Crown Copyright Delegation of Authority

THIS DELEGATION is made on the 5th day of February 2016
September, 2016—

BETWEEN:

1. THE QUEENS PRINTER FOR SCOTLAND of The National Archives, Kew, Richmond, Surrey, TW9 4DU (the Controller);

and

2. Historic Environment Scotland (HES), John Sinclair House, 16 Bernard Terrace, Edinburgh, EH8 9NX

1. PURPOSE

In this document We delegate to You the authority for licensing the Crown-owned copyrights and database rights in Material that You have produced or commissioned. It is Government policy to encourage the re-use of information and this Delegation of Authority is made in order to facilitate re-use.

2. AUTHORITY

2.1 Copyright and Database Rights may become the property of the Crown in two ways:


b. By assignment to the Crown.

2.1 In accordance with copyright and database rights legislation, Her Majesty the Queen is the first owner of all copyrights and database rights held by the Crown. The Controller of Her Majesty’s Stationery Office, who is also Queen’s Printer of Acts of Parliament, Queen’s Printer for Scotland and Government Printer for Northern Ireland, has been appointed by Her Majesty by Letters Patent to hold and administer copyrights and database rights belonging to the Crown on Her behalf.

3.
DEFINITIONS

The following terms have the following meanings:

Delegation: This document which delegates the legal authority to use and re-use the Material.

IFTS: Our Information Fair Trader Scheme (IFTS) which sets and assesses standards for public sector bodies licensing the re-use of public sector information.

Licensees: Individuals or organisations You license to use and re-use the Material.

Material: All Crown copyright and Crown-owned copyrights and database rights in the works detailed at Annex A.

Our, Us, We: These terms apply to the Controller of Her Majesty’s Stationery Office, as Queen’s Printer, Queen’s Printer for Scotland and Government Printer for Northern Ireland.


You, Your: Historic Environment Scotland (HES), John Sinclair House, 16 Bernard Terrace, Edinburgh, EH8 9NX

4. DELEGATION

4.1 Under the terms of this Delegation You are permitted to grant to Licensees including sub-licensees, the non-exclusive right to re-use the Material. The authority to grant exclusive rights is subject to Our prior consent in accordance with paragraph 5.2.

4.2 In accordance with Government policy, You are expected to authorise Licensees to re-use the Material as widely as possible.

4.3 Any previous delegation granted to You in respect of the Material is now withdrawn and replaced by this Delegation. This Delegation shall not affect the terms and conditions of any existing licences which were granted by You under any previous delegation. The terms and conditions of such licences shall continue for the period of the licence or until You renew or terminate the licence. You have a responsibility to review Your licences regularly and to ensure that the terms and conditions of Your licences comply with the responsibilities placed on You by this Delegation and are consistent with current Government policy.
YOUR RESPONSIBILITIES

5.1 You shall comply with good practice by:

- including appropriate attribution statements in all Your published Material and, where appropriate, details of how the Material may be re-used and how to apply for a licence if required. We have issued guidance on this subject which can be found on Our website at:
  nationalarchives.gov.uk/information-management/policies/copyright-licensing-arrangements.htm;
- providing details on Your website of how to apply for a licence;
- publishing standard licence terms and conditions for the re-use of the Material on Your website;
- publishing standard charges for the re-use of the Material, where appropriate, on Your website;
- maintaining an up to date list of the Material that You have available for re-use;
- responding to applications to re-use within 20 working days in accordance with the Regulations. In most cases responding means making an offer of a licence. The 20 working days may be extended in cases where the application raises complex issues. In such cases the applicant must be notified in writing within 20 days of the date of the application setting out the reasons for the delay and providing an estimated date by which You expect to respond to the request;
- specifying that licences are issued on behalf of the Controller of Her Majesty's Stationery Office.
- maintaining full and accurate records of licences, licensing terms, transactions and correspondence, which must be made available to Our Standards Department on request in accordance with the IFTS (see paragraph 5);
- requiring Licensees to identify the source of the Material they are re-using and its copyright or database right status and to give a clear attribution statement. The following attribution statement will meet most circumstances:

  "The (insert details of the materials being) used is Crown copyright [and/or Crown database right] and is reproduced with the permission of Historic Environment Scotland (HES)."

Where space is restricted:

"© Crown copyright. Historic Environment Scotland (HES)"
"Crown database rights. Historic Environment Scotland (HES)"

- notifying Us in advance of any significant new policy developments or public statements of policy which are associated with or have an impact upon Our responsibilities for Crown owned copyrights and database rights, so that We have the opportunity to comment and (where We have the policy lead) to amend, so that We may prepare for any public response;
• with reference to paragraph 5.2, publishing a list of any exclusive or sole licences that have been issued by You and reviewing the need for exclusivity in accordance with the Regulations;

• notifying Us of any potential infringements. No legal action should be initiated without Our approval;

• reviewing all existing licences on a regular basis;

• having a complaints procedure. Details of the complaints procedure must be published on Your website.

5.2 You will ensure that you do not:

• grant exclusive or sole licences without obtaining specific prior consent from Us. This will be given only in exceptional circumstances;

• assign or transfer existing Crown owned copyrights or database rights. Any assignments or transfers of existing Crown owned copyrights or database rights may be made only by Us. Such assignments and transfers are made only in exceptional circumstances. Prospective assignments of Crown owned copyrights and database rights may be made in the context of contracts where it is in the public interest for copyright to belong to the other party; such assignments will be subject to Our approval;

• operate any form of anti-competitive licensing with the aim of protecting Your own products and services;

• transfer this Delegation to any other person or organisation.

6. OUR RESPONSIBILITIES

6.1 We will provide You with guidance, advice and support to enable You to meet Your responsibilities under this Delegation and to comply with the Regulations and the IFTS.

Further information can be found at: nationalarchives.gov.uk/information-management/ifts.htm

7. CHARGING POLICY

7.1 All fees and charges will be in accordance with any applicable fees orders and with the current charging policy guidance set by HM Treasury.

7.2 It is Government policy that, wherever possible, public sector information should be made available for re-use at zero or marginal cost. All bodies with delegated authority for licensing, other than trading funds, must justify any exceptions to this policy and may be required to apply at intervals for approval for those exceptions to continue. If the result of such a review is that all the Material is to be made available at zero or marginal cost We shall consult with You about the continued need for this Delegation.
7.3 Information about exceptions to marginal cost pricing is available at: nationalarchives.gov.uk/information-management/ifts/cost-pricing.htm

7.4 You should ensure that information which may be re-used at zero or marginal cost is accompanied by a statement to the effect that it may be re-used in accordance with a licence under the UK Government Licensing Framework.

Information about the UK Government Licensing Framework and its licences is available at: nationalarchives.gov.uk/information-management/uk-gov-licensing-framework.htm

8. THE INFORMATION FAIR TRADER SCHEME (IFTS)

8.1 It is a condition of this Delegation that You become accredited to the IFTS and comply with the IFTS principles.

For information on the IFTS see: nationalarchives.gov.uk/documents/ifts-complaints-procedure.pdf

8.2 Our Standards Department is responsible for monitoring licensing activities through the IFTS. This will require the completion of an IFTS assessment which will demonstrate to Us that the Material is being licensed openly, fairly and transparently, and will require You to submit to initial and periodic inspections by Our Standards Department.

8.3 The Standards Department also investigates complaints it receives relating to licensing and information trading activities. The IFTS Complaints Policy can be found at: nationalarchives.gov.uk/documents/ifts-complaints-procedure.pdf

8.4 When a complaint has been made to Us You will be required to send Us all the paperwork that relates to the complaint and Your responses.

9. INFRINGEMENTS

9.1 Under this Delegation You are authorised and expected to take the lead on all infringements of Crown owned copyrights and database rights in the Material. You also have the right to appoint Your own legal adviser. You will advise Us when an infringement is identified and whether You intend to commence litigation so that arrangements can be made to join the Us to the action as copyright holder. Each infringement case shall be considered individually in order to establish in whose name action will be initiated. Our legal advisors will be the final arbiter in such matters. We shall bear the costs of obtaining any legal advice that We require, but all other costs of the action will be Your responsibility unless We agree otherwise. You will keep Us informed of the progress of litigation. Regular, simplified progress reports on litigation and other significant legal issues will be arranged to avoid unnecessary bureaucracy and delay.
10. REVIEW AND ENDING OF THE DELEGATION

10.1 The Delegation will be reviewed formally every two years from the date of this Delegation, and a decision will be taken on its further continuation.

10.2 We will advise You in writing if it becomes necessary to amend or revise this Delegation to reflect changes in government information policy. Other changes may be made by mutual agreement.

10.3 You will let Us know in writing if Your status is going to change or of any other factors that will affect the operation of this Delegation.

10.4 We reserve the right to revoke or amend this Delegation should there be a substantive change to the status and/or responsibility of Your organisation.

10.5 We may terminate this Delegation if You are not meeting Your responsibilities or if We are unable to accredit You to the IFTS. In such circumstances We will write to You specifying Our concerns and requesting Your written comments so that we can agree corrective action.

10.6 This Delegation will terminate if You cease to be authorised to operate exceptions to marginal cost pricing (see paragraph 7). Any licence properly issued prior to such termination will remain in force until it expires or is terminated by Us.

11. STATUTORY REFERENCES

11.1 References to any statute or statutory provision in this Assignment shall be taken to include any replacement or amending legislation.

Signed by: ............................ Date: 5/2/16

Name in capital letters: CAROL TULLO

The Queen’s Printer for Scotland

Signed by:............................ Date: 27/1/2016

Name in capital letters: JANE RYDER

Job Title: CHAIR

for and on behalf of: Historic Environment Scotland (HES).

Redacted under FOI exemption 40(2).
ANNEX A

The Crown copyright Material and/or Database Right covered by this Delegation

Historic Environment Scotland Collections and former Royal Commission for Ancient and Historic Monuments Scotland (RCAHMS) and Historic Scotland Collections. Collections which are Crown copyright or where the copyright has been assigned to the Crown. This includes photographs, manuscripts, documents and drawings originated by or for HES including those of RCAHMS and Historic Scotland.

Historic Environment Scotland (HES) databases and former Royal Commission for Ancient and Historic Monuments Scotland (RCAHMS) and Historic Scotland databases, including CANMORE (Computer Application for National Monuments Records Enquiries).

Works created in the course of undertaking functions delegated to Historic Environment Scotland by Scottish Ministers under Sections 3 and 8 of the Historic Environment Scotland Act 2014.