

HISTORIC ENVIRONMENT SCOTLAND BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Historic Environment Scotland Bill introduced in the Scottish Parliament on 3 March 2014:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 47–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. 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 BILL

3. The purpose of the Bill is to create a new lead body for Scotland's historic environment – Historic Environment Scotland which will be a Non-Departmental Public Body and to equip that body with the necessary powers to be able to carry out the functions which are currently delivered by Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). The Bill provides for RCAHMS to be dissolved. The Bill also sets out the governance arrangements for the new body and provides for the delegation or transfer to Historic Environment Scotland of Ministerial powers and responsibilities under existing legislation as appropriate. The Bill enables the transfer of the property, staff and liabilities of both RCAHMS and Historic Scotland to Historic Environment Scotland (excluding properties and collections in the care of Scottish Ministers) and aligns certain functions in relation to designation and regulation of the historic environment with the rest of the planning system.

Status and functions of Historic Scotland and RCAHMS

4. Historic Scotland is an Executive Agency of the Scottish Government. This means that it has no powers of its own, but operates using powers conferred on Scottish Ministers.
5. The main functions which Historic Scotland carries out are:
 - Caring for and presenting to visitors the Properties in Care;
 - Designating places to be protected, by scheduling of monuments of national importance, by listing buildings of architectural or historic interest, by adding to the Inventory of Gardens and Designed Landscapes and the Inventory of Historic Battlefields and by designated Historic Marine Protected Areas;
 - Providing specialist advice and expert knowledge to the Scottish Government's Historic Environment Policy Unit to inform the development of Scottish Ministers' policies as they relate to the historic environment and other matters;
 - Providing financial assistance towards the conservation and enhancement of the historic environment; and
 - Providing guidance on the management of the historic environment.

6. RCAHMS was established by Royal Warrant in 1908. It is treated for administrative purposes as a Non-Departmental Public Body. It has been a registered charity since 1992, when the Royal Warrant was last updated. Its purpose is to:

- identify, survey and analyse the historic and built environment of Scotland;
- preserve, care for and add to the information and items in its collections; and
- promote understanding, education and enjoyment through interpretation of the information it collects and items it looks after.

7. Many of Historic Scotland's functions are set out in statute, mainly in the Acts listed below. The Bill amends the following Acts to ensure that Historic Environment Scotland can operate as intended:

- the Historic Buildings and Ancient Monuments Act 1953 ("the 1953 Act");
- the Ancient Monuments and Archaeological Areas Act 1979 ("the 1979 Act");
- the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 ("the 1997 Act"); and
- the Marine (Scotland) Act 2010 ("the 2010 Act").

8. The Bill is in seven Parts:

- Part 1 - Historic Environment Scotland;
- Part 2 - Functions in relation to scheduled monuments;
- Part 3 - Functions in relation to listing and conservation;
- Part 4 - Functions in relation to the marine environment;
- Part 5 - Dissolution of RCAHMS and transfer of staff etc. to Historic Environment Scotland;
- Part 6 - Further modifications in relation to the historic environment; and
- Part 7 – Final provisions.

9. The Bill also includes six schedules setting out the detailed arrangements in relation to a number of areas covered by the Bill and making minor and consequential amendments.

COMMENTARY ON SECTIONS

PART 1 – HISTORIC ENVIRONMENT SCOTLAND

Section 1 – Historic Environment Scotland

10. Section 1 provides for the creation of a new body to be known as Historic Environment Scotland, with the functions conferred on it by this Act and any other enactment. This section introduces schedule 1 to the Bill, which makes provision about the status, membership

procedures and powers of Historic Environment Scotland. Further notes on schedule 1 are given below.

Section 2 – Functions of Historic Environment Scotland

11. Section 2 sets out the functions of the Historic Environment Scotland. Subsection (1) sets out that the new body has the general function to investigate, care for and promote Scotland's historic environment. Subsection (2) expands on the general function.

12. Subsection 2(a) gives Historic Environment Scotland the function of identifying and recording the historic environment. It might, for example, do this by undertaking field and aerial survey programmes to identify new sites or gather more information about existing sites, and creating records of discoveries.

13. Subsection 2(b) gives Historic Environment Scotland the function of understanding and interpreting the historic environment. It might do this by undertaking research into historic buildings to determine their date and building sequence and presenting the results to a variety of audiences in various media.

14. Subsection 2(c) gives Historic Environment Scotland the function of learning about, and educating others about, the historic environment. This might be done by participating in collaborative research programmes with individuals, academic institutions and other bodies, or by acquiring knowledge of traditional skills and techniques and helping to maintain these by training new craftspeople, or by using material in the collections to contribute to teaching materials for schools.

15. Subsection 2(d) gives Historic Environment Scotland the function of protecting and managing the historic environment. It could do this by engaging with the development planning process to ensure that the historic environment is considered in strategic development proposals. Its work in designating scheduled monuments, listed buildings, gardens and designed landscapes and battlefields will provide the foundation for protection of these important assets.

16. Subsection 2(e) gives Historic Environment Scotland the function of conserving and enhancing the historic environment. Its work in this respect might include undertaking or arranging hands-on maintenance and repair work at the visitor properties it manages, or supporting work to improve the general condition of a conservation area.

17. Subsection (3) gives Historic Environment Scotland the function of managing its collections as a national resource for reference, study and research. Subsection (4) expands on this function. Definitions of "collection" and "object" are given in section 13 of the Bill and explained in paragraph 70-71 of these notes.

18. Subsection 4(a) sets out that in exercising its function Historic Environment Scotland must do so with a view to preserving, conserving and developing its collections. It might, for example, do this by engaging specialist conservators to maintain or bring objects in the collections to a good condition, by ensuring that the objects in its collections are stored and

accessed in ways which seek to minimise deterioration, or by adding significant new material to its collections to ensure that their value and currency are maintained. Such activities might be undertaken within the framework of a collections strategy.

19. Subsection 4(b) sets out that in exercising its function Historic Environment Scotland must do so with a view to making the collections accessible to the public and to persons wishing to carry out study and research. This could be achieved by making public search rooms available so that objects in the collections can be brought to persons wishing to consult them or by digitally copying objects and making them available online.

20. Subsection 4(c) sets out that in exercising its function Historic Environment Scotland must do so with a view to exhibiting and interpreting objects in the collections. Ways of doing this might include organising the public display of objects on a particular theme or topic, and delivering audio, visual or audio-visual aids to assist those wishing to understand the context and cultural significance of the exhibits. It might collaborate to exhibit collections internationally to encourage tourism to Scotland, or seek the loan of another body's collections to support particular exhibitions. This function will also be delivered online.

21. Subsection (5) sets out the manner in which Historic Environment Scotland is to exercise its functions.

22. Subsection (5)(a) sets out that in exercising its functions Historic Environment Scotland must do so with a view to encouraging education and research. This might include partnering with academic institutions and other bodies in research projects, or seeking to encourage school and university students to use its collections or visitor sites in connection with curricular studies.

23. Subsection 5(b) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting and contributing to understanding and enjoyment of the historic environment. Activities such as organising public events and activities at the properties that it looks after, publishing accessible and useful information and running hands-on activities to engage the public in the process of discovery would be among the ways it could achieve this.

24. Subsection 5(c) sets out that in exercising its functions Historic Environment Scotland must do so with a view to promoting the diversity of persons accessing the historic environment and its collections and exhibitions. It might, for example, invest in works to improve physical access to the monuments and historic buildings it presents to the public or deliver community engagement activities that are focused on increasing diversity and tailored to meet the needs of particular groups and individuals. Online access to its services might be particularly important here.

25. Subsection 5(d) sets out that in exercising its functions Historic Environment Scotland must do so with a view to offering and promoting leadership in relation to the historic environment. This could include leading collaborative projects to develop standards in connection with the management, protection and conservation of the historic environment. It might also lead by example: demonstrating high standards of conservation work or producing attractive and informative publications.

26. Subsection 5(e) sets out that in exercising its functions Historic Environment Scotland must do so with a view to working with other persons (whether in partnership or otherwise). Ways of doing this might providing training and support to groups wishing to identify and record their local historic environment, or supporting owners who wish to repair or maintain historic buildings in the most authentic manner. It might work with others to develop online solutions that fulfil specific user needs by providing integrated access to information and digitised collections held by several different collections.

27. Subsection 5(f) sets out that in exercising its functions Historic Environment Scotland must do so with a view to contributing, as appropriate, to the development and delivery of policies and strategies in relation to the historic environment. This might involve active participation in and contributing expert knowledge to professional forums and committees. This strategic approach is currently represented by Scotland's Historic Environment Strategy, in which Historic Environment Scotland will be a key partner.

28. Subsections (6) and (7) allow Historic Environment Scotland to support and assist (including financial support and assistance) any other person carrying out functions similar to its own functions.

29. Subsection (8) requires Historic Environment Scotland to have regard to wider relevant government policies and strategies. It might do this, for example, by ensuring that a modern building which acts as accommodation for its staff is compliant with government policies on energy efficiency and waste reduction, by ensuring that the management of visitor sites is in accord with biodiversity requirements or that it considers wider regeneration objectives when allocating grants and loans under its various programmes.

Section 3 – Delegation of functions in relation to Properties in Care

30. Section 3 allows the Scottish Ministers to delegate their functions (statutory and non-statutory) in relation to Properties in Care to Historic Environment Scotland or any other person the Ministers consider appropriate. Under subsection (7), "Property in Care" means any heritable property which is of historical, archaeological, architectural or cultural significance and which is owned or occupied by, under the guardianship of, or otherwise under the management and control of the Scottish Ministers. Currently there are 345 such properties, consisting of a mixture of properties where Ministers hold title, properties where guardianship agreements have conferred management responsibilities on Ministers in perpetuity, and a small number of properties which are leased or held by other means. In all cases, these properties are held for the purpose of being conserved and made accessible for the public.

31. Subsection (3) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

32. Subsection (5) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless Ministers provide otherwise in the delegation. Thus, Historic Environment Scotland would retain money paid for admittance to visitor properties.

33. Subsection (6) makes it clear that delegating functions does not affect the ultimate responsibility of the Scottish Ministers for properties in care.

34. The scheme(s) of delegation from the Scottish Ministers to Historic Environment Scotland or other bodies would specify expected standards of conservation and maintenance and degree of public access, and the measures by which achievement of these would be monitored. Schemes of delegation could also deal with matters such as charging for access and for additional services.

Section 4 – Power of entry to investigate the historic environment

35. Section 4 gives Historic Environment Scotland the power to enter land (including buildings or other structures on the land) to identify and record the historic environment, subject to certain provisions set out in the subsections.

36. Subsections (2) to (4) set out details of how this power may be exercised, including restrictions on the power, for example the exclusion of access to dwelling-places. Similar statutory powers of access, which already exist for Ministers and their employees, are only used as a last resort after every effort to contact the owner or occupier of a property has failed. These powers have been exercised very seldom – less than ten times in total over the past 30 years.

37. Subsection (5) makes it a criminal offence to (without reasonable excuse) intentionally obstruct a person exercising the powers of entry under subsection (1). The offence is punishable on summary conviction up to a maximum fine, set in subsection (6) of level 3 on the standard scale (currently £1000).

Section 5 – Acquisition, deposit and disposal of objects

38. Section 5 specifies Historic Environment Scotland's powers in relation to the acquisition, acceptance on deposit of and disposal of objects. Historic Environment Scotland is empowered to acquire objects (either by purchase, exchange or gift) or accept objects on deposit to develop the collections. Deposit is an arrangement whereby a depositor charges a body (in this case Historic Environment Scotland) with the safe-keeping of an object or collection for a fixed or indefinite period of time, with ownership of the property resting with the depositor and subject to such conditions as are agreed between the body and the depositor. Deposit, which is common practice in a wide range of collections, creates additional requirements when objects are being disposed of, as set out below, in paragraphs 44-46.

39. Subsection (2) makes clear that these powers are in addition to any other powers of acquisition or acceptance on deposit that Historic Environment Scotland may have, as HES may in future be given additional statutory powers under other legislation, for example under the Museums and Galleries Act 1992.

40. Subsection (3) sets out the circumstances in which Historic Environment Scotland may dispose of any object from its collection.

41. The case for disposal in subsection (3)(a) is that an object is a duplicate of, or similar to, another object in the collections, for example where a collection of architectural drawings includes original drawings along with multiple un-annotated copies it may not be desirable to keep the copies.

42. The case for disposal in subsection (3)(b) is that Historic Environment Scotland considers that the object is not required for the purposes of the collections. This would allow Historic Environment Scotland to ensure that objects in the collection are relevant to the historic environment and consistent with its collecting policy.

43. The case for disposal in subsection (3)(c) is that because of damage, deterioration or infestation by destructive organisms, the object is no longer of use for the purposes of the collections. This would allow disposals in cases where an object was damaged to such an extent that it had lost all information content and was therefore not worth conserving, for example a heavily water-damaged document.

44. The case for disposal in subsection (3)(d) is that the object is hazardous. This provision would allow disposal in cases where an object is hazardous, for example where a material such as a cellulose nitrate film has degraded to the point of posing a possible fire hazard. The key test here would be whether any benefits of retaining such objects were outweighed by the risks.

45. The case for disposal in subsection (3)(e) is that the Scottish Ministers agree to the disposal. This would allow disposal in a case where there was a moral claim on an object that would ordinarily not be eligible for disposal under subsection (3)(a)-(d)

46. Subsection (4) clarifies that such disposals may be made by sale, exchange, gift, return or destruction. It is implicit that disposal (other than return) of an object is only possible where Historic Environment Scotland holds the object as owner.

47. Subsection (5) makes clear that these powers are in addition to any other powers of disposal that Historic Environment Scotland may have, as HES may in future be given additional statutory powers of acquisition and disposal under other legislation, for example under the Museums and Galleries Act 1992.

48. Subsection (6) sets out that where an object is subject to a prohibition or restriction on disposal, as in the case of an object on deposit, Historic Environment Scotland cannot dispose of the object without the consent of the person having the right to enforce the prohibition or restriction. However where an object is damaged, has deteriorated or become infested and is no longer of use for the purposes of the collections, HES can dispose of that object without consent if they have taken all reasonable steps to contact the appropriate person. HES may also dispose of any object which is hazardous even without consent. It is implicit that an object on deposit or loan is, by its very nature, subject to an implied restriction or prohibition on disposal.

49. These provisions protect the interests of depositors and lenders and will serve as a reminder to Historic Environment Scotland to check for any such prohibitions or restrictions when considering any disposal under subsection (3).

50. Subsection (7) clarifies that in this section and in section 6, references to Historic Environment Scotland's collections are references to collections of objects which are owned by, in the custody of, or otherwise under its management and control, excluding those collections they have been delegated the management of under section 7.

Section 6 - Borrowing and lending of objects

51. Section 6 empowers Historic Environment Scotland to borrow or accept loans of historic objects for exhibition, study or research while subsection (2) empowers Historic Environment Scotland to lend any historic object from its collections.

52. Subsection (3) specifies the factors that Historic Environment Scotland must have regard to when deciding whether or not to lend an object, and for Historic Environment Scotland to specify a period for which the object is to be lent and to place conditions on the loan.

53. The factors to which Historic Environment Scotland must have regard are: the interests of the users of the collections; the suitability of the prospective borrower; the purpose of the loan; the physical condition and degree of rarity of the object, and any risk to which the object is likely to be exposed and the extent to which that risk can be mitigated or indemnified.

54. Subsection (4) makes clear that these powers are in addition to any other powers of borrowing, accepting loans or lending that Historic Environment Scotland may have, as Historic Environment Scotland may in future be given additional statutory powers under other legislation.

55. Subsection (5) protects prohibitions or restrictions on lending that donors have attached to objects in the collections and is intended to serve as a reminder to Historic Environment Scotland to check for any such conditions when considering lending objects under subsection (2). Prohibitions or restrictions on lending may only be overridden with the consent of the person having the right to enforce the condition or if the name and contact details of such a person cannot be ascertained despite Historic Environment Scotland taking all reasonable steps to ascertain them.

Section 7 – Delegation of functions in relation to collections

56. Section 7 enables the Scottish Ministers to delegate the management of their collections to Historic Environment Scotland or to any other person Ministers consider appropriate.

57. Subsection (2) allows for delegation to take place despite the existence of prohibitions or restrictions on delegation in agreements.

58. Subsection (3) clarifies that such delegations can apply to a particular object in a collection or group of objects. The same subsection also clarifies that such delegations can apply to a particular object in a collection, a group of such objects or all such objects.

59. Subsection (4) makes it clear that any revenue received as a result of the exercise of any delegated function is the revenue of the person to whom the function is delegated unless

Ministers provide otherwise in the delegation. Thus, money paid by a publisher in return for the right to use images of objects in delegated collections would remain with Historic Environment Scotland.

60. Subsection (5) makes it clear that delegation of functions does not affect the ultimate responsibility of the Scottish Ministers.

61. Subsection (7) clarifies that references in this section to the Scottish Minister's collections are to collections of objects which are owned by, in the custody of, or otherwise under the management and control of the Scottish Ministers – as distinct from the collections of Historic Environment Scotland itself by virtue of section 5 and any transfer of property scheme under paragraph 4 of schedule 5.

Section 8 - Corporate planning

62. Section 8 places a duty on Historic Environment Scotland to prepare a corporate plan at the beginning of each planning period which must be submitted to the Scottish Ministers for approval. Subsection (2) outlines what such a plan must describe, subsection (3) describes the method for its approval and subsection (4) requires the plan once approved to be published. Subsections (5) and (6) allow for modifications to the agreed plan. Subsection (7) sets the normal planning period as 3 years and allows for a different period for the initial plan, while subsection (8) allows for these terms to be varied by order of Ministers – if for example experience shows that a longer or shorter period is better suited to the cycle of planning and resource allocation. Ministers will be also able to offer directions and guidance on the content and presentation of corporate plans under the provisions of section 12 (see below) if this is necessary.

Section 9 – Grants to Historic Environment Scotland by the Scottish Ministers

63. Section 9 allows the Scottish Ministers to make grants to Historic Environment Scotland. These may be for general or particular purposes – for example towards a named function or project. It also provides for such grants to be subject to such terms and conditions as the Scottish Ministers may determine. Examples might include additional funding to accelerate the delivery of a shared research project or to create a shared national resource, such as a building conservation skills training centre. Historic Environment Scotland's funding will normally be dealt with in corporate plan and annual financial allocation discussions, with the power in this section being very much for use in exceptional circumstances, such as large projects with a high priority which emerge at short notice.

Section 10 – Grants and loans by Historic Environment Scotland

64. Section 10 provides a power for Historic Environment Scotland to make grants and loans to such persons as it considers appropriate in furtherance of its functions subject to such terms and conditions as it may determine.

65. At present, grant programmes operated by Historic Scotland on behalf of Ministers include grants for the repair of historic buildings, grants for the care and maintenance of ancient

monuments, grants for archaeology projects, grants in support of conservation skills training and grants to voluntary organisations. Total grant expenditure is in the order of £15 million per annum.

66. These grants are distributed under a variety of different powers held by Ministers, and there are a variety of terms and conditions associated with each power. The Bill gives Historic Environment Scotland a single power which will allow it to take over all existing grant-giving activities and will promote a more responsive grant programme that can adapt to current needs and a less complex approach to programme terms and conditions.

67. Subsection (3) clarifies that such grants or loans made by Historic Environment Scotland must be made in accordance with any general authorisation given by the Scottish Ministers to Historic Environment Scotland. Such an authorisation might, for example, set the broad terms and eligibility/ranking criteria of all grant programmes which Historic Environment Scotland was expected to operate over the planning period. However, an authorisation would not extend to allowing Ministers to give direction in relation to the outcome of particular grant or loan applications.

Section 11 - Advice, information and assistance

68. Section 11 places a duty on Historic Environment Scotland to provide the Scottish Ministers with advice, information and assistance on any matter relating to the organisation's functions, and also allows Historic Environment Scotland to offer these to Scottish Ministers. It also allows Historic Environment Scotland to provide advice, information and assistance to any person. This last provision is particularly significant, since Historic Environment Scotland will employ staff who have a very varied body of expertise and skills and will frequently be asked for advice.

Section 12 - Directions and guidance

69. Section 12 provides for the Scottish Ministers to direct Historic Environment Scotland (both generally and specifically) in relation to the exercise of its functions.

70. However, subsection (2) provides that the Scottish Ministers will not be able to direct in respect of particular historic properties, collections or objects or the making of grants and loans. This is to provide for curatorial independence, allowing for decision-making to be led solely by expert knowledge and judgement in these key areas.

71. Historic Environment Scotland must comply with directions and must have regard to guidance issued by the Scottish Ministers (subsection 4). Directions must be given in writing (subsection (5)) and the Scottish Ministers must publish directions and guidance (subsection (6)).

Section 13 – Interpretation

72. Section 13 sets out how the terms “collection”, “object” and “property in care” are to be interpreted in the Bill.

73. “Collection” in the Bill means a collection of objects usually with some kind of shared characteristic, for example created by the same individual or referring to the same place. It is used in this Bill to refer specifically to collections of objects, rather than to collections of buildings or sites. The term can refer to the entire collection of material managed by Historic Environment Scotland or smaller groupings within the ‘parent collection’.

74. The collections that will be managed by Historic Environment Scotland include material of many different types and in many different formats. The term “object” has been used throughout the bill to refer to a ‘thing’ curated by Historic Environment Scotland. The definition provided in the Bill makes it clear that objects may be physical artefacts, documents or indeed any thing, provided only that it is of relevance to the historic environment.

75. “Object” in the Bill means an object, document or other thing having historical, archaeological, architectural or cultural significance or interest relating to the historic environment generally or with particular reference to Scotland. The term “document” used here takes its meaning from schedule 1 to the Interpretation and Legislative Reform Scotland Act 2010 and means “anything in which information is recorded in any form (and references to producing a document are to be read accordingly)”. “Document” would cover information recorded in electronic form, for example, digital images, databases, spread sheets and 3-D and 2-D spatial data.

PART 2 – FUNCTIONS IN RELATION TO SCHEDULED MONUMENTS

Section 14 – Historic Environment Scotland’s functions in relation to scheduled monuments

76. Section 14 introduces schedule 2 to the Bill, which makes provision for Historic Environment Scotland’s functions in relation to scheduled monuments as well as making other modifications, including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling and maintaining the schedule of monuments under the 1979 Act. It also confers designation functions on Historic Environment Scotland in relation to the inventories of gardens and designed landscapes and of battlefields. All of these matters are provided for by changes to the 1979 Act. Further notes on schedule 2 are given below.

PART 3 – FUNCTIONS IN RELATION TO LISTING AND CONSERVATION

Section 15 – Historic Environment Scotland’s functions in relation to listed buildings

77. Section 15 introduces schedule 3 to the Bill which makes provision for Historic Environment Scotland’s functions in relation to listed buildings and conservation areas as well as making other modifications including those relating to consents and appeals. It confers on Historic Environment Scotland the function of compiling lists of buildings of special architectural or historic interest. These matters are provided for by changes to the 1997 Act. Further notes on schedule 3 are given below.

PART 4 – FUNCTIONS IN RELATION TO THE MARINE ENVIRONMENT

Section 16 - Historic Environment Scotland’s functions in relation to the marine environment

78. Section 16 introduces schedule 4 to the Bill which makes provision for Historic Environment Scotland’s functions in relation to the marine environment by way of amendment to the Marine (Scotland) Act 2010. Further notes on schedule 4 are given below.

PART 5 – DISSOLUTION OF RCAHMS AND TRANSFER OF STAFF ETC. TO HISTORIC ENVIRONMENT SCOTLAND

Section 17 - Dissolution of RCAHMS

79. Section 17 provides for the dissolution of the Royal Commission on the Ancient and Historical Monuments of Scotland. The duties of serving Commissioners will cease at the commencement of this provision.

Section 18 - Transfer of staff and property etc. to Historic Environment Scotland

80. Section 18 introduces schedule 5 to the Bill which contains provisions about the transfer to Historic Environment Scotland of staff and property etc. of RCAHMS and of the Executive Agency of the Scottish Ministers known as Historic Scotland. Further notes on schedule 5 are given below.

PART 6 – FURTHER MODIFICATIONS IN RELATION TO THE HISTORIC ENVIRONMENT

Section 19 - Grants and loans by the Scottish Ministers

81. Section 19 amends the 1953 Act, which is the current basis for grant-giving in respect of the repair of historic buildings.

82. Subsection (2) removes from section 4 of the 1953 Act the requirement that buildings/land must be of “outstanding” historic or architectural interest to be eligible for grants by the Scottish Ministers under that section, as this provision is no longer of particular value. It dates from a period before Listed Buildings were assigned to categories and before grant programmes had detailed and agreed criteria. It also inserts a new section 1A which clarifies that the power to make grants under section 4 of the 1953 Act includes the power to make loans for the same purposes. This recognises the need to make wise use of public funds by allowing for approaches other than grant-giving. Subsection (2)(d) inserts a new subsection (5) in section 4 of the 1953 Act which clarifies that a grant or loan made under this section is to be made on such terms and conditions (including as to repayment) as Ministers may determine.

83. Subsection (3) repeals section 3(3) of section 45A of the 1979 Act, inserted by the Historic Environment (Amendment) (Scotland) 2011 Act, which placed an annual limit on grants and loans made by Ministers for the development and understanding of matters of historic, etc., interest. This power is currently used to give support for the work of a range of voluntary bodies

whose objectives include cultivating the general conditions by which Scotland's historic environment is valued and cared for. With the desired move to more collaborative action to deliver agreed strategic objectives, the work of such bodies is likely to become proportionately more significant in future and it is desired to retain flexibility to offer support in this way in situations where funding by Historic Environment Scotland might be perceived as not appropriate.

Section 20 - Local inquiries in relation to ancient monuments

84. Section 20 inserts new sections 23A and 23B into the 1979 Act to give the Scottish Ministers a power to hold inquiries in relation to functions under Part 1 of the 1979 Act including for example an appeal under new section 1C. The operation of these changes is discussed further below, under schedule 2.

Section 21 - Meaning of "listed building"

85. Section 21 amends section 1 of the 1997 Act which places a duty on the Scottish Ministers to compile and maintain a list of buildings of special architectural or historic interest by inserting a new subsection (4A). This new section allows for any such entry for a building in the list to specify that an object or structure is not to be treated as part of the building for the purposes of the 1997 Act and also that any part or feature of the building is not of special architectural historic interest. This new power will apply to future new entries and to the amendment, in the future, of existing entries. The intention is to ensure that protection is more precisely targeted upon those elements of a building which are of particular historical or architectural significance. For example, the new power would allow for a relatively modern extension to a historic building to be excluded from the protection – and restrictions – applied by listing to the remainder of the building.

Section 22 - Applications for listed building consent

86. Section 22 amends section 12 of the 1997 Act by inserting new subsections (1A) and (1B). This gives Ministers the power to set out in regulations or directions the circumstances in which a planning authority which is minded to grant listed building consent is required to notify the Scottish Ministers.

PART 7 – FINAL PROVISIONS

Section 23 - Interpretation

87. Section 23 expands the short references used in the Bill, for economy of space, to give their full citations: "the 1979 Act" to the Ancient Monuments and Archaeological Areas Act 1979 and "the 1997 Act" to the Planning (Listed Buildings and Conservation Areas)(Scotland) Act 1997.

Section 24 – Subordinate legislation

88. This section provides that an order under section 25(1) which adds to, replaces or omits the text of an Act, is subject to the affirmative procedure of the Scottish Parliament otherwise

orders (except commencement orders under section 29(2)) are subject to negative procedure in Parliament.

Section 25 – Ancillary provision

89. Subsection (1) confers powers on the Scottish Ministers enabling them to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purpose of giving full effect to this Act or any of its provisions.

90. Subsection (2) states that any order made under the powers of section 25(1) may modify any enactment (including this Act).

Section 26 – Consequential modifications

91. Section 26 introduces schedule 6 which makes amendments to other Acts required as a result of the establishment of Historic Environment Scotland and repeals provisions of certain Acts.

Section 27 – Crown application: criminal offences

92. By virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provision in section 4(5) of this Bill.

Section 28 – Crown application – powers of entry

93. Section 28 provides that the power in section 4 (power of entry to investigate the historic environment) is exercisable in relation to Crown land, but only if the appropriate authority gives its consent. Subsection (2) provides a table to clarify what is meant by “appropriate authority”.

Section 29 - Commencement

94. Section 29 sets out the arrangements for commencement of the provisions of the Bill. Section 23 to 25, 27, 28 and 30 come into force on the day after Royal Assent. All other provisions will come into force on such day as the Scottish Ministers may by order appoint. Subsection (3) provides that a commencement order may include transitional, transitory or saving provision.

Section 30 – Short title

95. This provides for the Act, if passed, to be referred to as the Historic Environment Scotland Act 2014.

SCHEDULES

SCHEDULE 1 – HISTORIC ENVIRONMENT SCOTLAND

96. This schedule makes provision about the status, membership procedures and powers relating to Historic Environment Scotland.

97. Paragraph 1 clarifies the status of Historic Environment Scotland: it is not a Crown body and therefore does not have any of the special privileges of the Crown. Crown bodies are not, for example, required to obtain formal scheduled monument consent for works to properties in their ownership or care.

98. Paragraph 2 deals with membership arrangements in relation to the Board of Historic Environment Scotland. Sub-paragraph (1) sets out maximum and minimum numbers (which Ministers have a power under sub-paragraph (8) to vary from the 10-15 specified here). All Board members are to be appointed by the Scottish Ministers and must have (sub paragraph (3)) skills and expertise relevant to the functions of the body. There is no specification of particular fields of expertise, with the expectation being that Ministers will select a balanced board whose members among them combine knowledge of the functional areas with skills and experience suitable for managing a large public body. Sub-paragraph (4) specifies that Ministers must encourage equal opportunities when making appointments to the board. The specific meaning of “equal opportunities” is clarified by sub paragraph (9). More generally, it is intended to add Historic Environment Scotland to the list of bodies whose appointments are regulated by the Commissioner for Ethical Standard in Public Life in Scotland and to conduct the first round of appointments according to the Commissioner’s Code of Practice. Sub-paragraph (5) allows Ministers to set the terms and conditions of service of Board members, while sub paragraph (6) sets out arrangements for members to resign. Sub-paragraph (7) allows for Ministers to reappoint members.

99. Paragraph 3 sets out that members of certain bodies are not eligible to be appointed as Board members, or must cease to be Board members if they attain a place in these bodies. The bodies specified are the House of Commons, the House of Lords, the Scottish Parliament and the European Parliament. The reason for these exclusions is to avoid any perception of conflicts of interest between the legislative role of these bodies and the decision-making role of Historic Environment Scotland.

100. Paragraph 4 sets out the arrangements for removal of members, including insolvency, repeated non-attendance or inability to discharge the duties required of member. These factors, if they pre-existed, would debar any person from being appointed in the first instance, so only provisions for removal are required in the Bill.

101. Paragraph 5 allows for payment of remuneration, allowances and expenses to Board members, with Ministers determining the rates.

102. Paragraph 6 sets out the arrangements for appointment and employment of a person as Chief Executive, with a requirement for Ministerial approval of the Board’s chosen candidate. This paragraph also covers arrangements for the employment of staff.

103. Paragraph 7 allows for the payment of pensions, allowances and gratuities by Historic Environment Scotland, with Ministers again determining the rates.

104. Paragraphs 8 and 9 set out the arrangements for the Board's business, including committees, procedure and meetings. Ministers and officials are permitted to attend meetings, but may not vote.

105. Paragraph 10 allows the Board to delegate any of their functions to members, committees or employees, except that the Board cannot delegate the approval of annual reports and accounts.

106. Paragraph 11 allows for proceedings of Historic Environment Scotland to remain valid, even when conducted while the Board or a committee is temporarily short of the minimum specified number of members or if a member of the Board or committee subsequently proves to be ineligible for membership or is disqualified. The normal conduct of Board business would allow the Chair to require any business conducted in such circumstances to be brought back to the Board for review.

107. Paragraph 12 sets out the general powers available to Historic Environment Scotland. Sub-paragraph (1) is a power to do anything related to the exercise of its functions while sub-paragraph (2) sets out a list of particular powers. These powers are intended to give the body a sufficiently wide range of powers to undertake any activity currently in hand at RCAHMS or Historic Scotland or foreseen.

108. Paragraphs 13 and 14 set out requirements in respect of accounts and reports, including for their publication.

SCHEDULE 2 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO SCHEDULED MONUMENTS

109. Schedule 2 to the Historic Environment Scotland Bill makes provision for Historic Environment Scotland's functions in relation to scheduled monuments (within the meaning of the 1979 Act) as well as making other modifications.

Part 1 – Schedule of monuments

110. Part 1 of the schedule confers on Historic Environment Scotland the function under section 1 of the 1979 Act of compiling and maintaining a schedule of monuments of national importance as currently carried out by Historic Scotland for Scottish Ministers. It also makes other modifications of section 1 of the 1979 Act.

111. The duty of Ministers to compile and publish a list of scheduled monuments is replaced by a duty on Historic Environment Scotland to compile publish the schedule as prescribed by Ministers. The latter change will involve the replacement of a regularly published printed index to scheduled monuments by online access to digital versions of the scheduling documents (including maps) which relate to each and every scheduled monument. Online public access to this definitive material will be what the body is required to deliver, rather than a simple list, though such lists can still be generated if need arises.

Part 2 – Scheduled Monument Consent

112. Part 2 of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of scheduled monument consents; modifies the functions of the Scottish Ministers in relation to modification and revocation of such consents, and makes consequential modifications, including to the procedure for applications for the grant, modification and revocation of such consents. From the point of view of applicants for consent, the extant system is being transferred entirely to Historic Environment Scotland, with the provision of an appeal to Ministers (see below for more detail on appeals).

113. Paragraph 5 confers the power (currently held by Scottish Ministers) to grant scheduled monument consent under section 2 of the 1979 Act on Historic Environment Scotland. Sub-paragraph (d) inserts subsection (5A) in section 2 of the 1979 Act. This allows for the granting of partial consent in relation to an application for scheduled monument consent.

114. Paragraph 6 inserts new section 3A in the 1979 Act. This allows any person interested in a scheduled monument which is subject to a scheduled monument consent granted subject to conditions to apply to Historic Environment Scotland for the variation or discharge of any such conditions. The section also sets out details of what an application must specify and what actions Historic Environment Scotland may take in response.

115. Paragraph 7 further amends the 1979 Act by substituting subsections (3) and (4) of section 4 with two new subsections which allow Historic Environment Scotland to revoke or modify a scheduled monument consent at any time before works have been completed. Subsection (4) also clarifies that any modification or revocation does not apply to works already carried out.

116. Paragraph 8 inserts a new section 4A into the 1979 Act which relates to the modification and revocation of scheduled monument consent by Scottish Ministers, including arrangements for notification and hearings. The effect of these changes is to recast the provisions of Part II of schedule 1 to the 1979 Act to harmonise procedure with that for modifications and revocations in respect of listed buildings under the 1997 Act. The intended effect of these changes is to make procedures around scheduled monument consent as similar as possible to procedures around listed building consent.

117. Paragraphs 9 to 13 make changes to sections 5 to 9 of the 1979 Act to give Historic Environment Scotland the necessary powers and liabilities in relation to its newly conferred functions under the 1979 Act.

118. Paragraph 14 amends Part 1 of schedule 1 (applications for scheduled monument consent) to the 1979 Act to require applications for scheduled monument consent to be made to and dealt with by Historic Environment Scotland rather than by the Scottish Ministers. Subsection (5)(b) of paragraph 14 substitutes sub-paragraphs (2) and (3) of paragraph 3 with a new subparagraph (2) which allows the Scottish Ministers to prescribe (by way of regulations) the procedures to be followed by Historic Environment Scotland when determining applications for scheduled monument consent.

119. Paragraph 15 repeals 5 to 9 of schedule 1 of the 1979 Act in connection with amendments made by paragraph 7, and further amends Part 2 of schedule 1 of the same Act in this respect.

Part 3 – Scheduled monuments: enforcement notices

120. Part 3 of the schedule confers on Historic Environment Scotland functions in relation to scheduled monument enforcement notices currently conferred on the Scottish Ministers, by amending sections 9A, 9B and 9D of the 1979 Act to allow Historic Environment Scotland to serve a scheduled monument enforcement notice in respect of unauthorised works carried out to a scheduled monument. From the point of view of the person receiving such a notice, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

121. Amendments to section 9D give Historic Environment Scotland power to enter land in, on or under which the scheduled monument is situated to undertake any works which have not been carried out within the period for compliance with the notice.

Part 4 – Scheduled monuments: stop notices

122. Part 4 of the schedule confers on Historic Environment Scotland functions in relation to stop notices and temporary stop notices currently conferred on Scottish Ministers by amending sections 9G, 9H, 9I, 9K, 9L and 9N of the 1979 Act. From the point of view of the person receiving such a notice, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

123. Amendments to section 9G of the 1979 Act enable Historic Environment Scotland to serve a stop notice, where a scheduled monument enforcement notice has been served requiring works to cease, whilst amendments to section 9K enable Historic Environment Scotland to serve a temporary stop notice requiring works to stop immediately.

Part 5 – Appeals and referrals from Historic Environment Scotland

Chapter 1 – Appeals from Historic Environment Scotland

124. Chapter 1 of Part 5 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers and for the referral of applications for and related to scheduled monument consent from Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Bill will be required relatively infrequently.

125. Paragraph 28 inserts a new section 1C into the 1979 Act which gives owners, tenants and occupiers the right to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to include a monument in the Schedule or to amend an entry relating to the monument in question in the Schedule. Inserted new section 1D allows for the Scottish Ministers to either dismiss or allow such an appeal while inserted new section 1E provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.

126. Paragraph 29 inserts new section 4B into the 1979 Act which gives applicants for scheduled monument consent the right to appeal to the Scottish Ministers in the following circumstances – refusal of consent, the granting of consent subject to conditions, refusal of an application for variation or discharge of conditions attached to consent, granting of consent subject to conditions and refusal of an application for subsequent approval required by a condition to which consent is subject. Paragraph 29 also inserts two further new sections: 4C which makes further provision relating to such appeals whilst 4D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals under 4B.

127. Paragraph 30 inserts a new schedule 1A after schedule 1. This schedule makes provisions about the determination of certain appeals by a person other than the Scottish Ministers and applies to appeals under inserted sections 1C and 4B. Paragraph 1 of schedule 1A allows for the Scottish Ministers to prescribe classes of appeals under sections 1C and 4B which can be determined by a person appointed by the Scottish Ministers.

128. Paragraph 2 clarifies the powers and duties of a person so appointed. Paragraph 3 allows for the Scottish Ministers to direct that an appeal which would be determined by an appointed person is instead to be determined by them, while paragraph 4 provides for the Scottish Ministers to revoke a direction made under the powers set out in paragraph 3 at any time.

Chapter 2 – Referral of certain applications

129. Chapter 2 of Part 1 of the schedule makes provision for the referral of applications for (and related to) scheduled monument consent from Historic Environment Scotland to the Scottish Ministers by inserting a new section 3B into the 1979 Act. This enables the Scottish Ministers to call in an application for decision by them instead of by Historic Environment Scotland, offering harmonisation with wider planning procedures.

Part 6 – Functions in relation to gardens and designed landscapes and battlefields

130. Part 6 of the schedule confers on Historic Environment Scotland the function currently conferred on Scottish Ministers of compiling and maintaining the inventory of gardens and designed landscapes and the inventory of battlefields and amends sections 32A and 32B of the 1979 Act.

Part 7 – Other matters in relation to Scheduled monuments

131. Part 7 of the schedule makes other modifications of the 1979 Act in relation to scheduled monuments to enable Historic Environment Scotland to undertake functions in relation to such monuments, including provision for powers of entry.

SCHEDULE 3 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO LISTING AND CONSERVATION

132. Schedule 3 to the Bill makes provision for Historic Environment Scotland's functions in relation to listed buildings and conservation areas (within the meaning of the 1997 Act) as well as other modifications.

Part 1 – Listing of special buildings

133. Paragraph 2 of Part 1 of the of the schedule confers on Historic Environment Scotland the function of compiling, or approving, lists of buildings of special architectural or historic interest under section 1 of the 1997 Act, currently conferred on Scottish Ministers. Paragraph 3 inserts a new section 1A into the 1997 Act which imposes a duty on Historic Environment Scotland to publish the list compiled under section 1 and to notify certain persons and gives the Scottish Ministers the power to set out in regulations the requirements of such publication and notification. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 2 – Listed Building Consent

134. Part 2 of the schedule confers on Historic Environment Scotland functions in relation to the grant, modification and revocation of listed building consent. From the point of view of the owner or occupier of a building, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

135. Paragraph 8 amends section 7 of the 1997 Act to confer the power (currently held by Scottish Ministers) on Historic Environment Scotland to grant listed building consent. Paragraph 9 inserts new subsections (4A) and (4B) into section 9 of the 1997 Act requiring regulations making provision in relation to the procedure in respect of applications for consent to require planning authorities to consult Historic Environment Scotland (and such other persons as set out in either directions or regulations) before granting or refusing an application for consent.

Part 3 – Conservation areas

136. Part 3 of the schedule confers on Historic Environment Scotland functions in relation to conservation areas currently conferred on Scottish Ministers, including functions in relation to building preservation orders. From the point of view of owners or occupiers within a Conservation Area, the extant arrangements are transferred intact from Ministers to Historic Environment Scotland.

Part 4 – Appeals against listing

137. Part 4 of the schedule makes provision for appeals from decisions of Historic Environment Scotland to the Scottish Ministers. This is a new provision, consequent on transfer of duties previously performed by Ministers through their officials. Historic Environment Scotland will have internal processes which it is intended will resolve most disagreements, so it is intended that appeal processes set out in the Bill will be required relatively infrequently.

138. Paragraph 18 inserts sections 5B, 5C, and 5D into the 1997 Act. This allows any owner, occupier or tenant of a building to appeal to the Scottish Ministers against a decision of Historic Environment Scotland to designate a building as a listed building or to amend the list concerning the building in question (except where the amendment removes the building from the list). Inserted section 5C allows the Scottish Ministers to either dismiss or allow such an appeal and confirms that the determination by the Scottish Ministers of an appeal under this section is final,

while inserted section 5D provides that Ministers can set out in regulations the procedures that are to be followed in connection with appeals.

Part 5: Other matters in relation to listing

139. Part 5 of the schedule makes other modifications under that Act to enable Historic Environment Scotland to undertake functions in relation to listing, including powers of entry.

SCHEDULE 4 – FUNCTIONS OF HISTORIC ENVIRONMENT SCOTLAND IN RELATION TO THE MARINE ENVIRONMENT

140. Schedule 4 to the Bill makes provision conferring functions on Historic Environment Scotland in relation to the marine environment by amending the Marine (Scotland) Act 2010. However, Historic Environment Scotland is not given the power to designate historic Marine Protected Areas: this power remains solely with the Scottish Ministers.

141. Paragraph 2 inserts section 80A into the 2010 Act. This sets out the circumstances in which Historic Environment Scotland may give advice and guidance as regards Historic Marine Protected Areas (MPA) designated under that Act. Amendments are also made to section 82 to 84 of the 2010 Act to require a public authority to notify Historic Environment Scotland where the exercise of any of the authority's functions or the making of determinations is capable of affecting a marine historic asset in a Historic MPA.

SCHEDULE 5 – TRANSFER OF STAFF, PROPERTY ETC. TO HISTORIC ENVIRONMENT SCOTLAND

142. Schedule 5 to the Bill makes provision for the transfer of staff and property etc. to Historic Environment Scotland.

143. Paragraphs 1 to 3 make provision in relation to staff transfers. Paragraph 1 empowers the Scottish Ministers to make a staff transfer scheme making provision for or in connection with the transfer of staff employed by RCAHMS and staff of the Scottish Ministers employed in Historic Scotland to Historic Environment Scotland. Such a scheme is not subject to Parliamentary procedure.

144. Under paragraph 2, the scheme must specify the date on which the transfer is to take place. The scheme may specify different dates for different purposes and make different provision in relation to different cases or classes of case.

145. Paragraph 3 makes provision in respect of the effect of the transfer on an employee's contract. It provides that the contract of employment for the person who is transferring has effect on or after the transfer date as if originally made between the employee and Historic Environment Scotland.

146. Sub-paragraph 3(5) provides that employed staff may object in advance of their contract being transferred to Historic Environment Scotland, in which case their contract is terminated at

the end of the day before the intended transfer. This termination will not be treated as dismissal of a person for the purposes of the legislation.

147. Paragraphs 4 and 5 cover property transfers. Paragraph 4(1) enables the Scottish Ministers to make a property transfer scheme making provision for the transfer to Historic Environment Scotland of property, rights, liabilities and obligations of Scottish Ministers or RCAHMS. This includes property rights and obligations under lease agreements and rights and liabilities under grant and loan agreements.

148. Sub-paragraph 5(3) provides that a transfer scheme may make provision in relation to different cases or classes of case and may specify different dates in relation to different property, rights, liabilities and obligations.

SCHEDULE 6 – CONSEQUENTIAL MODIFICATIONS

149. Schedule 6 lists consequential modifications to other Acts which are not specific to the historic environment. Historic Environment Scotland, as with all newly created public bodies, requires to be added to the list of bodies covered in areas of regulation which apply across the public sector. Schedule 6 makes these changes in the following areas, each relative to the similarly named Act:

- Ethical standards
- Public services conduct
- Freedom of information
- Public appointments and public bodies
- Public services reform
- Public records

150. Finally, schedule 6 provides for RCAHMS, once it is dissolved, to be removed from the schedules accompanying these Acts.

FINANCIAL MEMORANDUM

INTRODUCTION

1. This document relates to the Historic Environment Scotland Bill introduced in the Scottish Parliament on 3 March 2014. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

2. The Bill will create a new lead body for the historic environment in Scotland and is intended to provide increased resilience within and across the historic environment Sector, ensuring the sustainability of key functions and preserving and developing the expertise of staff. Thus providing support for Scotland's historic environment sector into the future. The creation of the new body also comes within the context of Scotland's first Historic Environment Strategy¹, which the body will be a lead partner in delivering.

3. The Scottish Government is determined to protect and improve services provided by both current bodies and to deliver the policy aims set out below.

4. The Bill establishes Historic Environment Scotland (HES) as a non-departmental public body (NDPB), which will deliver the functions currently delivered by Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS). It provides that the functions, staff, resources, assets (excluding some assets in the ownership of the Scottish Ministers) and liabilities of RCAHMS and Historic Scotland and will be transferred to Historic Environment Scotland.

5. HES will deliver public benefit from the historic environment by:

- (a) acting as the lead public body on matters relating to Scotland's historic environment;
- (b) supporting and enabling partners, stakeholders, communities and individuals to fulfil their roles in investigating, protecting and celebrating our heritage; and
- (c) acting as a guardian of Scotland's historic environment.

6. The Financial Memorandum provides estimated costs and savings resulting directly from the provisions of the Bill and those indirect costs arising as a result of the Bill as the two organisations transition into HES. Preparatory work is being undertaken in both bodies in the period prior to the intended commencement date: this will be met from existing resources and the appropriate costs from this activity are recorded in this Financial Memorandum.

7. Costs and savings presented in the Financial Memorandum are presented on the basis of total expected figures for one-off costs both pre- and post-commencement, alongside recurring costs and efficiencies. The information is presented over the ten year period from the commencement of HES in addition to the two years prior to commencement, giving a total

¹ www.scotland.gov.uk/historicenvironment

period of 2013/14 to 2024/25. However, it does not represent a blueprint for the finished organisation which will require decision making by the incoming Board once it is established.

SUMMARY OF FINANCIAL IMPLICATIONS

8. The summary below sets out net costs of the Bill, as well as the savings. These are summarised initially without any optimism bias (detailed later on) and then the impact of optimism bias is assessed. Finally the impact of any charitable status which HES may achieve is estimated. An overall cost summary is presented in table 1 (below) and detailed in annexes 2 and 3.

Item £m	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20 Onward	Item total
Net position without bias	0.149	0.089	1.535	1.054	0.624	0.219	0.219	4.907
Net position with Bias	0.718	1.021	2.880	2.038	1.565	1.119	1.119	15.998
Net position with charitable status	0.149	0.089	0.162	-1.582	-2.012	-2.417	-2.417	-20.193

Table 1 – Summary of financial position

9. The further detail presented below provides a breakdown of the net one-off costs, recurring costs and savings resulting from the Bill and provides more detail on the impact of biases and charitable status.

10. The proposals in the Bill will remain affordable in all of the scenarios profiled within this Financial Memorandum and whilst the intention of the Bill is not to generate savings, there is the potential for net savings were the new body to achieve charitable status.

11. The biased costs profiled above represent the highest anticipated level of cost, should all risks be realised. Whilst this is firmly anticipated not to be the case, these costs remain affordable within the combined budget of Historic Scotland and RCAHMS, and when averaged across the 12 years represent 1.67% of the current annual operating budget of the two bodies.

12. With a robust process of change management in place, and the development of business cases and implementation of a programme planning approach for each of the cost areas identified it is anticipated that the costs profiled can be managed down.

13. A more detailed analysis of individual areas of cost and saving is presented in parts two and three, based on the methodology outlined below, whilst the overall impact is summarised in annexes 2 to 3.

METHODOLOGY FOR FINANCIAL MEMORANDUM

14. The estimated costs and savings in this Financial Memorandum are based on information on current levels of costs from the two organisations. The process of refining the figures has included collaboration with specialists in relevant areas, and the use of Scottish Government reports, such as the recommendations of the McLelland review² on Information Communication Technology (‘ICT’) savings. The costs identified were structured on the basis of the 2012 Audit Scotland guidance, which identified costs in the principal areas of staffing, IT, accommodation and corporate functions.

15. The costs of creating the new body are analysed using the framework of the Audit Scotland Good Practice Guide. The potential to achieve efficiencies is set out, with the assumption that any savings will be re-invested in the new organisation’s services and will off-set any costs related to the transition to the new organisation.

16. The profiling of figures assumes that 1 April 2015 is the earliest possible date that the new body could come into being.

17. The intention is that the body will be commenced in two phases, with the corporate entity and Board coming into existence from April 2015, and the rest of the body commencing from October 2015. This will incur a modest cost (see below) for the parallel running of both the HES board and the RCAHMS Commissioners for a transitional period of 6 months.

18. It is acknowledged that there will be a level of uncertainty in some of the figures presented in this Financial Memorandum, as they are based on best estimates of the likely costs to HES. In line with good practice an optimism bias has been applied to costs, and more detail is provided in Part Four below. For the majority of areas a standard bias of 53% has been applied, which is consistent with other similar processes carried out by the Scottish Government. In areas where costs are based on a higher level of externally verifiable information, for example in relation to staffing, supplier or additional taxation costs a lower bias of 10% has been applied. A 75% bias was applied to ICT costs in recognition of the level of bias which is accepted as inherent within the costing for any ICT project.

19. Efficiency estimates have been decreased by 30% to account for potential optimum bias and margins of uncertainty, in line with other recent examples of public sector reforms.

COST AND EFFICIENCY FIGURES

20. The Financial Memorandum provides ranges for cost figures where there is a margin of uncertainty in the best estimates, in line with Standing Order rule 9.3.2.

21. This part of the Financial Memorandum sets out the estimated costs and savings associated with the Bill. Whilst the Bill provides for structural change, the existing functions of the two organisations will continue and many of the costs associated with providing the service will not change as a result of the Bill. Information is provided in the following order: Firstly

² <http://www.scotland.gov.uk/Publications/2011/06/15104329/0>

estimates of the direct one-off costs resulting from provisions of the Bill, secondly recurring costs which are beyond the current expenditure of the two bodies and thirdly the efficiencies arising from Bill provisions.

22. The Scottish Ministers believe that the functions of HES will have a charitable purpose and as such would fulfil the test for charitable status. A decision on whether, when and in what configuration any application for charitable status is made will be a decision for the new body once it is constituted. As such this Financial Memorandum does not reflect any of the potential financial benefits of charitable status in the figures presented. However, a separate section on charitable status has been included which outlines the potential impact of charitable status on the financial implications of the Bill.

COSTS TO THE SCOTTISH ADMINISTRATION

23. The costs to the Scottish Administration have been set out below in two sections, the first presenting the one-off costs and the second the recurring costs.

Part One

One-off programme costs

24. There are a number of one-off costs associated with the creation of Historic Environment Scotland, occurring between 2013/14 and 2017/18. Those costs included in 2013/14 and 2014/15, which pre-date the proposed date of commencement for Historic Environment Scotland are for preparatory work directly related to the Bill and for work to create alignment between the two existing bodies, for instance in relation to staffing, which is outlined in further detail below. This increased alignment will enhance the transition into HES, as well as providing short term financial benefits through increased joint working. These costs total £5.025m incurred over 2 years pre-commencement and 3 years post commencement. These costs are summarised below in Table 2.

COSTS £m	2013/14	2014/15	2015/16	2016/17	2017/18	Item total
Item						
Staffing	0.450	0.635	0.605	0.835	0.405	2.930
Branding and Website	-	0.075	0.075	-	-	0.150
Heritage Management	-	0.030	-	-	-	0.030
Transition Programme	0.396	0.403	0.366	-	-	1.165
ICT	0.100	0.300	0.300	-	-	0.700
Estates	-	-	0.050	-	-	0.050
Total one off costs	0.946	1.433	1.396	0.835	0.405	5.025

Table 2 – Summary of one-off costs

Staffing costs

25. Staffing costs and efficiencies have been developed in line with the commitment given in the Outline Business Case³ for merger ('OBC') that any transfer of staff to HES would be at no detriment to their existing terms and conditions.

26. Whilst the creation of HES is not to secure savings, the efficiencies which can be achieved through managing a joint pay settlement for both Historic Scotland and RCAHMS provide a sustainable cost base for the new organisation. Savings achieved will be used to ensure the long term delivery of the functions of HES.

27. Additional staffing costs have been developed following detailed profiling of current staffing costs by the HR departments of both Historic Scotland and RCAHMS and in consultation with the relevant trades unions. These costs and the efficiencies detailed below have also undergone detailed scrutiny by Scottish Government analysts as the majority of the data profiled forms part of the 2013/14 joint pay settlement for the two organisations.

28. The costs profiled are consistent with previous examples of public sector reform and with earlier pay settlements for both Historic Scotland and RCAHMS.

29. These costs are primarily accounted for by a voluntary early exit scheme (VES) equating to £1.950m between 2013/14 and 2017/18. However, this cost is more than offset by associated savings (see paragraph 71) in staffing costs through the reduction in salary and associated costs of posts not being replaced like-for-like. These costs have been calculated on the basis of the actual impact of proposed changes on the staffing budgets of both organisations by Human Resources as part of the agreement of a pay remit.

30. Additional one-off costs in this area are for the harmonisation of grades, totalling £0.785m and for costs to align the salary structures between the two organisations, which total £0.195m.

31. This brings the total one-off costs for staffing to £2.93m.

Branding and website

32. One-off costs of £0.150m are included for branding. These costs primarily relate to the establishment of a web presence for HES, and are split between 2014/15 and 2015/16 to ensure that a website is in place for the anticipated commencement of HES. A decision on the operational names and branding for HES will be for the board to make following commencement and any additional branding or website costs will be absorbed by existing budgets for these areas.

Heritage Management

33. One-off costs of £0.030m are included for the Heritage Management functions which are currently delivered by Historic Scotland. These costs relate to the requirement to alter existing back-office systems to accommodate changes in practice under provisions in the Bill for this

³ <http://www.scotland.gov.uk/Publications/2013/05/1373/18>

area. These costs have been established on the basis of advice from the suppliers of the systems for the scope of changes required.

Transition programme

34. A number of one-off costs also relate to the transition programme budget, which include organisational development work on a corporate plan for the new organisation (primarily work with all tiers of the organisations by change management specialists to build capacity amongst managers); and taxation and legal advice on potential business structures. These costs total £1.165m over the financial years 2013/14 – 2015/16. In summary the main components of these costs relate to:

- external consultation (aggregation of individual costs) - £0.300m
- road-shows following commencement - £0.040m
- board and appointment costs - £0.024m
- staffing costs - £0.681m
- organisational development - £0.120m

35. These costs have been established on the basis of discussions with the transition programme team and comparison with other recent public sector reforms. The range of costs included within this section provide for the development and establishment of the new organisation. Individual costs were calculated on the basis of previous examples of similar work undertaken by both organisations. For example RCAHMS has significant experience in the appointment of Commissioners (the equivalent of Board members) and the costs involved in this which informed the development of costs for board appointments. This information was also supplemented by advice from CAPITA on benchmarked costs for similar processes in both public and private sectors.

36. Staffing costs were calculated using full staff costs of a range of different post types based on information from Human Resources teams in both organisations. These costs were then applied to the resource requirements developed by the transition programme team on the basis of their programme plan to create an overall total cost for the staff resources required. Staff costs directly associated with the transition programme team have been included within these costs, and they are already profiled within the staffing budget of Historic Scotland and RCAHMS. These costs amount to £0.681m over the three years from 2013/14 to the commencement of the body in 2015.

37. The costs of appointing a new Board and senior management team have been included within this section as appointment rounds will be required in 2015/16 to appoint the Chair and Board, the Chief Executive Officer and Senior Management Team. These costs total £0.023m.

38. A period of six months, from April to October 2015, has been allowed for the commencement of HES. During this period there will be additional costs from having multiple extant boards to support Historic Scotland, RCAHMS and HES. This additional cost would not

exceed £0.001m⁴. This cost is based on the full cost of both of the un-remunerated boards for Historic Scotland and RCAHMS being extended for a further period of six months.

ICT

39. ICT costs have been calculated on the basis of detailed consultation with staff in Historic Scotland and RCAHMS to understand the current ICT costs and structures of both organisations and to provide baseline figures for the costs and efficiencies. In addition to this, experience from other public sector reforms was used to inform the likely ICT requirements of Historic Environment Scotland and the phasing of the development of these following commencement. Recent Government reports, including the McLelland report⁵, have also been referred to. The indicative costs for additional SCOTS licences were developed by Government ICT specialists.

40. The total additional one-off costs of ICT beyond current expenditure will be £0.700m. This is composed of:

- Development of a new website - £0.200m
- Alterations to align existing systems for Heritage Management function with changes to workflow resulting from the Bill - £0.200m
- Re-purchasing of application licences following loss of charitable status - £0.300m

41. The individual costs itemised above have been calculated on the basis of previous projects, for example Historic Scotland's development of corporate and public facing websites. Costs for alterations to externally developed systems and re-purchasing of licences have been developed following contact with external suppliers to obtain outline costs for the work required.

42. In line with good practice, costs have been profiled for the development of a detailed business case on any new system requirements which the organisation may have. This will be for the Board of HES to consider in due course, and would form part of on-going project spend in this area if approved.

43. The maintenance of existing systems post the commencement of HES Scotland is not included within the Financial Memorandum as these are not additional costs as a result of the creation of the body. However, some costs to make minor alterations to existing systems required by the change are profiled within these costs, for example alterations to the Heritage Management Casework Management System to reflect changes to workflows.

44. In addition to these one-off costs, the recurring costs required to develop a shared IT solution for the new organisation are detailed in the section below.

Estates

45. Costs for accommodation primarily relate to the movement of staff between the two headquarter buildings following commencement. A cost of £0.050m is reflected to support the movement of staff between the two headquarters buildings at commencement in order to enable

⁴ Half year rate of expenses to cover additional costs over 6 months.

⁵ <http://www.scotland.gov.uk/Publications/2011/06/15104329/20>

more effective business structures. This cost was calculated on the basis of the cost per staff member for previous similar moves within both organisations, multiplied by the number of staff who are anticipated to require relocation.

46. It is not envisaged that there will be a need to merge headquarters accommodation in the short to medium term, given the proximity of the two buildings and the current leasing structures which offer no matched lease break date until 2022.

47. In the longer term, options for a single headquarters function may be examined in the context of the efficient use of the government estate and in conjunction with the Scottish Futures Trust. A full option appraisal to ensure value for money from combining headquarters buildings would be carried out at that time.

48. Any additional costs of running two headquarters buildings would be small in comparison with the costs of an early termination of either lease.

49. Any decision on a merged headquarters is also dependent upon developing a long-term storage solution for the collection currently held by RCAHMS. There is on-going discussion between bodies within the Culture portfolio, including RCAHMS to develop a shared storage facility for their collections and HES would continue to explore this option. Some funding has been set aside for this work within the portfolio and as such, these discussions are not factored into the Financial Memorandum.

Part two

Recurring additional costs

50. Recurring additional costs total £16.170m between 2015/16 and 2024/25. The principal areas of recurring costs relate to additional taxation costs and ICT. These costs are summarised below in table 3.

Costs £m	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19 and recurring	Item total over 10 years from commencement
Item							
Staffing	-	-	0.025	0.025	0.025	0.025	0.250
Heritage Management	-	-	0.090	0.090	0.090	0.090	0.900
Administration	-	-	0.030	0.140	0.140	0.140	1.290
Vehicles	-	-	0.094	0.094	0.094	0.094	0.0940
Taxation	-	-	0.885	0.885	0.885	0.885	8.850
ICT	-	-	0.209	0.209	0.209	0.209	2.090
Estates	-	-	0.185	0.185	0.185	0.185	1.850
Total recurring costs	-	-	1.518	1.628	1.628	1.628	16.170

Table 3 – Summary of recurring costs.

Staff costs

51. Recurring costs of £0.025m per annum are also included for the additional legal services which will be required to support the HR function of the new organisation. This additional cost results from the change in status of Historic Scotland to an NDPB meaning that it will no longer have access to legal services from within the Scottish Government although it will be able to procure legal services through Scottish Government framework contracts. This cost has been established from the framework contract for the current level of legal support required by the HR functions of both organisations.

52. In order for HES to be able to make an application for charitable status it is not anticipated that Board members will be remunerated.

53. The remuneration package for the new CEO will be consistent with the existing packages of the two extant CEOs of Historic Scotland and RCAHMS and so no additional cost has been reflected for this. An efficiency of half a remuneration package has been reflected (see paragraph 74). However, the agreement to a remuneration package for the new body will require benchmarking with other similar public bodies followed by agreement under the current Public Sector Pay policy for Senior Appointments⁶.

Heritage Management

54. The Bill will introduce an appeals system to some regulatory decisions made by Historic Environment Scotland, in particular the designation of listed buildings and scheduled monuments and the determination of scheduled monument consent. Appeals will be determined by Ministers, and there will be an additional staff costs to handle the anticipated level of appeals, projected at around 30-50 per year. The full staff costs of a C1⁷ post have been included to cover these costs, totalling £0.090m per annum (including allowances for travel and subsistence and

⁶ <http://www.scotland.gov.uk/Topics/Government/public-sector-pay/senior-appointment-pay>

⁷ Average costs of £0.066m

back-office support), based on initial information on the likely volume of appeals and in consultation with other areas of Scottish Government.

Administration

55. The recurring costs for additional administration requirements relate primarily to the need for access to additional legal services as an NDPB will not have access to the services of the Scottish Government Legal Division as Historic Scotland currently do. This cost has been calculated at £0.030m per annum on the basis of the costs of a framework contract operated elsewhere in the business by Historic Scotland.

56. An additional cost of £0.110m per annum is also included from 2016/17 onwards to cover the additional costs of audit which will be required as Historic Scotland will no longer be able to access Scottish Government wide arrangements for internal audit.

Vehicles

57. There are additional recurring costs for vehicles of £0.094m per annum as HES will be liable for road tax and additional insurance costs following the loss of crown exemption enjoyed by Historic Scotland.

58. These figures have been profiled following a review of the liabilities for road tax in relation to all of the vehicles in the Historic Scotland fleet. Additional insurance costs have been calculated by analysing the current level of hire car use in Historic Scotland and adding a cost for additional insurances provided by Arnold Clark Ltd. Additional costs are not provided for RCAHMS who already provide appropriate insurances, a situation which will not be changed by the provisions of the Bill.

Taxation

59. Historic Scotland currently benefits from Section 41 status as part of the core Scottish Government in relation to VAT and can reclaim the majority of any VAT liability. Historic Environment Scotland's status as an NDPB will remove any eligibility for Section 41 status and bring an additional liability for VAT.

60. A comprehensive analysis of this liability has been carried out and the additional annual costs to Historic Environment Scotland are assessed as £0.885m per annum. This figure has been developed following a comprehensive analysis of the current levels of VAT reclaim from Historic Scotland and has been benchmarked externally.

61. Although a cost to Historic Environment Scotland, this represents additional income to Her Majesty's Revenue and Customs ('HMRC').

ICT costs

62. As suggested by Green Book methodology the 'no change' option in relation to ICT has been considered within the remit of this Financial Memorandum. This would deliver the same level of service which both organisations currently have for HES. In line with this methodology the costs included represent those which would be required to deliver the same standard of

service provision, for example a single email system and file sharing, for HES. In order to facilitate a single shared network and email system the existing network of the larger organisation would require to be expanded to provide capacity for the staff of RCAHMS to join the network in line with staff currently working in Historic Scotland. The costs of the SCOTS⁸ network (the Scottish Government IT system) has been used as an exemplar cost in these calculations as the 'no change' option for ICT provision to the new body. However, the final solution will be subject to the agreement of a business case by the incoming Board of HES.

63. Costs for a minimum level of ICT provision included here will be used as a baseline against which any business case for an alternative solution can be assessed by the Board of HES and are included.

64. There are recurring costs in relation to the ICT requirements for Historic Environment Scotland totalling £2.090m. These costs can be summarised as follows:

- Licence costs following loss of discounted licences - £0.110m per annum
- Additional network costs to support use of single network – £0.099m per annum

65. An additional cost of £0.990m (over ten years) occurs from 2015/16 to bring 110 additional staff from RCAHMS onto the same network as Historic Scotland staff to provide shared network facilities for the whole of Historic Environment Scotland. This represents the minimum change option to provide shared infrastructure for all staff at the new body and is profiled as the baseline additional cost for this, using the average costs for a SCOTS licence as an indicative cost.

66. Any further decisions on a change in network supplier, or further systems development would be subject to a full business case and agreement by the Board of HES, with appropriate budget assigned to the project. Existing systems, such as the Canmore database, which is the principal public facing element of the RCAHMS collections allowing users to search online for individual items through a range of individual criteria, will remain extant and are an on-going cost which is currently borne by both organisations and so fall out-with the scope of this Financial Memorandum.

Estates

67. Additional recurring costs of £0.185m are also included as the rates relief currently enjoyed by RCAHMS as a charitable organisation will be lost. This may be off-set by rates relief on the wider estate of HES should it achieve charitable status (see paragraph 91 below). This cost could also be off-set by any future decision on a merged headquarters.

⁸ SCOTS network costs provided by Scottish Government ICT Specialists

Part three

Savings

68. The purpose of the creation of Historic Environment Scotland as a new lead body for Scotland's historic environment is not to generate savings. However, some modest efficiencies are likely to be available to the organisation. Over the period of reporting for this Financial Memorandum these savings total £16.288m, between 2013/14 and 2020/25. These savings are summarised in table 4 below:

COSTS £m	2013/14	2014/15	2015/16	2016/17	2017/18	Recurring from 2018/19	Item total
Item							
Staffing	-0.797	-1.354	-1.350	-1.350	-1.350	-1.350	-15.648
Administration	-	-	-0.029	-0.029	-0.029	-0.029	-0.290
ICT	-	-	-	-0.030	-0.030	-0.030	-0.350
Total efficiencies	-0.797	-1.354	-1.379	-1.363	-1.409	-1.409⁹	-16.288

Table Four – Annualised summary of savings

Please note: In the above table the positive figures represent costs, negative figures represent savings

69. The vast majority of these efficiencies relate to savings from staffing costs, achieved alongside the transition of all staff from Historic Scotland and RCAHMS to Historic Environment Scotland without detriment to current terms and conditions for staff. Additional efficiencies are also available from savings in administrative costs, including audit and ICT.

Staffing efficiencies

70. Staffing efficiencies have been established following detailed profiling of the impact of proposed changes to the staffing structure on the data held on staff by HR departments in both organisations, and the previous impact of voluntary early exit schemes by Historic Scotland's HR department. The figures provided have also undergone additional scrutiny by Government analysts as part of the 2013/14 pay settlement for both organisations.

71. Staffing efficiencies totalling £15.648m are available to HES between 2013/14 and 2025/26. These savings mainly relate to the pay settlement which was agreed in 2013/14 for both Historic Scotland and RCAHMS. The pay settlement agreed provides recurring savings. These savings primarily relate to efficiencies on posts following voluntary early exit schemes between 2013/14 and 2017/18. Whilst a pay settlement was due across both organisations the proposed creation of HES provided the opportunity to realise some potential efficiencies, for instance through alignment of terms and conditions, at an early stage. Financial savings against the baseline staff costs for both organisations will be carried through into the creation of HES.

72. In addition to these savings, reductions in overtime costs, consistency of provision for childcare vouchers and a one-off buy-out of public and privilege holidays (included in the costs

⁹ An additional saving of £0.80m occurs in 2020/21 following the termination of an ICT support contract for the Heritage Management function.

above) provide further recurring savings. Without the alignment between structures in Historic Scotland and RCAHMS it would not have been possible to deliver these changes to the pay structure. The figures included have been calculated on the basis of detailed analysis of the impact of proposed changes on the full staff costs for both organisations as part of the development of a pay settlement.

73. These savings have been achieved in full consultation with the trades unions and are consistent with the commitment made in the OBC that there would be no detrimental impact on staff from either Historic Scotland or RCAHMS.

Administration

74. There are recurring savings of £0.029m from commencement (2015/16) onwards achieved through corporate efficiencies of merged support functions such as HR and Chief Executive's office. These efficiencies have been calculated on the basis of shared service arrangements which are being established to deliver corporate functions jointly between the two organisations and this has provided detail on which functions are currently duplicated to allow for an estimation of the cost savings in this area.

ICT

75. There are projected savings of £0.350m in relation to Heritage Management, which is wholly accounted for by the removal of costs associated with the current casework management system and associated support contract which would no longer be required following the implementation of a new system. These figures have been calculated on the basis of existing costs from an external supplier which will no longer be required.

76. The McLelland Report¹⁰ anticipated savings of £230m would be possible on an overall spend of £1000m giving a metric for public sector savings of up to 23%. It is likely that similar savings would be available for HES in the implementation of a new ICT solution, and would form part of any business case on the development of a new system. However, as any additional savings to those already made by both bodies under McLelland's recommendations would be dependent on the agreement of a business case for change they have not been factored into this cost analysis.

OPTIMISM BIASES

77. The cost figures in this Financial Memorandum were adjusted for optimism bias in accordance with HM Treasury Green Book guidance. Biases have been applied to figures presented in this Financial Memorandum. Adjusting for optimism bias is the recommended method of mitigating the risk that the costs of major projects are underestimated, particularly in the early stages of development. The likely level of optimism bias was assessed individually for each element of cost, informed by evidence of the costs of other UK public sector reforms and advice from government analysts and the authors of individual cost models for specific areas on the level of uncertainty in any figures. The adjustments for optimism bias ranged between zero and 75%, depending on the margin of uncertainty.

¹⁰ <http://www.scotland.gov.uk/Publications/2011/06/15104329/20>

78. In most cases, the estimates were increased by 53% to account for optimism bias. This level of adjustment is the accepted standard bias which has been used in other similar examples of public sector reform. In other instances, ranges have been based on relevant guidance documents. No adjustments were made where there was a limited margin of uncertainty, for instance where figures are based on a known cost or legal structure as is the case in relation to taxation. In these cases, a single estimate is shown.

79. Efficiency estimates have been decreased by 30% to account for potential optimum bias and margins of uncertainty, in line with other recent examples of public sector reforms.

80. It is anticipated that as figures continue to be refined the level of uncertainty will decrease and figures will become closer to those profiled in the initial three parts of this document.

81. A summary of the impact of biases on the overall costs and savings is presented in Annex 2.

COSTS TO LOCAL AUTHORITIES

82. Charging policy for services currently provided by Historic Scotland and RCAHMS will not change as the result of the creation of the new body. There are therefore no additional costs associated with the formation of the merged body on local government.

83. There will be some process changes required for local authorities to administer regulatory consents for designated items, including listed buildings, in the planning system. However, these processes are moving in line with those elsewhere in the planning system, so no additional costs are anticipated.

84. HES will be working with local authorities to manage the transition to the new system and to build capacity within local authority partners. This will form part of a wider collaboration with local authorities and other partners through the Historic Environment Strategy¹¹, including working with COSLA, to ensure the regulatory system is as proportionate as possible.

85. Longer term savings, including the potential removal of 28 days statutory consultation time from a number of consent cases are anticipated as part of the changes brought about by the Historic Environment Scotland Bill. This time saving results from changes to the process for Planning Authorities to determine Listed Building Consent applications. The current 28 day statutory period at the end of the process during which Historic Scotland can comment on an application will become a parallel process with other consultations, and a consequential time saving will be delivered for a high proportion of applications.

¹¹ Scotland's Historic Environment Strategy will be published alongside the Bill and available for download from www.scotland.gov.uk/historicenvironment. The strategy provides the strategic framework for the historic environment sector, and Historic Environment Scotland will be a lead body in its delivery. More detail is provided in the background section of the Policy Memorandum which accompanies the Bill.

COSTS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES

86. There are no additional costs to business resulting from the creation of the new body.

87. There are anticipated time savings for the statutory consents process for listed buildings and scheduled monuments which will provide service improvements for users, including developers. These benefits are detailed in the Business Regulatory Impact Assessment which accompanies this Bill.

Scottish Administration grant support

88. The level of grant in aid (or equivalent) funding currently allocated to Historic Scotland and RCAHMS will be re-allocated to Historic Environment Scotland as part of the Budget Bill process, as the new body will deliver all of the functions currently delivered by the two bodies.

89. Provisions in the Bill for charges and grant making are enabling clauses to allow HES to continue to operate charges and distribute grants in the same manner as HS and RCAHMS currently do. Any future activity relating to these two clauses will be a continuation of the activities currently being carried out by HS and RCAHMS therefore neither provision will represent an increase in the charges to those currently levelled by these two bodies, or the level of grant distributed.

Costs to individuals

90. Any costs, for instance in the form of admissions charges for individuals to access properties in care (the majority of which are accessible free of charge), in the Bill, do not represent a change to the existing arrangements under which Historic Scotland charge admission fees for some properties. Historic Scotland has agreed these charges with Scottish Ministers and this would continue to be the case for HES.

CHARITABLE STATUS

91. The new body may apply for charitable status, which could be expected to bring significant financial benefit to the organisation. Since the decision relating to seeking charitable status is for the new body to make, and for the Offices of the Scottish Charities Regulator and HMRC to examine and confirm, these financial benefits to the organisation do not flow from the legislation and have not been included in the financial analysis set out above. However, the potential benefits are significant and relevant to the decision to create a new body. A table summarising the potential benefits of charitable is therefore set out below.

£m	2013/14	2014/15	2015/16	2016/17	2017/18	Recurring between 2018/19 and 2024/25	Item total
Gift Aid			-0.635	-1.270	-1.270	-1.270	-12.065
Donations			-0.150	-0.300	-0.300	-0.300	-2.850
Charitable Rates Relief (see notes)			-0.478	-0.956	-0.956	-0.956	-9.085
IT licences			-0.110	-0.110	-0.110	-0.110	-1.100
Total			1.373	2.636	2.636	2.636	26.363
Net position after charitable status	0.149	0.089	0.162	-1.582	-2.012	-2.417	-20.193

Table 5 – Summary of charitable status

Please note: In the above table the positive figures represent costs, negative figures represent savings

92. Work has been undertaken, drawing on experience from other similar bodies, including English Heritage and the Historic Royal Palaces to analyse the potential benefits of charitable status. This has resulted in an estimate of £1.270m per annum in gift aid following a detailed analysis of the 2012 annual accounts of Historic Scotland.

93. The potential benefits in the table above have been calculated following analysis of the accounts of Historic Scotland and information on the current charitable benefits from the charitable status of RCAHMS. Jointly commissioned work by both bodies to further analyse the potential benefits of charitable status has also validated these figures.

94. Income from HMRC as a result of gift-aid would more than off-set any additional taxation costs to HMRC giving net income after additional tax to the Charitable NDPB from HMRC of £0.415m per annum.

95. This income would also be further enhanced by possible charitable rates relief of £9.085m over the ten years from commencement. This figure is calculated on the basis of the recoverable rates for the RCAHMS HQ and then 80% of the current cost of rates for Historic Scotland. The recoverable rates for Historic Scotland have been reduced by 20% to allow for the differences in levels of rates relief available nationally due to the range of approaches taken by different local authorities. It should be noted that this would not represent a saving to the Scottish Administration as a whole as Scottish Government would refund the cost of any rates relief to individual local authorities.

96. The total estimated benefits associated with charitable status also takes account of the expected donations of around £0.300m per year in line with the estimates in the outline business case.

These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

97. In addition to this recurring savings of £0.110m per annum are profiled on the basis of discounts on ICT licences.

98. This amounts to a total benefit to the new body of charitable status of £26.363m. When set against the net cost of the new body this creates an overall surplus to HES of £20.193m.

These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

Annexes

Annex 1 - Overall cost summary

Annex 2 - Summary position comparing biased figures

Annex 3 – Summary impact of charitable status

ANNEX 1 – OVERALL COST SUMMARY

Net Position without Bias

COSTS £m	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/2020	2020/21	2021/22	2022/23	2023/24	2024/25	ITEM TOTAL
Item													
Staffing	- 0.3469	-0.719	-0.719696	- 0.489	0.920	1.325	1.325	1.325	1.325	1.324696	1.325	1.325	12.468
Branding	-	0.075	0.075	-	-	-	-	-	-	-	-	-	0.150
Heritage Management	-	0.03	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.09	0.93
Administration	-	-	1.00	0.111	0.111	0.111	0.111	0.111	0.111	0.111	0.111	0.111	1.0
Vehicles	-	-	0.094	0.094	0.094	0.094	0.094	0.094	0.094	0.094	0.094	0.094	0.940
Taxation	-	-	0.885	0.885	0.885	0.885	0.885	0.885	0.885	0.885	0.885	0.885	8.85
Programme	0.396	0.403	0.365	-	-	-	-	-	-	-	-	-	1.164
ICT	0.1	0.3	0.509	0.179	0.179	0.179	0.179	0.179	0.099 ¹²	0.179	0.179	0.179	2.44
Estates	-	-	0.235	0.185	0.185	0.185	0.185	0.185	0.185	0.185	0.185	0.185	1.9
TOTAL NET POSITION PER ANNUM	0.149	0.089	1.535	1.054	0.624	0.219	0.219	0.219	0.139	0.219	0.219	0.219	4.907

¹² This lower figure results from the termination of contracts for the support of back office systems for the Heritage Management function which will have been superseded by a new system, which deliver a one-off saving.

ANNEX 2 SUMMARY POSITION COMPARING BIASED FIGURES, £M

Item	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/2020	2020/21	2021/22	2022/23	2023/24	2024/25	Item total
Staffing	- 0.063	- 0.249	- 0.252	0.001	- 0.472	- 0.917	- 0.917	- 0.917	- 0.917	- 0.917	- 0.917	- 0.917	- 7.455
Branding	-	0.082	0.082	-	-	-	-	-	-	-	-	-	0.165
Heritage Management	-	0.046	0.138	0.138	0.138	0.138	0.138	0.138	0.138	0.138	0.138	0.138	1.423
Administration	-	-	0.026	0.194	0.194	0.194	0.194	0.194	0.194	0.194	0.194	0.194	1.771
Vehicles	-	-	0.103	0.103	0.103	0.103	0.103	0.103	0.103	0.103	0.103	0.103	1.03
Taxation	-	-	0.973	0.973	0.973	0.973	0.973	0.973	0.973	0.973	0.973	0.973	9.73
Programme	0.606	0.616	0.559	-	-	-	-	-	-	-	-	-	1.782
ICT	0.175	0.525	0.891	0.345	0.345	0.345	0.345	0.345	0.289	0.345	0.345	0.345	4.638
Estates	-	-	0.359	0.283	0.283	0.283	0.283	0.283	0.283	0.283	0.283	0.283	2.907
Total net position	0.718	1.021	2.880	2.037	1.564	1.119	1.119	1.119	1.06	1.119	1.119	1.119	15.998
% of Budget	0.90	1.28	3.60	2.55	1.96	1.40	1.40	1.40	1.33	1.40	1.40	1.40	

These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

ANNEX 3 – SUMMARY IMPACT OF CHARITABLE STATUS, £M

	Annual Total	Total over 10 years from Commencement
Gift Aid	1.270	12.70
Donations	0.300	3.000
Charitable Rates Relief	0.956	9.563
ICT Licences	0.110	1.100
Total	2.636	26.363

These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 3 March 2014, the Cabinet Secretary for Culture and External Affairs (Fiona Hyslop MSP) made the following statement:

“In my view, the provisions of the Historic Environment Scotland Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 3 March 2014, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Historic Environment Scotland Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Historic Environment Scotland Bill (SP Bill 47) as introduced in the Scottish Parliament on 3 March 2014

HISTORIC ENVIRONMENT SCOTLAND BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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