

THE NATIONAL TRUST FOR SCOTLAND (GOVERNANCE ETC.) ACT 2013

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by Turcan Connell on behalf of the promoter, The National Trust for Scotland for Places of Historic Interest or Natural Beauty (also known as The National Trust for Scotland), in order to assist the reader of The National Trust for Scotland (Governance etc.) Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The National Trust for Scotland for Places of Historic Interest or Natural Beauty (“the Trust”) is established by private Act of Parliament under the National Trust for Scotland Order 1935 (in the Act called “the 1935 Order”), as confirmed by the National Trust for Scotland Order Confirmation Act 1935, which incorporated the Trust under statute and provided a detailed constitution for its governance. Amendments have been made by subsequent private Acts in 1938, 1947, 1952, 1961 and 1973 (in these Notes together called “the subsequent Acts”).

4. The Act affects only the 1935 Order and does not amend or affect the provisions of the subsequent Acts. The subsequent Acts dealt only with the following matters:-

- The 1938 Act extended the objects and powers of the Trust, permitted the Trust to allow its properties to be occupied by Trust members, granted local authorities the power to convey property to the Trust, permitted agreements to be entered into restricting the use of land, and modified section 33 of the 1935 Order which is concerned with byelaws.
- The 1947 Act further extended the powers of the Trust and stipulated how those powers could be exercised.
- The 1952 Act extended the Trust’s powers of investment, which also required the partial repeal of section 28 of the 1935 Order which relates to the application of revenue.
- The 1961 Act inserted new provisions relating to the subscriptions payable by ordinary members (which also involved making consequential repeals in sections 14 to 16 of the 1935 Order), further modified the provisions relating to byelaws in sections 33 to 35 of the 1935 Order, and amended section 21 of

the 1935 Order so as to allow the council to set criteria for the re-election of council members.

- The 1973 Act further modified the Trust's powers of investment, and amended section 21 of the 1935 Order so as to permit the creation of a finance committee and an investment committee, and so as to regulate how different documents may be executed by the Trust.

5. The Act is intended to complete the implementation of reforms agreed in 2010 to modernise and streamline the governance of the National Trust for Scotland (in the Act called "the Trust") and will also clarify the use of the abbreviated name by which the Trust is known.

6. In 2009 a formal review of the Trust's governance was established, chaired by The Rt Hon Sir George Reid ("the Reid review"). The Reid review published its report "*Fit for Purpose – Report of the Strategic Review of the National Trust for Scotland*" in autumn 2010.¹ This made a number of recommendations for reform of the Trust's governance, and the recommendations were accepted in their entirety by the Trust's members at the Trust's Annual General Meeting in September 2010.

7. The majority of the recommendations made by the Reid review could be (and have already been) given effect to by the Trust, either acting through its members in AGM or acting through its governing body, the council (also known as the Board of Trustees). However, amendment of the Trust's founding legislation is necessary to amend certain aspects of the Trust's governance where the founding legislation is prescriptive.

COMMENTARY ON SECTIONS

Section 1 – president and vice-presidents

8. Section 1 of the Act repeals any reference to the president within section 18 of the 1935 Order (which is concerned with the establishment of the council). It thus formally removes the president from the council and puts an end to the president's status as a charity trustee so that the president has no liability as a charity trustee.

9. Section 1 of the Act also repeals any reference to the vice-presidents within section 18 (establishment of the council) and thereby similarly removes the status of charity trustee from the vice-presidents.

10. The repeals made in subsection (1) would result in the 1935 Order being silent on the status of the president and vice-presidents. Subsection (2) is, therefore, necessary in order to allow proper definition of the roles of president and vice-presidents (including their relationship with the council) once these office bearers have been removed from the council. A new section 18A is inserted into the 1935 Order to address this.

¹ Fit for Purpose: Report of the Strategic Review of the National Trust for Scotland – available at www.nts.org.uk/legislation

11. Section 18A(1), (2)(a), (3) and (4) mirror the existing provisions of the 1935 Order. However, the relevant provisions are repealed and then inserted anew as the existing provisions are contained within a section which is no longer appropriate and which is potentially misleading (section 18 - establishment of council). Inclusion of these provisions within the new section 18A allows the provisions relating to the president and vice-presidents to be consolidated in one place for clarity.

12. Section 18A(2)(b) and (c) are new provisions which supplement the repeals in section 1 and further implement recommendations 16 and 17 of the Reid review. They ensure that the president and vice-presidents are not members of the council and that a clear distinction is drawn between these different roles.

13. Section 18A(5) imposes an obligation upon the council to prescribe the duties and responsibilities of these office bearers to ensure that the roles of these office bearers are clearly defined.

Section 2 – Co-opted members of council

14. Section 2 of the Act addresses the issue of co-opted members of the council (co-opted trustees) and substitutes a new section 20 of the 1935 Order.

15. Section 20(1) and (3) are restatements of the existing position but the opportunity has been taken to clarify and update the drafting in the 1935 Order. No change is made to the maximum permitted number of co-opted trustees.

16. Section 20(2) extends the maximum permitted period of office to four years, which is in alignment with the term that elected members of council serve at present.

17. Section 20(4) allows the council to set eligibility criteria for co-opted trustees if they wish to seek either further co-option or election. This allows this matter to be dealt with in the same way as the setting of criteria for elected trustees.

Section 3 – Abolition of representative membership of the council

18. The repeals made by section 3 of the Act remove all references to representative members of the council from the 1935 Order while also re-stating section 14(f) of the 1935 Order as section 14(e) to allow the lettering to remain sequential.

Section 4 – Name of the Trust

19. Section 4 is inserted to make it clear that use of the customary abbreviation, The National Trust for Scotland, is legally valid and is to be considered to be equivalent to use of the full name, the National Trust for Scotland for Places of Historic Interest or Natural Beauty.

Section 5 – Transitional provisions

20. Section 5 of the Act includes transitional provisions to provide for the period between the Bill being enacted and coming into force and the first appointments being made under the Act.

21. Section 5(1) states that any individuals who were appointed under those provisions of the 1935 Order which are now being repealed are not removed from office as a result of these repeals. Any president, vice-president, or co-opted trustee who is presently in office will, therefore, remain in office until the first Annual General Meeting of the Trust held after the Bill has been enacted and has come into force, at which point new appointments will be made under its provisions.

22. Section 5(2) removes the status of charity trustee from the current president and any vice-presidents immediately upon the Bill being enacted and coming into force, rather than this change only coming into effect when new appointments are made under its provisions.

PARLIAMENTARY HISTORY

23. The following table sets out, for each stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates which the proceedings at that stage took place, and the references to the Official Report of those proceedings. It also shows the dates on which the Committee report and other papers relating to the Bill were published, and the references to those reports and other papers.

PROCEEDINGS AND REPORTS	REFERENCE
INTRODUCTION	
Bill as introduced – 7 January 2013	SP Bill 21 – Session 4 (2013)
Preliminary Stage	
1st meeting, 26 February 2013	1st Meeting, 26 February 2013
2nd meeting, 12 March 2013	2nd Meeting, 12 March 2013
3rd meeting, 26 March 2013	(Meeting in private)
The National Trust for Scotland (Governance etc.) Bill Committee Preliminary Stage Report, published – 28 March 2013	1st Report, 2013 (Session 4), The National Trust for Scotland (Governance etc.) Bill Committee
Preliminary Stage debate – 23 April 2013	Cols 18868-18877
Consideration Stage	
4th meeting, 7 May 2013	4th Meeting, 7 May 2013

*These notes relate to The National Trust for Scotland (Governance etc.) Act 2013 (asp 9)
which received Royal Assent on 28 June 2013*

PROCEEDINGS AND REPORTS	REFERENCE
Final Stage	
Consideration by the Parliament	
Final Stage debate –23 May 2013	Cols 20292-20302
ROYAL ASSENT	
28 June 2013	The National Trust for Scotland (Governance etc.) Act 2013 (asp 9)