

**REGULATORY IMPACT ASSESSMENT:  
TRANSFER TO SNH OF FUNCTIONS OF THE ADVISORY COMMITTEE ON  
SITES OF SPECIAL SCIENTIFIC INTEREST,  
PART ONE OF THE PUBLIC SERVICES REFORM (SCOTLAND) BILL**

**INTRODUCTION**

1. This Regulatory Impact Assessment (RIA) provides information on the impact of the dissolution of the Advisory Committee on Sites of Special Scientific Interest (ACSSSI) and the transfer of its functions to Scottish Natural Heritage (SNH).

**TITLE OF THE PROPOSAL**

2. Public Services Reform (Scotland) Bill Part 1.

**PURPOSE AND INTENDED EFFECT OF REGULATION**

**Objectives**

3. The proposed legislation will provide for the dissolution of ACSSSI and require SNH to establish a committee to take on ACSSSI's functions. This will rationalise the scrutiny and decision making processes directly linked to the notification (or review) of Sites of Special Scientific Interest (SSSI), by removing the potential duplication of functions between ACSSSI and revised SNH Board structures.

4. Dissolution of ACSSSI and effective transfer of its functions to SNH will occur upon enactment of the Public Services Reform (Scotland) Bill which is expected to occur in June 2010, by which time SNH will be expected to have implemented procedures, involving the new committee, to assist in administering those functions.

**Background**

5. ACSSSI is an advisory NDPB established in 1992, under the Natural Heritage (Scotland) Act 1991 to advise SNH in cases where there are sustained objections or representations, by owners or occupiers of land, to the notification (or review) of Sites of Special Scientific Interest ("SSSI"). Its role is to comment on the scientific justification for the designation. There is no equivalent body for England or Wales.

6. ACSSSI is a very small body. In recent years it has on average, no more than twice a year. ACSSSI currently comprises four members including a convenor. Members are appointed by Scottish Ministers under the provisions included in the Nature Conservation (Scotland) Act 2004 in accordance with the Code of Practice for Ministerial Appointments to Public Bodies. The convenor and members receive modest remuneration and expenses. ACSSSI has no staff, but there is a contract with a third party for secretarial support, and the Advisory Committee has procured specialist advice when it required additional scientific input. ACSSSI's annual running costs depend on the number of cases referred to it and have varied between £1,000 and £60,000. The costs are met directly from SNH's Grant in Aid.

## **Rationale for government intervention**

7. In September 2007 Professor Crerar published his report (*the Crerar Review*) on 'The Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland.' This resulted in cross party support for improving the way in which scrutiny is organised and carried out. The report highlighted the need to simplify scrutiny processes, which is particularly relevant to the duplication of functions that now exists between ACSSSI and the revised SNH Board structures.

8. ACSSSI is somewhat anomalous in being appointed by Ministers to advise SNH which is itself the principal advisor to Ministers on the natural heritage. The SNH Board is not bound to follow ACSSSI's advice and has often taken the decision not to do so. The number of cases referred to the Advisory Committee has, in recent years, declined very significantly and this trend is expected to continue well beyond the proposed dissolution date of June 2010. This is in contrast to the disproportionate effort that ACSSSI needs to devote to meeting corporate governance requirements and dealing with administrative issues. The emphasis of nature conservation site designation has also shifted and now focuses primarily on assessment of potential "Natura" sites which Member States of the EU are obliged to identify and classify under the EU Birds and Habitats Directives. Domestic SSSI designations therefore no longer have primacy. More significantly, there have been changes to SNH's Board structure such that potential now exists within the organisation to provide adequate access to the designation process for all interested parties and so effectively take on ACSSSI's functions.

9. In these circumstances, there is no justification for the continued existence of a free-standing body to assess objections to proposed SSSI notifications. The Bill provisions include the legislative changes required for the dissolution of ACSSSI and for SNH to take on the functions of that body.

## **CONSULTATION**

### **Within government**

10. ACSSSI was consulted prior to and following the First Minister's statement in January 2008 announcing the Scottish Government's intention to reduce the number of public bodies in Scotland. SNH participated in official level discussions with ACSSSI and Scottish Government in April 2008 that focussed on the key elements of the Advisory Committee's functions that should be taken forward by SNH's new procedures. SNH is consulting Scottish Government on the options it is considering for administering those functions.

### **Public consultation**

11. There has been no formal public consultation on this proposal. However, the First Minister's statement on 30 January 2008 clearly set out the Scottish Government's intention to dissolve ACSSSI as part of a wider move to simplify and

improve the landscape of Scottish public bodies. Whilst the statement received significant coverage in the media, there have been no subsequent representations from the public or interested parties about the proposal, except from ACSSSI itself to state its view that an independent review mechanism is important in assessing challenges to SSSI notifications.

## **OPTIONS**

### **Option 1 (Do nothing)**

12. Maintaining the status quo would enable ACSSSI to continue to fulfil its advisory functions, and to operate independently and provide independent, scientific advice to SNH. However, this would be difficult to defend in the light of the circumstances described in paragraphs 7 to 9.

13. Consideration was given to the possibility of redefining ACSSSI's role and remit through Ministerial direction to the body to streamline its future operation. This could, for example, allow ACSSSI to concentrate its advice entirely on SNH's application of guidance rather than on individual cases. However, apart from the costs that would continue to be incurred in administering the sponsorship functions and the appointments process, this would still represent a duplication of functions between ACSSSI and the revised SNH Board structures, which now recognise the need for all interested parties to have access to the designation process as well as for scientific scrutiny of guidance.

### **Option 2 – dissolution of ACSSSI and requirement of SNH to establish a specific committee to fulfil the Advisory Committee's functions**

14. This option would effectively meet the objective to rationalise the scrutiny and decision making processes directly relating to the notification of SSSI in terms of removing the potential for duplication of functions between ACSSSI and the revised SNH Board structures. This option would also address some of the anomalies stemming from ACSSSI's continued existence as highlighted in paragraphs 7 to 9.

15. In response to a strategic review of SNH undertaken in 2005, SNH implemented changes to its Board structure in 2007 such that it now includes a SSSI Committee and a SSSI Representations Group. The former has delegated responsibilities for SSSI notification and confirmation. The latter forms part of the procedures for the notification and confirmation of SSSI which is convened when there are unresolved scientific objections to hear objectors in person. SNH therefore already has in place a sound basis to meet the Bill's requirements to establish a specific committee for the purpose of considering representations made to SNH by any person with an interest in land.

16. SNH is considering options for introducing a procedure to support the work of the two specific committees in order to administer the functions that would be transferred from ACSSSI, and to preserve a measure of the transparent and independent approach operated by that body. This would accommodate the concerns raised by the Advisory Committee. SNH will be expected to clear its plans for a procedure with Ministers during 2009-10, and the organisation should be in a

position to implement it by no later than the enactment date of the Bill anticipated for June 2010.

## **COSTS AND BENEFITS**

### **Sectors and groups affected**

17. ACSSSI's role is to advise SNH in cases where there are objections or representations by landowners, occupiers and others with an interest in land affected by to the notification (or review) of a SSSI. SNH is therefore affected by the dissolution of ACSSSI, and by the requirement to establish a committee and introduce procedures to take over ACSSSI's functions. Landowners, occupiers and other parties with interests in land would also be potentially affected.

### **Costs**

18. Changes to SNH's Board structure and the way it organises its procedures already provide the potential basis for access to the SSSI designation process for all interested parties. It is anticipated that costs incurred on meeting the provisions of the Bill to establish a committee to administer ACSSSI's functions will therefore be minimal.

19. SNH is considering a number of options for a procedure to support the new committee in managing ACSSSI's current functions. These options are being developed. It is not straightforward to determine what the likely costs will be at this stage. However we would not expect generated costs on SNH to exceed £10,000 per annum. This figure is based on SNH handling one SSSI notification per annum with input from contracted specialist advisers which is one of the options under consideration. The level of costs would therefore be dependent on contract costs and the complexity of future cases.

20. A cost of up to £5,000 in the financial year 2009-10 is estimated for preparatory work by SNH on developing a procedure for dealing with representations on the notification of SSSIs. This will principally be costs incurred in staff time.

21. It is not expected that there will be any costs on businesses, local authorities, individuals or other bodies as a result of the transfer.

### **Benefits**

22. The savings expected to be accrued from winding up ACSSSI are not expected to be significant because of the reduction in the number of sites that are likely to require SSSI notification in future. The estimated costs (based on expenditure in 2007-08) from which future savings will be derived are estimated to be £7,000 or less.

23. There are opportunity costs that will also be saved in relation to the staff time which is spent on sponsorship functions, in particular appointments processes. The saving generated from not needing to run an appointments round for new Committee

members every 3 years is estimated at £40,000 (equating to around £13, 000 per annum).

#### **SMALL/MICRO FIRMS IMPACT TEST**

24. It is not expected that the provisions in this proposal will have an impact on small or micro firms as it is proposed that the equivalent levels of access to the SSSI designation process will be provided to all parties with an interest in land holdings as the current process offers through ACSSSI.

#### **LEGAL AID IMPACT TEST**

25. It is not expected that this proposal will result in any increase in the use of legal processes or create new rights or responsibilities, or otherwise place any additional burden on the Legal Aid Fund.

#### **TEST RUN OF BUSINESS FORMS**

26. Currently, there is no intention to introduce any new forms as a direct result of this proposal. SNH would be expected to test any new forms it created as part of the introduction of procedures for managing the functions transferred from ACSSSI.

#### **COMPETITION ASSESSMENT**

27. It is unlikely that the proposals will have an impact on competition.

#### **ENFORCEMENT, SANCTIONS AND MONITORING**

28. There will be no requirement to enforce or monitor the dissolution of ACSSSI. Scottish Government will monitor SNH's performance informally with respect to how effectively it takes on and administers the functions transferred from ACSSSI. This may be achieved through the scrutiny of reports that SNH will be expected to publish on the assessment of representations or objections to SSSI notifications.

29. In addition, all interested parties will continue to have recourse to the Scottish Public Services Ombudsman if they are dissatisfied with SNH's operation of the SSSI system, as they would in relation to all other aspects of the organisation's operations.

#### **IMPLEMENTATION AND DELIVERY PLAN**

30. The dissolution of ACSSSI will take place immediately upon enactment of the Public Services Reform (Scotland) Bill in June 2010 by which time SNH will be in a position to implement its procedure for managing the functions to be transferred from ACSSSI. We would expect SNH to develop and deliver this procedure, selected from a number of options currently under consideration, during the course of 2009-10, and for Ministers to endorse final plans for the procedure before it is implemented.

## POST IMPLEMENTATION REVIEW

31. In addition to the mechanism for monitoring performance outlined in paragraph 29, it is expected that SNH will wish to undertake its own review, consulting stakeholders accordingly, on the effectiveness of arrangements it introduces for administering the functions to be transferred from ACSSSI.

## SUMMARY AND RECOMMENDATIONS

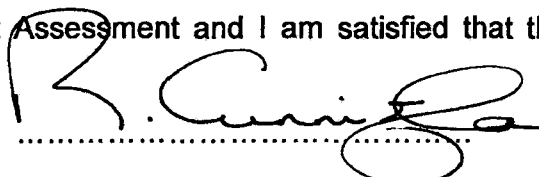
32. It is evident that there is no strong justification for ACSSSI to continue in its role: there is a decreasing demand for it to fulfil its advisory functions, with disproportionate effort devoted to meeting corporate governance requirements; and, the revised Board structures now provide a sound basis for SNH to include the Advisory Committee's functions within its operation.

33. **Option 2 set out in this RIA is therefore recommended.** This would deliver the principal benefit of rationalising the scrutiny and decision making processes associated with the notification (or review) of SSSI and provide modest savings to the Scottish administration.

## DECLARATION AND PUBLICATION

34. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the Responsible Minister



Date

20 May 2009

## Contact

Any queries about this RIA should be addressed to:

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