



The Scottish Parliament  
Pàrlamaid na h-Alba

## SUBORDINATE LEGISLATION COMMITTEE

### AGENDA

5th Meeting, 2012 (Session 4)

Tuesday 28 February 2012

The Committee will meet at 2.30 pm in Committee Room 6.

1. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Evidence in Civil Partnership and Divorce Actions \(Scotland\) Order 2012;](#)  
[Community Care \(Personal Care and Nursing Care\) \(Scotland\) Amendment Regulations 2012.](#)

2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2012 \(SSI 2012/26\);](#)  
[Bus Service Operators Grant \(Scotland\) Amendment Regulations 2012 \(SSI 2012/33\);](#)  
[Public Service Vehicles \(Registration of Local Services\) \(Scotland\) Amendment Regulations 2012 \(SSI 2012/32\);](#)  
[Housing \(Scotland\) Act 2010 \(Consequential Modifications\) Order 2012 \(SSI 2012/38\);](#)  
[Police Grant and Variation \(Scotland\) Order 2012 \(SSI 2012/49\);](#)  
[Sexual Offences Act 2003 \(Prescribed Police Stations\) \(Scotland\) Amendment Regulations 2012 \(SSI 2012/50\);](#)  
[Water Services Charges \(Billing and Collection\) \(Scotland\) Order 2012 \(SSI 2012/53\).](#)

3. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Housing \(Scotland\) Act 2010 \(Commencement No. 6, Transitional and Savings Provisions\) Order 2012 \(SSI 2012/39\).](#)

4. **The Scottish Social Housing Charter:** The Committee will consider the Scottish Social Housing Charter.

5. **UK Public Bodies Act 2011:** The Committee will consider an order made under Section 9 of the UK Public Bodies Act 2011.
6. **Police and Fire Reform (Scotland) Bill** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

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The papers for this meeting are as follows—

**Agenda Items 1, 2, 3 and 4**

Legal Brief (private) SL/S4/12/5/1 (P)

Instrument Responses SL/S4/12/5/2

**Agenda Item 5**

Public Body Consent Memorandum

Briefing Paper (private) SL/S4/12/5/3 (P)

**Agenda Item 6**

[Police and Fire Reform \(Scotland\) Bill \(as introduced\)](#)

[Delegated Powers Memorandum](#)

Briefing Paper (private) SL/S4/12/5/4

**SUBORDINATE LEGISLATION COMMITTEE**

**5th Meeting, 2012 (Session 4)**

**Tuesday 28 February 2012**

**Instrument Responses**

**INSTRUMENTS SUBJECT TO THE NEGATIVE PROCEDURE**

**The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2012 (SSI 2012/26)**

**On 17 February 2012, the Scottish Government was asked:**

- 1) Section 12 of the Prisons (Scotland) Act 1989 provides for the making of rules in connection with the “photographing and measuring” of prisoners. Rule 2(4) of these Rules inserts a replacement rule 12 into the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the principal Rules”), which provides for inter alia the recording of prisoners’ biometric data, details of their next of kin and “any other personal particulars of the prisoner that are relevant”. The Scottish Government is asked to explain:
  - a) whether “biometric data” may only constitute data which arises from the photographing and measuring of prisoners, standing its definition as “fingerprints and any other data specified by direction”, or whether prisoners may, for example, be required to give samples of any kind should data of that nature be specified by direction? If this is the case, what power is to be relied upon so to provide?
  - b) whether it is sufficiently clear to the end-user of the principal Rules what may be required under this provision, given that the definition of biometric data is almost wholly postponed to a direction which is not subject to the same scrutiny or publication requirements as these Rules?
  - c) what power is being relied upon to make provision for the recording of details of next of kin and (unspecified) other personal particulars which the Governor deems to be relevant.
- 2) The Executive Note in relation to rule 2(7) indicates that the amendment “...restricts the Governor’s ability to refuse to allow civil or untried prisoners to wear their own clothes.” Before being amended, rule 32 provided (read short) that that the Governor might order a prisoner to wear other appropriate clothing for any of the reasons in paragraph (4), one of which was that a direction under paragraph (5) had been made. The amendment has deleted that reason from paragraph (4), but it now reappears in sub-paragraph (2)(c). The net result appears to be that the Governor may still order a prisoner to wear other appropriate clothing so as to comply with a paragraph (5) direction. The Scottish Government is accordingly asked to explain how the amendments to rule 32

deliver a restriction on the Governor's ability to refuse to allow prisoners to wear their own clothes, as the Executive Note claims.

- 3) Rule 2(14) appears to duplicate exactly the terms of rule 2(13). Is this simply a typographical error, and does the Scottish Government consider that it has any effect on the construction of these Rules or the principal Rules?

**The Scottish Government responded as follows:**

- 1) (a) The definition of "biometric data" in rule 2 of the Principal Rules has been amended in these Rules so as to, inter alia, remove the words "or other physical measurements". This was to avoid any confusion in rule 12 of the Principal Rules whereby biometric data and certain other specified physical measurements were, and are still, referred to separately. Biometric data now means only fingerprints with the direction making power being retained from the previous definition of "biometric data" as enacted in November 2011. The intention behind the new wording of the definition of "biometric data" is that fingerprints will be the only form of biometric data taken from prisoners with Ministers being able to specify other forms of data, fitting the description of biometric data, to be taken from prisoners should that ever be required in the future. At present the only forms of data that can be taken from prisoners are those specified in rule 12(1). Section 12 of the Prisons (Scotland) Act 1989 allows rules under section 39 of that Act to provide for the measuring and photographing of prisoners. Section 39 provides that rules may be made for, inter alia, the classification and treatment of prisoners. The Scottish Ministers position is that section 12 of the 1989 Act permits the photographing and measuring of prisoners and section 39 permits other rules to be made for the classification and treatment of prisoners including the taking of fingerprints and other data from a prisoner.

(b) The Scottish Ministers' position is that the definition of biometric data is merely complemented by the direction-making power. The only form of biometric data which is taken from prisoners at present is fingerprints. The Scottish Ministers consider that retaining the direction making power in the definition of "biometric data" is necessary to enable other forms of data, fitting the description of biometric data, to be taken from prisoners should that ever be required in the future. Directions under the Prison Rules are published on the Scottish Prison Service website and copies are made available to prisoners in the accommodation blocks and the prison library in compliance with rule 7 of the Principal Rules. Any changes brought about by a direction made under the Prison Rules are clearly communicated to end users by the Scottish Ministers.

(c) Section 39 of the 1989 Act permits other rules to be made for the classification, treatment, discipline and control of prisoners. The Scottish Ministers position is that rules providing for the recording of a prisoner's family details and a general description of the prisoner are therefore permitted under section 39. Recording data about a prisoner enables the quick identification of the prisoner for the purposes of discipline and control. It also allows for the classification of prisoners and the identification of any special requirements that prisoner may have. The details of next of kin and other emergency contacts are necessary to enable the Governor to comply with the obligation in rule 42 of the

Principal Rules to notify friends and relatives if a prisoner suffers serious illness or injury.

- 2) As enacted in November 2011, rule 32 of the Principal Rules permitted civil and untried prisoners to wear their own clothing but also enabled a Governor to order the prisoner to wear other clothing for any of the reasons specified in rule 32(4). One of the reasons in rule 32(4), as enacted in November 2011, was that a direction was in force under paragraph (5). On one interpretation, those provisions would have enabled the Governor to remove the rights of civil and untried prisoners to wear their own clothing if a direction, in any terms, was in force. A direction prohibiting, for example, the wearing of football tops could have been used by the Governor to restrict the right of untried and civil prisoners to wear their own clothing in other ways as all that was previously required was that a direction had to be in force. The amendments to Rule 32 ensure that Governors can now only restrict the right of untried and civil prisoners to wear their own clothing in accordance with the terms of a rule 32(5) direction.
- 3) The duplicate paragraph at rule 2(14) is a typographical error but the Scottish Ministers' position is that this does not affect the construction of these Rules or the Principal Rules. The Scottish Ministers intend to correct this error by way of a correction slip.

**The Bus Service Operators Grant (Scotland) Amendment Regulations 2012 (SSI 2012/33)**

**On 15 February 2012 the Scottish Government was asked:**

In relation to the definition of “flexible service” in regulation 2(2)(a), could the meaning and effect have been made clearer, as-

(i) such a service is defined as having the meanings given in regulation 2(2A) of the 2001 Regulations, but that paragraph (2A) contains 2 meanings, both for a flexible service and a standard service, and

(ii) “flexible service” in the 2001 Regulations is only given one meaning, though it is set out in 5 sub-paragraphs?

**The Scottish Government responded as follows:**

(i) The Scottish Government accepts that the definition of “flexible service” would have been clearer had it referred to the meaning given in regulation 2(2A)(a) of the Public Service Vehicles (Registration of Local Services) (Scotland) Regulations 2001. However, the view of Scottish Government is that there is unlikely to be any confusion for the reader.

(ii) The Scottish Government accepts that the word ‘meanings’ should not have been pluralised in the definition of “flexible service”. However, the view of Scottish Government is that again there is unlikely to be any confusion for the reader.

**INSTRUMENT NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE****The Housing (Scotland) Act 2010 (Commencement No. 6, Transitional and Savings Provisions) Order 2012 (SSI 2012/39 (C. 8))****On 17 February 2012 the Scottish Government was asked:**

(1) Please explain why the provision made in column 3 of Schedule 1 is considered a usual and competent use of the power in section 161(2)(c) of the Housing (Scotland) Act 2010 to commence different provisions for different purposes. This provision commences section 110 on 1 April 2012 for certain purposes, but paragraph 4 of the Executive Note states that the Scottish Government has no intention to bring that section into force for all purposes. It therefore appears that the commencement of section 110 for restricted purposes is intended to continue indefinitely. This does not appear to have been the intention of the Parliament given the terms of the Act as passed and in particular the definition of “disposal” provided in section 165.

(2) In paragraph 18(f) of Schedule 2, would you agree that the reference to schedule 7 to the 2001 Act appears to be an error and should refer to schedule 8? If so would the Scottish Government propose to correct this error, so that the transitional provision can operate in relation to schedule 8?

(3) The transitional provision made by paragraph 4(2) of Schedule 2 (providing that the right of appeal against a decision of the Scottish Ministers on registration or removal as contained in section 62 of the 2001 Act continues to have effect in relation to undetermined appeals on the appointed day, as if the decision appealed is treated as made by the Scottish Housing Regulator in relation to the register kept by the Regulator under section 20 of the 2010 Act) does not modify the effects of section 62(2) and (3) of the 2001 Act in relation to such undetermined appeals, on or after the appointed day.

Those subsections place an obligation on the *Scottish Ministers* not to remove bodies from the register while the appeal is pending, and for a proposal to remove an industrial and provident society, to give notice of appeal to the Financial Services Authority.

Could you explain why it is not considered necessary or appropriate to modify the effects of section 62(2) and (3) for the purposes of this transitional provision, as it appears the effect of the provision is that after the appointed day, appeals are treated as relating to the decision of the *Scottish Housing Regulator* in relation to the Regulator’s register, and yet those subsections provide that the *Scottish Ministers* have the requirements not remove a body from the register, and to give notice where applicable to the FSA?



**The Scottish Government responded as follows:**

(1) The policy rationale for the provision made in column 3 of Schedule 1 is fully set out in the Executive Note. The Scottish Government considers that there is a problem with the breadth of the requirement for tenant consultation as set out in section 110 of the Housing (Scotland) Act 2010. To commence it in full would, in the Scottish Government's view, place unreasonable and impractical restrictions on the ability of Registered Social Landlords to manage their businesses.

The Scottish Government therefore intends to bring forward legislation to amend section 110 when a suitable opportunity arises and will consider further the commencement of the section when the Parliament has had the opportunity to consider the position. It is incorrect to say that the Executive Note states that "*the Scottish Government has no intention to bring that section into force for all purposes*"; the Note contains no such statement.

The Scottish Government does not consider this an unusual use of the commencement power. The powers to commence provisions and to make different provision for different purposes are part of a normal and prudent scheme for commencement of a lengthy and detailed set of statutory provisions. The Scottish Ministers are expected to use them to achieve an appropriate and workable introduction of what has been enacted. Where a difficulty in a provision has been identified, it is entirely appropriate that the power is used to commence only the unproblematic element of the provision, pending further Parliamentary consideration of the problematic element.

(2) The SGLD thanks the Subordinate Legislation Committee for its question. This is indeed a typographical error; the reference to "schedule 7 to the 2001 Act" should refer to "schedule 8".

An amending commencement order will be brought forward in advance of the coming into force of this Order on 1 April 2012 to correct the reference to ensure the transitional provision operates in relation to the intended schedule.

(3) The transitional provision made by paragraph 4(2) of Schedule 2 is intended to enable the Scottish Housing Regulator (SHR) to progress any appeal that is taken against a pre-commencement Ministerial decision. The Scottish Ministers consider that it achieves that purpose.

In relation to section 62(2), the Scottish Government does not consider it necessary to modify this provision. After commencement, the pre-commencement register under the 2001 Act will no longer be in force. The body appealing under section 62 will have moved to the new register, by virtue of section 21(1) of the 2010 Act. The Regulator could not then simply remove the body from that new register without complying with the 2010 Act regime. So in practice it appears to the Scottish Government to be of no consequence that section 62(2) ceases to operate. There will be no pre-commencement register from which Ministers could remove the body, and the Regulator will only have power to remove it from the new register in accordance with the 2010 Act.

As regards section 62(3), to give notice of certain appeals to the Financial Services Authority, the likelihood is that any appeal would already have been notified pre-commencement. The duty is to notify “as soon as may be after an appeal is brought”, and the transitional provision only applies where an appeal is brought before the appointed day. The duty to notify will have attached to Ministers and there is no reason why they cannot fulfil that duty, even if particular timings might mean they have to notify very shortly after the responsibility for the conduct of the appeal has passed to the SHR. The Scottish Government therefore saw no need to provide for transfer of the duty, though it agrees that such an approach would have been possible if wished.

## **PUBLIC BODY CONSENT MEMORANDUM**

### **DRAFT PUBLIC BODIES (ABOLITION OF THE NATIONAL ENDOWMENT FOR SCIENCE, TECHNOLOGY AND THE ARTS) ORDER 2012**

#### **Draft Public Body Consent Motion**

1. The draft motion, which will be lodged by the Cabinet Secretary for Education and Lifelong Learning, is:

"That the Parliament consents to the making of the Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012, a draft of which was laid before the United Kingdom Parliament on 19th January 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament."

This memorandum has been lodged by Michael Russell, Cabinet Secretary for Education and Lifelong Learning, in accordance with interim arrangements agreed by the Parliamentary Bureau at its meeting on 20 December 2011.

#### **Public Bodies Act 2011**

2. The UK Public Bodies Act 2011 ("the 2011 Act") gives UK Ministers the authority (via order making powers) to abolish, merge or transfer the functions of public bodies listed in its schedules, and some of those bodies operate in both the reserved and devolved areas. Section 9 of the 2011 Act acknowledges the scope for incursion into devolved interests by requiring orders that include provision falling within devolved competence to be consented to by Holyrood.

3. On 20 December 2011 the Parliamentary Bureau approved interim arrangements for handling requests for consent to orders triggering section 9 of the 2011 Act.

#### **NESTA**

4. The National Endowment for Science, Technology and the Arts ("NESTA") was established by section 16 of the National Lottery Act 1998. A draft Order to abolish NESTA using powers contained in the Public Bodies Act 2011 was laid before the UK Parliament on 19 January 2012. Copies of the draft NESTA Order and the accompanying draft explanatory memorandum, as laid at Westminster, are provided in Annexes A and B. A copy of the draft Order can be found at:

<http://www.legislation.gov.uk/ukdsi/2012/9780111519394/contents>. The NESTA Order is the first order to be promoted under the 2011 Act which requires consent in accordance with the requirement set out at section 9 to the 2011 Act.

5. NESTA was established as a non-departmental public body by section 16 of the National Lottery Act 1998. Its functions are "*to support and promote talent, innovation and creativity in the fields of science, technology and the arts*". It operates in Scotland as well as across the rest of the UK and receives its funding

from a National Lottery endowment out of money in the National Lottery Distribution Fund.

**6.** As a NDPB, NESTA operates at arms length from Government. Whilst the sponsor department, the Department for Business Innovation and Skills (BIS), has a role to support and challenge NESTA, it does not direct NESTA or its work programmes and its strategy is determined by its members. It has financial independence by virtue of the endowment.

**7.** In recent years, NESTA has focused on supporting and promoting talent, innovation and creativity by developing models of innovation for the wider public benefit. It achieves its objects by running practical experiments and commissioning policy and research work for wider dissemination and adoption by policy makers. NESTA's portfolio of projects changes from year to year as it experiments and adapts to changing societal and economic challenges. It is also one of the UK's largest seed-stage investors, combining capital investment with non-financial support to help innovative early stage companies.

**8.** Recent Scottish-based activities include the "Starter for 6" enterprise training programme that supports up-and-coming creative entrepreneurs across Scotland; investments in Aquapharm Biodiscovery and Design LED products; and participation of a number of Highland schools in "discover" which offers students credits to spend on on-line learning experiences. Under its new remit as a charitable organisation, NESTA will continue to operate in Scotland as before but with revised and more broadly inclusive remit that will, for the first time, include activities in the voluntary sector and in social enterprises.

**9.** There are no anticipated risks for NESTA or its activities as a result of the proposed changes, and the Charity Commission has indicated that there will be no negative effect on NESTA's work as a consequence of its transition to charity status.

### **Legislative issues**

**10.** NESTA is funded through payments from lottery funds the specific matters in relation to which NESTA exercises its functions - science, technology and the arts – are not on the whole reserved matters in Scotland. And although the Scottish Parliament does not have the competence to abolish NESTA across the whole of the UK (which is the effect of article 2 of the Order), it is the effect of the abolition itself, in particular in relation to the removal of NESTA's functions in Scotland, which falls within the competence of the Scottish Parliament. This is because the functions which NESTA exercises in Scotland relate broadly to devolved matters and accordingly, it would be open to the Scottish Parliament to legislate to provide that some or all of NESTA's devolved functions are no longer to be exercisable in Scotland.

**11.** This type of analysis is already accepted in relation to "cross-border public authorities" within the meaning of section 88(5) of the Scotland Act 1998. Section 90(1) of the Scotland Act assumes that the Scottish Parliament has a degree of legislative competence to remove functions from such cross-border bodies in so far as those functions are exercisable in Scotland within devolved competence.

## *UK Government reform proposal*

**12.** In October 2010, the UK Government announced that it proposed to abolish NESTA as a NDPB and reconstitute it as a charitable trust in the public sector, which would hold NESTA's National Lottery endowment; and a charity in the voluntary sector which would apply the endowment in its capacity as trustee of the trust. This would allow NESTA to continue its work while protecting the endowment and further distancing it from Government.

**13.** In reaching the decision to reconstitute NESTA as a charity, and in line with its wider review of public bodies, the UK Government applied three tests to determine whether NESTA should remain a public body:

Does it perform a technical function?

Do its activities require political impartiality?

Does it need to act independently to establish facts?

**14.** It was the UK Government's view that NESTA did not meet these three criteria and so did not think it necessary that NESTA remain as an NDPB or continue to be part of the public sector in order to carry out its functions.

**15.** In assessing NESTA's future, several options were explored by the UK Government before identifying its preferred policy option. These were:

- Do nothing. This option was considered alongside the UK Government's three tests for a public body and NESTA did not meet these three criteria.
- Abolition. NESTA could be abolished and the endowment returned to the National Lottery Distribution Fund for redistribution. This option was rejected as there is currently no other suitable body to perform NESTA's functions, its programmes for wider public benefit would cease and the public investment in NESTA via the National Lottery Distribution Fund would be lost.
- Merger. NESTA could merge with another body which carries out similar functions or operates in a similar policy area. This option may enable NESTA to enhance its impact by providing a wider array of stakeholders and opportunities for future programmes and could include efficiencies and savings from sharing accommodation and back office costs. However, this option was rejected as there was no comparable organisation to merge with without considerably altering NESTA's direction, brand, mission and activities.
- Reconstitution of NESTA as a private sector body. NESTA's activities could be transferred to a private sector (non-charitable) body; either a company limited by guarantee incorporated under the Companies Act 2006 or a company incorporated by royal charter. The body should be non-profit as the potential for private shareholders to profit from National Lottery funds in the form of the endowment was deemed to be inappropriate. This option was ultimately rejected as the need for suitable controls to ensure propriety of expenditure of the endowment is at odds with ensuring the level of UK

Government control does not cause the new body to be classified to the public sector.

**16.** In October 2010, the UK Government announced that it proposed to abolish NESTA as a NDPB and reconstitute it as a charitable trust in the public sector, which would hold NESTA's National Lottery endowment; and a charity in the voluntary sector which would apply the endowment in its capacity as trustee of the trust. This would allow NESTA to continue its work while protecting the endowment and further distancing it from Government.

### **Scottish Government position**

**17.** The Scottish Government is supportive of the proposal to reconstitute NESTA as a charitable organisation. The order-making powers in the Public Bodies Act are designed to enable UK Ministers to take forward the reform of a substantial number of public bodies for which the UK Government is responsible. This is consistent with the Scottish Government's continuing commitment to simplify and streamline the public bodies landscape in Scotland.

**18.** The responses to the consultation provided no evidence of opposition within Scotland to the proposals, nor any evidence that the reconstitution of NESTA would give rise to any detriment to the existing relationship between NESTA and Scottish organisations or to the programmes that NESTA supports in Scotland.

**19.** As a charitable organisation, NESTAs remit will include the ability to undertake research and fund activities in the voluntary and third sector areas. This revised remit accords with the Scottish Government's Economic Strategy which acknowledges the role that social enterprises have in relation to economic activity and encourages the third sector to increase its economic contribution.

### **Order to abolish NESTA**

**20.** The UK Government laid the draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 before the UK Parliament on 19 January 2012 in exercise of the powers conferred by sections 1(1), 6(1) and (5) and 35(2) of the Public Bodies Act 2011. The Order is due to come into force on 1st April 2012 or, if the Order is made on or after 1st April 2012, 28 days after the day on which it is made.

**21.** This order if passed would abolish NESTA. At the same time, a transfer scheme made by UK Ministers under section 23(1)(a) of the Act would transfer all property, rights and liabilities of NESTA relating to the National Lottery endowment to a charitable trust ("the NESTA Trust"), as well as all other property, rights and liabilities and employees relating to NESTA to a charity ("the NESTA Operating Company). The charity - constituted as a company limited by guarantee - would be appointed as the sole trustee of the NESTA Trust. A copy of the draft transfer scheme is provided in Annex [C].

## **Reasons for seeking a Public Body Consent Motion**

**22.** Most of the bodies listed in the schedules to the Act operate wholly in the reserved area. However, the public body landscape across the UK includes bodies operating in both the reserved and devolved areas. Section 9 of the 2011 Act requires orders under section 1 to 6 of the Act which make provision affecting these public bodies which would be within the legislative competence of the Scottish Parliament to be consented to by the Scottish Parliament.

**23.** The Order makes provision which has the effect of abolishing certain functions of NESTA in or as regards Scotland (namely the promotion of talent, innovation and creativity in the fields of science, technology and the arts). As provision to abolish these functions is within the legislative competence of the Scottish Parliament, the Order requires the consent of the Scottish Parliament before it can be made by a UK Minister.

## **Scottish interests**

**24.** The reconstituted NESTA will continue to operate in Scotland and, under its new charitable remit, its revised objectives will include specific reference to activities undertaken in the voluntary sector and social enterprises.

## **Consultation**

**25.** A public consultation on the proposal to abolish NESTA as a public body and reconstitute it as a charitable body was held by BIS and closed on 29 November 2011. The results indicated strong support for the proposed policy of abolition as a NDPB and reconstitution as a charity.

## **Financial Implications**

**26.** We do not anticipate that any new costs will fall on the Scottish Government or public bodies in Scotland as a direct result of the provisions in the Order.

## **Charitable status in Scotland**

**27.** The presence of an office in Dundee requires NESTA to present itself as a charity in Scotland. The Office of Scottish Charity Regulator has confirmed that registration has been completed and a Scottish charity number (SCO42833) has been allocated.

## **Conclusion**

**28.** Accordingly the Government invites the Parliament to consent to the making of the Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012, a draft of which was laid before the UK Parliament on 19 January 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament.

Scottish Government  
February 2012



*Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.*

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DRAFT STATUTORY INSTRUMENTS

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**2012 No. XXXX**

**PUBLIC BODIES**

**Public Bodies (Abolition of the National Endowment for Science,  
Technology and the Arts) Order 2012**

*Made* \*\*\*

*Coming into force* - - - \*\*\*

The Secretary of State for Business, Innovation and Skills makes the following Order in exercise of the powers conferred by sections 1(1), 6(1) and (5) and 35(2) of the Public Bodies Act 2011<sup>(1)</sup> (“the Act”).

The Secretary of State considers that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1) of the Act; and
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The consent of the Scottish Parliament and the consent of the Northern Ireland Assembly have, so far as required, been obtained in accordance with section 9(1) and (3) of the Act.

The Secretary of State has consulted in accordance with section 10 of the Act.

The Secretary of State has consulted the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006<sup>(2)</sup>.

A draft of this Order and an explanatory document containing the information required in section 11(2) of the Act have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3). In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

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<sup>(1)</sup> 2011 c.24.  
<sup>(2)</sup> 2006 c.32.

## 2.Citation and commencement

1.—(1) This Order may be cited as the Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012.

(2) Subject to paragraph (3), this Order shall come into force on 1st April 2012 or, if the Order is made on or after 1st April 2012, 28 days after the day on which it is made.

(3) Article 3(2) shall come into force on the day after that on which the other provisions of this Order come into force.

## 2.Abolition

3. The National Endowment for Science, Technology and the Arts, which was established by section 16 of the National Lottery Act 1998<sup>(3)</sup>, is abolished.

## 4.Amendments

5.—(1) The consequential amendments and revocation which are set out in the Schedule shall have effect.

(2) In Schedule 1 to the Public Bodies Act 2011, the entry relating to the National Endowment for Science, Technology and the Arts is omitted.

Date

*Name*  
Minister of State  
Department for Business, Innovation and Skills

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<sup>(3)</sup> 1998 c.22.

## SCHEDULE

### CONSEQUENTIAL AMENDMENTS

<i>Legislation</i>	<i>Provision</i>	<i>Amendment</i>
Parliamentary Commissioner Act 1967 <sup>(4)</sup>	Schedule 2	Omit “National Endowment for Science, Technology and the Arts”.
House of Commons Disqualification Act 1975 <sup>(5)</sup>	Part III of Schedule 1	Omit the entry relating to the Chairman and other members of the National Endowment for Science, Technology and the Arts.
Northern Ireland Assembly Disqualification Act 1975 <sup>(6)</sup>	Part III of Schedule 1	Omit the entry relating to the Chairman and other members of the National Endowment for Science, Technology and the Arts.
Finance Act 1982 <sup>(7)</sup>	Section 129(1)	Omit “or to the National Endowment for Science, Technology and the Arts”.
Inheritance Tax Act 1984 <sup>(8)</sup>	Schedule 3	Omit “The National Endowment for Science, Technology and the Arts”.
Finance Act 1986 <sup>(9)</sup>	Section 90(7)	Omit paragraph (e) and the preceding “or”.
Taxation of Chargeable Gains Act 1992 <sup>(10)</sup>	Section 271(7)	After “Historic Buildings and Monuments Commission for England” insert “and”.
National Lottery etc Act 1993 <sup>(11)</sup>	Section 22	Omit “and the National Endowment for Science, Technology and the Arts”. For subsection (4) substitute - “(4) This section has effect

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<sup>(4)</sup> 1967 c.13: the new Schedule 2 was inserted in 1967 c.13 by the Parliamentary Commissioner Order 2011 (S.I. 2011/751).

<sup>(5)</sup> 1975 c.24: the relevant entry in Part III of Schedule 1 was inserted by the National Lottery Act 1998 (c.22) sections 16(2), 27(4) and Schedule 4 paragraph 10(1).

<sup>(6)</sup> 1975 c.25: the relevant entry in Part III of Schedule 1 was inserted by the National Lottery Act 1998 sections 16(2), 27(4) and Schedule 4 paragraph 10(2).

<sup>(7)</sup> 1982 c.39: the relevant words were inserted in section 129(1) by the National Lottery Act 1998 sections 24(4) and 27(4).

<sup>(8)</sup> 1984 c. 51: the relevant words were inserted in Schedule 3 by the National Lottery Act 1998 section 24(3).

<sup>(9)</sup> 1986 c.41: paragraph (e) was inserted in section 90(7) by the National Lottery Act 1998 section 24(5).

<sup>(10)</sup> 1992 c.12: the words were inserted in section 271(7) by the National Lottery Act 1998 section 24(2).

National Lottery Act 1998 <sup>(12)</sup>	Part II	subject to section 25 of the Horserace Betting and Olympic Lottery Act 2004.” Omit Part II (including Schedule 4).
Freedom of Information Act 2000 <sup>(13)</sup>	Part VI of Schedule 1	Omit the entry relating to the National Endowment for Science, Technology and the Arts.
Finance Act 2003 <sup>(14)</sup>	Section 69	Omit paragraph (b).
Income Tax (Trading and Other Income) Act 2005 <sup>(15)</sup>	Section 108(4)	Omit paragraph (e).
	Section 620(5)	In the definition of “charity” – (a) insert “and” after paragraph (a); and (b) omit paragraph (c) and the preceding “and”.
	Section 628(6)	In the definition of “charity” – (a) insert “and” after paragraph (a); and (b) omit paragraph (c) and the preceding “and”.
National Endowment for Science, Technology and the Arts (Increase of Endowment) Order 2006 <sup>(16)</sup>		Revoke.
Income Tax Act 2007 <sup>(17)</sup>	Section 430(1)	Insert “and” after paragraph (a).
	Section 446	Omit paragraph (c) and the preceding “and”. Insert “and” after paragraph (a).
Corporation Tax Act 2009 <sup>(18)</sup>	Section 105(4)	Omit paragraph (c) and the preceding “and”. Insert “and” after paragraph (a).
Corporation Tax Act 2010 <sup>(19)</sup>	Section 202	Omit paragraph (c) and the preceding “and”. Insert “or” at the end of paragraph (c).
	Section 217	Omit paragraph (e) and the preceding “or”. Insert “or” after paragraph (b).

<sup>(11)</sup> 1993 c.39: section 22(4) was amended by sections 19(7) and 27(4) of the National Lottery Act 1998 and takes effect subject to section 25 of the Horserace Betting and Olympic Lottery Act 2004 (c.25).

<sup>(12)</sup> 1998 c.22.

<sup>(13)</sup> 2000 c.36.

<sup>(14)</sup> 2003 c.14.

<sup>(15)</sup> 2005 c. 5: the relevant words in sections 620(5) and 628(6) were amended by the Income Tax Act 2007 (c.3).

<sup>(16)</sup> S.I. 2006/396.

<sup>(17)</sup> 2007 c.3.

<sup>(18)</sup> 2009 c.4.

<sup>(19)</sup> 2010 c.4.

Section 468

Omit paragraph (d) and the preceding “or”.

Insert “and” after paragraph (c).

Omit paragraph (e) and the preceding “and”.

(a) 2000 c.36.

(b) 2003 c.14.

(c) 2005 c. 5: the relevant words in sections 620(5) and 628(6) were amended by the Income Tax Act 2007 (c.3).

(d) S.I. 2006/396.

(e) 2007 c.3.

(f) 2009 c.4.

(g) 2010 c.4.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The National Endowment for Science, Technology and the Arts (“NESTA”) was established by the National Lottery Act 1998. This Order abolishes NESTA using powers contained in the Public Bodies Act 2011.

A full economic impact assessment has been produced for this Order by the Department for Business, Innovation and Skills and is annexed to the Explanatory Document for this Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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**EXPLANATORY DOCUMENT TO**

**29. THE PUBLIC BODIES (ABOLITION OF THE NATIONAL ENDOWMENT FOR SCIENCE, TECHNOLOGY AND THE ARTS) ORDER 2012**

**2012 No. [XXXX]**

**1.** This explanatory document has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Act.

**2. Purpose of the instrument**

2.1 To abolish the National Endowment for Science, Technology and the Arts (NESTA) as part of the Government's public bodies reform programme.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 As NESTA was established by legislation (Part II of the National Lottery Act 1998), legislation is required to abolish it. The Public Bodies Act 2011 confers powers on Ministers in relation to certain public bodies and offices. Section 1 of the Act enables Ministers to abolish by order public bodies which are listed in Schedule 1, including NESTA.

4.2 As required by sections 9 and 10 of the Public Bodies Act 2011, the UK Government is either seeking consent to the order or consulting the Devolved Administrations. The order will not be made until consent is obtained from the Scottish Parliament (in accordance with subsection 9(1)(a) of the Act) and the Northern Ireland Assembly (in accordance with subsection 9(3)(a) of the Act). Welsh Ministers have been consulted on the proposal in accordance with section 10(1)(e) of the Act and section 63(1) of the Government of Wales Act 2006.

4.3 This order abolishes NESTA on 1st April 2012 or, if the order is made on or after 1st April 2012, 28 days after the day on which it is made. The order makes consequential amendments and contains an amendment to Schedule 1 to the Public Bodies Act 2011.

4.4 A transfer scheme will be made by the Minister using the powers under section 23(1)(a) of the Act at the same time as the order is made. This will transfer all property, rights and liabilities of NESTA relating to the National Lottery endowment to a charitable trust, the NESTA Trust, as well as all other property, rights and liabilities and employees relating to NESTA to a charity, NESTA Operating Company, which is a company limited by guarantee and has been appointed as the sole trustee of

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

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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

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

## **7. Policy background**

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

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

7.3 A transfer scheme will be made at the same time as the order to abolish NESTA to transfer the property, rights and liabilities of NESTA relating to the National Lottery endowment to the NESTA Trust and all other property, rights and liabilities and employees to NESTA Operating Company (see 4.4). This will allow the valuable work of NESTA to continue whilst protecting the endowment. As the sole trustee of the NESTA Trust, NESTA Operating Company will manage the endowment and spend the return from the endowment in furtherance of the charitable objects of the NESTA Trust. A Protector will be appointed by Ministers to provide assurance of the propriety in the way the endowment is used. As required by section 23(4) of the Act, NESTA Operating Company, and the NESTA Trust have consented to be recipients of any property, rights and liabilities transferred under the transfer scheme.

7.4 The objects of the new charitable trust were approved by Ministers and the Charity Commission. The full objects can be found at Annex A of this document. The objects of the independent charity are the same as those of the charitable trust but they include an additional object to advance any other purpose which is recognised as exclusively charitable under the laws of England and Wales and Scotland, which will

be funded by non-endowment sources of income. There is no anticipated negative impact on NESTA's work as a result of a change in status to a charity. The responses to the consultation were in broad agreement that NESTA would benefit from this increased independence from Government.

#### Section 8 of Public Bodies Act

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

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

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

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

7.7 The Minister considers that whilst abolishing NESTA and reconstituting it as an independent charity and trust will change the status of the organisation, there will



be no anticipated negative impact on NESTA's work and therefore individuals' rights as a result of this change.

#### Interest in the Houses of Parliament

7.8 During the passage of the Public Bodies Act through Parliament, NESTA was specifically referred to on two occasions. During its passage through the House of Lords, Lord Warner tabled an amendment to remove NESTA from Schedule 1 of the Bill with Lord Dubs and Lord Evans of Temple Guiting also speaking in favour.<sup>20</sup> In particular, they asked whether NESTA's work was likely to be accepted as a charitable purpose by the Charity Commission, what the process was for appointing trustees, and whether the proposed changes to NESTA had been discussed with the NESTA Board. Following Lord Taylor of Holbeach's response to the questions raised, Lord Warner withdrew his amendment, but asked for assurance in writing that the Government's proposal to reconstitute NESTA as a charity would not damage NESTA and its future work. Lord Taylor of Holbeach wrote to Lord Warner after the debate on 21 March 2011 to provide this assurance and a copy was laid in the House Library.<sup>21</sup>

7.9 The only other reference to NESTA during the passage of the Act was at the second reading in the House of Commons. At this time, Tessa Jowell MP spoke in favour of NESTA entering the voluntary sector.<sup>22</sup>

## **8. Consultation outcome**

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

8.2 BIS received 27 responses to the consultation and there was strong support for the proposed policy option – to abolish NESTA as an NDPB and reconstitute it as an independent charity and charitable trust. The majority of responses supported Government's proposal that NESTA does not need to be part of the public sector, and that it will benefit from having more independence from Government. 80% of the responses to the consultation concurred with the preferred policy option as the most suitable choice for NESTA, with 85% agreeing that Government had explored all the options relevant to NESTA.

8.3 In addition, over 90% of responses agreed that NESTA would benefit from increased independence from Government. Responses highlighted that the change in status would improve NESTA's abilities to support innovation in the UK - allowing

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<sup>20</sup> Hansard HL vol 725 cols 802-806 (28 February 2011)

<sup>21</sup> <http://deposits.parliament.uk/>

<sup>22</sup> Hansard HC vol 531 col 223 (12 July 2011)

NESTA to be more effective and giving it “more freedom to be creative, innovative and at the forefront of the development of new ideas that can help drive positive economic growth”.

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

8.5 The Government’s formal response to the consultation has been published on the BIS website at: [www.bis.gov.uk/consultations/](http://www.bis.gov.uk/consultations/)

## **9. Guidance**

9.1 Not applicable.

## **10. Impact**

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

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

10.3 An Impact Assessment will be published alongside this Explanatory Document at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

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

## **13. Contact**

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

## **Annex A - Objects of the NESTA Trust**

“For the public benefit -

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

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

2. To advance:

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

The voluntary sector means charities and voluntary organisations.

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

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

**SCHEME TO TRANSFER THE PROPERTY, RIGHTS AND LIABILITIES OF  
NESTA 2012**

The Secretary of State makes the following Transfer Scheme in exercise of the powers conferred on him by sub-section 23(1)(a) of the Public Bodies Act 2011 (c.24) (the “2011 Act”) in connection with the Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (the “2012 Order”) which is made under section 1 of the Act and abolishes the National Endowment for Science, Technology and the Arts.

The consent of the two charities, NESTA Operating Company and the NESTA Trust has been obtained in accordance with section 23(4) of the Act.

Upon being made, a copy of the Transfer Scheme will be laid before Parliament in accordance with section 24(1) of the Act.

**Interpretation**

1. In this Scheme -

“Charity” means NESTA Operating Company, a company limited by guarantee incorporated in England and Wales on 15 July 2011 with number 7706036 and registered in England and Wales as a charity with number 1144091 and in Scotland as a charity with number SC042833;

“Employees” means the persons employed by NESTA on the Transfer Date;

“Endowment” means the financial assets described in Schedule 1;

“Intellectual Property Rights” means patents, copyright and related rights, trade marks, trade names and domain names, rights in goodwill, rights in designs, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Liabilities” includes contingent liabilities;

“NESTA” means the National Endowment for Science, Technology and the Arts which was established by the National Lottery Act 1998;

“2012 Order” means the Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012;

“Property” means the property described in Schedule 2;

“Transfer Date” means the date on which this Scheme comes into force;

“Trust” means the trust created by the Trust Deed, currently called the “NESTA Trust” and registered as a charity with number 1144683; and

“Trust Deed” means the trust deed dated 22 September 2011 between NESTA and the Charity;

2. This Transfer Scheme is made on [ ] 2012.

3. This Transfer Scheme may be cited as the Scheme to Transfer the Property, Rights and Liabilities of NESTA 2012.

4. This Transfer Scheme shall come into force on 1<sup>st</sup> April 2012 or, if the 2012 Order comes into force on or after 1<sup>st</sup> April 2012, 28 days after the date on which the 2012 Order is made.

### **Transfer to the Trust**

5. (1) All the property, rights and liabilities of NESTA in connection with or arising from the Endowment on the Transfer Date are transferred to and vest in the Trust.

(2) The property, rights and liabilities transferred to the Trust under this Scheme include:

(a) all rights and liabilities of NESTA arising from or in connection with any grant, shareholder, loan, partnership, licence or other agreement (whether written or not), articles of association or other instrument relating to the Endowment;

(b) any cash held on NESTA’s behalf in accounts associated with the Endowment;

(c) property acquired and rights and liabilities arising in the period after the making of this Scheme and before the Transfer Date;

(d) rights and liabilities arising subsequently in respect of matters occurring in the period referred to in (c);

(e) rights and liabilities under an enactment; and

(f) all the records relating to the Endowment.

(3) References to NESTA in any agreement (whether written or not), instrument or other document in connection with or relating to the property, rights or liabilities transferred to the Trust are to be treated as references to the Trust.

(4) Any right in relation to the Endowment that was, immediately before the Transfer Date enforceable by or against NESTA is, on or after that date, enforceable by or against the Trust.

(5) Anything done by or in relation to NESTA for the purposes of, or otherwise in connection with, the Endowment is to have effect as if done in relation to the Trust.

(6) Anything which is in the process of being done by or in relation to NESTA in connection with the Endowment on the Transfer Date is to have effect as if done by or in relation to, and may be continued by or in relation to, the Trust.

### **Transfer to the Charity**

6. (1) All the property, rights and liabilities of NESTA on the Transfer Date

(a) excluding all the property, rights and liabilities transferred to the Trust under this Scheme; but

(b) including without limitation:

(i) the Property; and

(ii) all rights and liabilities of NESTA arising from or in connection with any grant, shareholder, loan, partnership, licence or other agreement (whether written or not), articles of association, instrument or other document;

are transferred to and vest in the Charity.

(2) The property, rights and liabilities transferred to the Charity include:

(a) property acquired and rights and liabilities arising in the period after the making of this Scheme and before the Transfer Date;

(b) rights and liabilities arising subsequently in respect of matters occurring in the period referred to in (a);

(c) property situated anywhere in the United Kingdom or elsewhere and rights and liabilities under the law of any part of the United Kingdom or of any place outside the United Kingdom; and

(d) rights and liabilities under an enactment or rule of law.

(3) All the records of NESTA, excluding those which relate to the Endowment but including those which relate to the Employees, are transferred to the Charity.

(4) References to NESTA in an agreement (whether written or not), instrument or other document in respect of any property, rights or liabilities transferred to the Charity are to be treated as references to the Charity.

(5) Any right in relation to the property, rights and liabilities transferred to the Charity under this Scheme that was, immediately before the Transfer Date enforceable by or against NESTA is, on or after that date, enforceable by or against the Charity.

(6) Anything done by or in relation to NESTA for the purposes of, or otherwise in connection with, property, rights and liabilities transferred to the Charity under this Scheme shall have effect as if done in relation to the Charity.

(7) Anything which is in the process of being done by or in relation to NESTA in connection with the property, rights and liabilities transferred to the Charity under this Scheme on the Transfer Date is to have effect as if done by or in relation to, and may be continued by or in relation to, the Charity.

**Employees**

7. The Employees shall be employees of the Charity from the Transfer Date.

**Supplementary provisions**

8. No right to terminate or vary an agreement (whether written or not), no arrangement or instrument is to operate or become exercisable, and no provision of or right, restriction or limitation arising under any agreement (whether written or not), arrangement or instrument, articles of association, enactment or rule of law, including without limitation any pre-emption, drag or tag, option or other right arising under any articles of association, shareholders or partnership agreement, is to operate or become exercisable or be contravened, by reason of any transfer under or in operation of this Scheme.

9. The transfers provided for by this Scheme are to be made:

- (a) irrespective of any requirement for notice or consent that would otherwise apply or any restriction, condition or provision arising under any agreement (whether written or not), arrangement, instrument, articles of association, enactment, rule of law or otherwise which would render such transfer void or of no effect; and
- (b) whether or not they would otherwise be capable of being transferred.

Signed by [ ] on [ ] day of [ ]

.....

Authorised by the Secretary of State to sign on his behalf 2012



## SCHEDULE 1 – ENDOWMENT

### 1. Cash and UK Government Gilts held by the Commissioners for the Reduction of the National Debt

All cash held and UK Government Gilts managed for NESTA by the Commissioners for the Reduction of the National Debt, part of the UK Debt Management Office, (account UK DEBT MANAGEMENT OFFICE’s NESE/NESTA ENDOW INVEST Fund).

### 2. Other Investments

All NESTA’s investments in listed equities, property funds and bonds managed by institutional investors and any cash held on behalf of NESTA in accounts associated with such investments, including without limitation:

Name of Investment	Manager
Unit Trust Scheme SISF GLOBAL EQUITY ALPHA GBP I ACC	Schroders Investment Management Limited (cash held by JP Morgan)
BlackRock UK Property Fund	BlackRock (Channel Islands) Limited
UBS Triton Property Unit Trust	USB Global Asset Management (UK) Limited
Edinburgh Partners Global Opportunities Fund Share Class I (GBP Denominated)	Edinburgh Partners Opportunities Fund plc c/o NTSSIL - (Northern Trust Securities Services (Ireland) Limited)
Global Equity Fund (Currency Unhedged)	Longview Partners Investments (registered in Luxemburg with trade number B 112 878)
Lexington Capital Partners VII (Offshore), L.P. (part of the Lexington Capital Partners VII, L.P.)	Lexington Partners General Partner Holdings VII LLC (a limited liability company incorporated in the State of Delaware, US)

### 3. Investments in Seed & Early Stage Companies

All NESTA’s investments in seed and early-stage technology companies, including without limitation in the following companies:

Company Name	Registered Number
AQUAPHARM BIO-DISCOVERY LTD	SC206116
ASHE MORRIS LTD	4132405
BASEKIT PLATFORM LIMITED	06669087
CAMFRIDGE LIMITED	4750292
CELLCENTRIC LIMITED	4948632

CELLNOVO LIMITED	4349221
COBALT LIGHT SYSTEMS LIMITED	5856979
CYTOX LIMITED	5149130
DESIGN LED PRODUCTS LIMITED	SC258229
DIALOG DEVICES LIMITED	4545195
EKF DIAGNOSTICS HOLDINGS PLC	4347937
EOSEMI LIMITED	5628221
FEATURESPACE LIMITED	5640420
GNODAL LTD	6147615
HAEMOSTATIX LIMITED	4698400
LEIN APPLIED DIAGNOSTICS LIMITED	4750688
LIGHT BLUE OPTICS LIMITED	5018807
MECIRIA LIMITED	5324327
MICRIMA LIMITED	5616345
MMIC SOLUTIONS LIMITED	SC287736
ODONTIS LIMITED	4226185
ORTHOGEN LIMITED	4059454
OSSPRAY LIMITED	5033642
PLASMA CLEAN LTD	4949576
PLAXICA LIMITED	6660089
PROBE SCIENTIFIC LIMITED	3598449
PROKYMA TECHNOLOGIES LIMITED	5663740
PROVISION COMMUNICATION TECHNOLOGIES LIMITED	4240213
RADIO PHYSICS SOLUTIONS LTD	6768053
SIRIGEN GROUP LIMITED	6420732
SIX TO START LIMITED	6289098
SKIMBIT LTD	6347796

SMART SURGICAL APPLIANCES LIMITED	5900659
ST ANDREWS FUEL CELLS LIMITED	SC279417
SURFACE GENERATION LIMITED	4379384
SYMETRICA LIMITED	4533319
ULTRA GLOBAL LIMITED	7742807
VERYAN HOLDINGS LIMITED	6425482

#### 4. Investments in Funds

All NESTA's investments in the following funds:

<b>Fund</b>	<b>Registered number</b>
THE UMIP PREMIER FUND LIMITED PARTNERSHIP	LP012844
IP VENTURE FUND	LP011416
PENTECH FUND II LIMITED PARTNERSHIP	SL006306
SEEDCAMP INVESTMENTS LLP	OC331184
SEEDCAMP INVESTMENTS II LLP	OC355777
GP BULLHOUND SIDECAR LIMITED	99996 (Registered in Jersey)

## SCHEDULE 2 - PROPERTY

1. Lease dated 23 August 2006 of the first and second floors of 1 Plough Place, Fetter Lane, London EC4A 1DE for a term of 20 years less three days from 24<sup>th</sup> June 2001 granted by the New Opportunities Fund to the National Endowment for Science, Technology and the Arts.
2. Occupation agreement for Lab 8 within the Dundee University Incubator dated 27<sup>th</sup> April 2009 between the University of Dundee and the National Endowment for Science, Technology and the Arts.
3. NESTA's interest in:
  - a. NESTA Partners Limited, registered in England and Wales with company number 06618114; and
  - b. NESTA Investment Management LLP, a limited liability partnership registered in England and Wales with number OC338038.

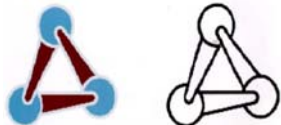
4. NESTA's interest in the following funds:

<b>Fund</b>	<b>Registered number</b>
BIG ISSUE INVEST SOCIAL ENTERPRISE INVESTMENT FUND L.P.	LP013721
SOCIAL IMPACT CO-INVESTMENT FUND L.P.	LP014659

5. NESTA's interest in the following companies:

<b>Company Name</b>	<b>Registered number</b>
ABUNDANCE NRG LIMITED	7049166
CLEARLY SO LIMITED	6686965
RESONANCE LIMITED	4418625

6. NESTA's Intellectual Property Rights, including without limitation the following trade marks:

<b>Number</b>	<b>Mark</b>	<b>Class</b>	<b>Registration date</b>	<b>Type</b>
2201417	NESTA	9, 16, 25, 35, 36, 41	16 June 2000	UK
2203470		9, 16, 25, 35, 36, 41	14 July 2000	UK
3150455	Children's Palace	9, 16, 28, 36, 41, 43	7 June 2004	Community Trade Mark