (a) of sub-paragraph (1) above, the member shall not take part in any deliberation or decision of the body with respect to the contract;
  - (b) head (b) of that sub-paragraph, the member shall not take part in any deliberation or decision of the body with respect to the matter if the body decides that the interest in question might affect prejudicially his consideration of the matter.
- (3) For the purposes of this paragraph, a notice to the effect that a person is a member of a specified body corporate or firm and is to be regarded as interested in any contract which is made with the body corporate or firm after the date of the notice, and in any other matter whatsoever concerning the body corporate or firm which falls to be considered after that date, shall if given at a meeting of Scottish Enterprise or Highlands and Islands Enterprise be a sufficient disclosure of the person's interest to Scottish Enterprise or as the case may be Highlands and Islands Enterprise.
- (4) For the purposes of this paragraph disclosure at a meeting may be made without the attendance in person of the member in question provided that he takes reasonable steps to secure that the matter disclosed is in a notice taken into consideration at the meeting.

- 21 The validity of any proceedings of either body shall not be affected by any vacancy among its members or by any defect in the appointment of a member or by any failure to comply with any requirement of paragraph 20 above.

#### *Committees*

- 22 (1) For or in connection with the discharge of its general functions or the exercise of its powers either body may establish such committees (whose members need not be members of the body in question) as appear to it to be appropriate; and the composition and remit of committees so established and the terms on which members of such committees hold office shall be determined by the establishing body.
- (2) A body establishing a committee under sub-paragraph (1) above shall pay to members of the committee who are not members of the body travelling and other allowances, including compensation for loss of remunerative time, in accordance with such arrangements as may be determined by the Secretary of State with the approval of the Treasury.

#### *Execution of Documents*

- 23 (1) Except in so far as any enactment (including an enactment contained in a statutory instrument) provides otherwise, a document—
- (a) is signed by either body if it is signed on its behalf by a member or by the secretary or by a person authorised to sign the document on behalf of the body in question; and
  - (b) is subscribed by either body if it is subscribed on its behalf by being signed in accordance with the provisions of head (a) above at the end of the last page of the document.
- (2) A document shall be presumed, unless the contrary is shown, to have been subscribed in accordance with sub-paragraph (1) above if—
- (a) it bears to have been subscribed on behalf of the body in question by a member or by the secretary or by a person bearing to have been authorised to subscribe the document on behalf of that body; and
  - (b) it bears to have been signed by a person as a witness of the subscription of the member, secretary or other person subscribing on behalf of the body in question or (if the subscription is not so witnessed) to have been sealed with the common seal of that body.