

EXPLANATORY MEMORANDUM TO
THE PUBLIC BODIES (ABOLITION OF THE NATIONAL ENDOWMENT FOR
SCIENCE, TECHNOLOGY AND THE ARTS) ORDER 2012

2012 No. 964

1. This explanatory document has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 To abolish the National Endowment for Science, Technology and the Arts (NESTA) as part of the Government's public bodies reform programme.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 As NESTA was established by legislation (Part II of the National Lottery Act 1998), legislation is required to abolish it. The Public Bodies Act 2011 confers powers on Ministers in relation to certain public bodies and offices. Section 1 of the Act enables Ministers to abolish by order public bodies which are listed in Schedule 1, including NESTA.
 - 4.2 As required by sections 9 and 10 of the Public Bodies Act 2011, the UK Government is either seeking consent to the order or consulting the Devolved Administrations. The order will not be made until consent is obtained from the Scottish Parliament (in accordance with subsection 9(1)(a) of the Act) and the Northern Ireland Assembly (in accordance with subsection 9(3)(a) of the Act). Welsh Ministers have been consulted on the proposal in accordance with section 9(1)(e) of the Act and section 63(1) of the Government of Wales Act 2006.
 - 4.3 This order abolishes NESTA on 1st April 2012 or, if the order is made on or after 1st April 2012, 28 days after the day on which it is made. The order makes consequential amendments and contains an amendment to Schedule 1 to the Public Bodies Act 2011.
 - 4.4 A transfer scheme will be made by the Minister using the powers under section 24(1)(a) of the Act at the same time as the order is made. This will transfer all property, rights and liabilities of NESTA relating to the National Lottery endowment to a charitable trust, the NESTA Trust, as well as all other property, rights and liabilities and employees relating to NESTA to a charity, NESTA Operating Company, which is a company limited by guarantee and has been appointed as the sole trustee of the NESTA Trust. The

Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to this transfer. The transfer scheme will be laid in Parliament once the order has been made. A draft transfer scheme can be found in the House libraries.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 David Willetts, Minister of State for Universities and Science, has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 are compatible with the Convention rights.”

7. Policy background

7.1 NESTA’s remit is to support and promote talent, innovation and creativity in the field of science, technology and the arts. It promotes innovation and creativity to help tackle social and economic problems and provides an independent, well-informed voice and commentary on innovation policy.

7.2 On 14 October 2010, the Government committed to reforming the public bodies landscape and on 28 October 2010, the Public Bodies Bill was introduced in the House of Lords to provide the legislative framework to enact many of the reform proposals. NESTA did not meet the criteria set to remain a public body. Whilst the Government’s view is that NESTA performs a valuable function and wants to see its activities continue, the decision was made to abolish NESTA as a public body. The Government’s view is that NESTA’s activities are better suited to the voluntary sector.

7.3 A transfer scheme will be made at the same time as the order to abolish NESTA to transfer the property, rights and liabilities of NESTA relating to the National Lottery endowment to the NESTA Trust and all other property, rights and liabilities and employees to NESTA Operating Company (see 4.4). This will allow the valuable work of NESTA to continue whilst protecting the endowment. As the sole trustee of the NESTA Trust, NESTA Operating Company will manage the endowment and spend the return from the endowment in furtherance of the charitable objects of the NESTA Trust. A Protector will be appointed by Ministers to provide assurance of the propriety in the way the endowment is used. As required by section 24(4) of the Act, NESTA Operating Company, and the NESTA Trust have consented to be recipients of any property, rights and liabilities transferred under the transfer scheme.

7.4 The objects of the new charitable trust were approved by Ministers and the Charity Commission. The full objects can be found at Annex A of this document. The

objects of the independent charity are the same as those of the charitable trust but they include an additional object to advance any other purpose which is recognised as exclusively charitable under the laws of England and Wales and Scotland, which will be funded by non-endowment sources of income. There is no anticipated negative impact on NESTA's work as a result of a change in status to a charity. The responses to the consultation were in broad agreement that NESTA would benefit from this increased independence from Government.

Section 8 of Public Bodies Act

7.5 Section 8 of the Public Bodies Act 2011 states that a Minister can abolish a body only if by doing so it improves the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. NESTA already has a large amount of independence from Government as its programmes and strategy are determined by its trustees and it is funded by the return on its National Lottery endowment, rather than funding from Government. As a result of this change, the Government expect to see improvements in the following areas:

- Efficiency – The Government's view is that it is not necessary for NESTA to be part of the public sector to carry out its functions and that NESTA's activities are better suited to delivery by the voluntary sector, whilst Government maintains oversight of propriety of expenditure of the National Lottery endowment through the Charity Commission and the Protector.
- Effectiveness – As a result of no longer being an NDPB, NESTA will be subject to reduced accounting, governance and reporting requirements, allowing them to redistribute resources previously allocated to such reporting requirements to other activities which advance their mission.
- Economy – By abolishing NESTA as an NDPB, there will be a reduced sponsor team in BIS. Sponsor team responsibilities such as approving and laying of NESTA's accounts in Parliament and the OCPA-regulated appointments process for NESTA's board of trustees would no longer be necessary and these responsibilities would not need to be continued by NESTA staff following transition. This reduction in sponsorship team roles mean that staff can be re-allocated to other Government priorities giving taxpayers greater value for money. A full cost/benefit analysis can be found in the final-stage impact assessment alongside the order at www.legislation.gov.uk. The impact assessment shows a net benefit over 10 years of £1.84 million (present value).
- Accountability to Ministers – The Government's view is that it is not necessary for NESTA to be part of the public sector to carry out its functions or be accountable to Ministers for its activities. Through the ministerially-appointed Protector, Ministers will maintain assurance for propriety of the way in which the National Lottery endowment is used, whilst giving NESTA further distance and independence from Government.

7.6 As required by section 8(2) of the Act, David Willetts, Minister of State for Universities and Science, has made the following statement:

“In my view, abolishing NESTA will not remove any necessary protection and will not prevent anyone from continuing to exercise any right of freedom which that person might reasonably expect to continue to exercise.”

7.7 The Minister considers that whilst abolishing NESTA and reconstituting it as an independent charity and trust will change the status of the organisation, there will be no anticipated negative impact on NESTA’s work and therefore individuals’ rights as a result of this change.

Interest in the Houses of Parliament

7.8 During the passage of the Public Bodies Act through Parliament, NESTA was specifically referred to on two occasions. During its passage through the House of Lords, Lord Warner tabled an amendment to remove NESTA from Schedule 1 of the Bill with Lord Dubs and Lord Evans of Temple Guiting also speaking in favour.¹ In particular, they asked whether NESTA’s work was likely to be accepted as a charitable purpose by the Charity Commission, what the process was for appointing trustees, and whether the proposed changes to NESTA had been discussed with the NESTA Board. Following Lord Taylor of Holbeach’s response to the questions raised, Lord Warner withdrew his amendment, but asked for assurance in writing that the Government’s proposal to reconstitute NESTA as a charity would not damage NESTA and its future work. Lord Taylor of Holbeach wrote to Lord Warner after the debate on 21 March 2011 to provide this assurance and a copy was laid in the House Library.²

7.9 The only other reference to NESTA during the passage of the Act was at the second reading in the House of Commons. At this time, Tessa Jowell MP spoke in favour of NESTA entering the voluntary sector.³

8. Consultation outcome

8.1 A six week public consultation on the proposal to abolish NESTA and establish it as an independent charity with a separate charitable trust to hold the National Lottery endowment was launched on 18 October 2011 and closed on 29 November 2011. As the scope of the consultation was narrow, a focused and targeted consultation was deemed suitable. The consultation document was made widely available to all interested stakeholders and the wider public by statements on both the BIS and NESTA websites. BIS also sent the consultation document directly to over 100 stakeholders. The consultation was aimed at employees and trustees of NESTA and anyone who had an interest in NESTA’s work. In particular, views were sought from partners of NESTA in the public, private and voluntary sectors, including central and local government and the devolved administrations.

8.2 BIS received 27 responses to the consultation and there was strong support for the proposed policy option – to abolish NESTA as an NDPB and reconstitute it as an

¹ Hansard HL vol 725 cols 802-806 (28 February 2011)

² <http://deposits.parliament.uk/>

³ Hansard HC vol 531 col 223 (12 July 2011)

independent charity and charitable trust. The majority of responses supported Government's proposal that NESTA does not need to be part of the public sector, and that it will benefit from having more independence from Government. 80% of the responses to the consultation concurred with the preferred policy option as the most suitable choice for NESTA, with 85% agreeing that Government had explored all the options relevant to NESTA.

8.3 In addition, over 90% of responses agreed that NESTA would benefit from increased independence from Government. Responses highlighted that the change in status would improve NESTA's abilities to support innovation in the UK - allowing NESTA to be more effective and giving it "more freedom to be creative, innovative and at the forefront of the development of new ideas that can help drive positive economic growth".

8.4 A number of issues were raised in response to the consultation, in particular about the endowment and NESTA's role. While these have been addressed in the Government response to the consultation, further clarification is provided here. Whilst the Government considers that NESTA would be better placed to operate outside the public sector, the National Lottery endowment must remain within the public sector. The majority of the endowment is currently invested in Government gilts and sits as a liquid asset benefitting Public Sector Net Debt (PSND). For National Accounts purposes, transfer of the endowment out of the public sector would have a detrimental effect on PSND, as this would reduce the stock of government's assets. The charitable trust in the public sector will ensure that Ministers maintain assurance for propriety of the way in which the endowment is used, through the Protector, but the trust will not be directly monitored by Government. In terms of NESTA's role, NESTA will continue to support innovative companies, both as part of a diversified portfolio invested for financial return, and through grant funding and programme-related investment in line with their charitable objects.

8.5 The Government's formal response to the consultation has been published on the BIS website at: www.bis.gov.uk/consultations/

9. Guidance

9.1 Not applicable.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact assessment shows a net benefit to the public sector over 10 years of £1.84 million (present value).

10.3 An Impact Assessment will be published alongside this Explanatory Document at www.legislation.gov.uk;

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The trustee of the trust will be independent of Government and free to carry out activities in line with the objects of its charity. Through the ministerially-appointed Protector, Government will monitor the arrangements of the trust.

13. Contact

Laura Hart at the Department for Business, Innovation and Skills Tel: 020 7215 5322 or email: laura.hart@bis.gsi.gov.uk can answer any queries regarding the instrument.

Annex A - Objects of the NESTA Trust

“For the public benefit -

1. To advance education, and in particular the study of innovation, by the promotion of research and the publication of the useful results thereof, in:

- Science and technology
- The arts
- The efficiency of public services
- The voluntary sector and social enterprise
- Industry and commerce

2. To advance:

- Science and technology
- The arts
- The efficiency of public services
- The voluntary sector
- Industry and commerce and social enterprise which
 - Relieves poverty
 - Relieves unemployment
 - Advances health
 - Advances environmental protection or improvement and sustainable development
 - Advances citizenship or community development through or by encouraging and supporting innovation.

The voluntary sector means charities and voluntary organisations.

- Charities are organisations, which are established for exclusively charitable purposes in accordance with the law of England and Wales.
- Voluntary organisations are independent organisations, which are established for purposes that add value to the community as a whole, or a significant section of the community, and which are not permitted by their constitution to make a profit for private distribution. Voluntary organisations do not include local government or other statutory authorities.

Sustainable development means “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.