

*These notes relate to the Commons Amendments to the Public Bodies Bill [HL]  
as brought from the House of Commons on 26th October 2011 [HL Bill 107]*

## **PUBLIC BODIES BILL [HL]**

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### **EXPLANATORY NOTES ON COMMONS AMENDMENTS**

#### **INTRODUCTION**

1. These explanatory notes relate to the Commons Amendments to the Public Bodies Bill [HL], as brought from the House of Commons on 26th October 2011. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and the Commons Amendments and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Commons Amendments themselves, refer to Bill 188, the Bill as first printed for the Commons.
3. These notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons Amendments.
4. All the Commons Amendments were in the name of the Minister, except amendments 55 and 57 which reflect acceptance by the Government of a non-Government amendment.

#### **COMMENTARY ON COMMONS AMENDMENTS**

##### ***Commons Amendments 1, 30, 31 and 35***

5. Commons Amendment 1 would add a co-operative society, a community benefit society, and a charitable incorporated organisation to the list of “eligible persons” in clause 1(3). Eligible persons are the persons to whom functions may be transferred when a body is abolished under clause 1. Functions may also be transferred to an eligible person under clauses 2(3) and 5(1)(b); and property may be transferred to an eligible person under clause 24(2)(b). This amendment responds to the commitment made by the Minister for Civil Society at Committee in the House of Commons to consider the inclusion of such bodies.
6. Commons Amendments 30, 31 and 35 would add definitions of “co-operative society” and “community benefit society” to clause 29 and make transitional provision until the coming into force of the Co-operative and Community Benefit Societies and Credit Unions Act 2010.

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***Commons Amendments 2 and 3***

7. Commons Amendments 2 and 3 would provide that the consent of the Treasury is required to make an order under clause 4 (power to modify funding arrangements) or provision by virtue of clause 6(2)(b) or (3) (consequential etc power to modify funding arrangements).

***Commons Amendment 4***

8. Commons Amendment 4 would have the effect of providing that, where the consent of Welsh Ministers is required under clause 9, a Minister is not required to consult with Welsh Ministers under clause 10. This would ensure consistency with the provision in relation to Scotland and Northern Ireland.

***Commons Amendments 5 and 14***

9. Commons Amendment 5 would provide that the requirement under clause 10(1)(a) on a Minister to consult a body or office affected by proposals to make an order would not apply to a body with no members or an office which is vacant. Commons Amendment 14 would make equivalent provision in relation to the requirement for Welsh Ministers to consult under clause 19(1)(a). This is intended to deal with situations where the public body or office is defunct or moribund and where in consequence there is no-one to consult.

***Commons Amendments 6, 17 and 36***

10. Commons Amendments 6, 17 and 36 make drafting changes moving provision in relation to the calculation of periods referred to in clauses 11 (procedure) and clause 20 (procedure for orders by Welsh Ministers etc) from clause 29 (interpretation) to those clauses.

***Commons Amendments 7 and 12***

11. Commons Amendments 7 and 12 make drafting changes to clauses 13 and 18 so as to use the new defined terms introduced by amendments 32 and 34 (described below).

***Commons Amendments 8, 9 and 10***

12. Commons Amendments 8, 9 and 10 make drafting changes to provide that references to accountability to Ministers are taken, in relation to Welsh Ministers, as references to accountability to Welsh Ministers.

***Commons Amendments 11, 13, 15 and 16***

13. Commons Amendment 11 would remove clause 16 (delegation etc), which is superseded by the new clauses inserted by Amendments 22 to 25 (see below). Amendments 13, 15 and 16 are consequential on the removal of clause 16.

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***Commons Amendments 18 and 20***

14. Commons Amendments 18 and 20 would make drafting changes to clause 21 (restriction on creation of functions) and clause 23 (restriction on creation of criminal offences) to remove references to authorising the creation of certain functions. As clause 21 provides that orders under the Bill may not create powers to make subordinate legislation the reference to ‘authorising’ the creation of certain functions is not necessary. This has no substantive effect on the restrictions on powers of Ministers and Welsh Ministers under clauses 21 to 23.

***Commons Amendment 19***

15. Commons Amendment 19 would make a drafting change to remove clause 22(2)(b). Clause 22(2)(b) provides a restriction on ‘authorising arrangements’ for functions to be carried out by other persons which is a reference to a power in clause 6 of the Bill as introduced in the House of Lords and which was removed in Committee in the House of Lords. The reference in clause 22(2)(b) is, therefore, no longer necessary.

***Commons Amendment 21***

16. Commons Amendment 21 would add “Stamp Duty Land Tax” (“SDLT”) to the list of relevant taxes under clause 26(5). This would enable the Treasury to vary the effect of SDLT in relation to property transferred under a transfer scheme made under clause 24.

***Commons Amendments 22 to 25, 29, 32 to 34 and 59***

17. The new clauses introduced by Commons Amendments 22 to 25 extend and supersede the provision made by clause 16 of the Bill (although they do not extend the provision made by clause 16 of the Bill in relation to the Forestry Commissioners).

18. Commons Amendment 22 would insert a new clause to provide that the Environment Agency may make arrangements to delegate its non-devolved functions to a person exercising Welsh environmental functions. (“Non-devolved” functions are functions not touching upon the area of Welsh devolved competence.) *Subsection (2)* provides that such arrangements require the consent of the Secretary of State and of Welsh Ministers. *Subsection (3)* confers a power on the Secretary of State to make provision about such arrangements (including about the charging of fees in relation to the arrangements). This order-making power would be subject to the consent of Welsh Ministers. *Subsection (4)* provides that an order is subject to the negative resolution procedure in both Houses of Parliament.

19. Commons Amendment 23 would insert a new clause to provide that the Environment Agency, the Forestry Commissioners and any other person exercising Welsh environmental functions may make arrangements between themselves under which one exercises Welsh environmental functions for the other. Arrangements may also be made by them to co-operate when carrying out Welsh environmental functions.

20. The remainder of the new clause is concerned with consent requirements and order-making powers in relation to such arrangements.

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21. Commons Amendment 24 would insert a new clause in relation to shared services. *Subsections (1) and (2)* of the new clause provide that the bodies listed may make arrangements with any other person for the provision of administrative, professional and technical services for purposes relating to exercise of public functions in England or Wales. These arrangements are subject to various consent requirements and order-making powers.

22. Commons Amendment 25 would insert a new clause in relation to the provision of services by the Forestry Commissioners. *Subsection (1)* of the new clause provides that the Forestry Commissioners may make arrangements for the provision of administrative, professional or technical services with a person who exercises a Welsh environmental function for purposes relating to the exercise of public functions in or as regards Wales. This preserves the effect of clause 16 for the Forestry Commissioners.

23. Commons Amendment 29 would amend clause 28 (orders: supplementary) to provide that orders made under the new clauses could not make provision repealing, revoking or amending an enactment. Commons Amendments 32, 33 and 34 would make drafting changes to reflect the new clauses and the definitions used within them. Amendment 59 would amend the long title of the Bill consequentially.

***Commons Amendments 26, 39, 42, 45, 48, 58, 60***

24. Commons Amendment 26 would insert a new clause to provide for the abolition of the regional development agencies outside London. This would replace the power under clause 1 and Schedule 1 to abolish the RDAs (see amendments 45 and 48). The clause contains consequential order-making powers and powers to transfer property, rights and liabilities.

25. Commons Amendments 39 and 42 would make consequential changes to the extent and commencement provision. Commons Amendment 58 would insert a new Schedule to provide for consequential repeals. Commons Amendment 60 would amend the long title of the Bill consequentially.

***Commons Amendments 27, 52, 61***

26. Commons Amendment 27 would insert a new clause to substitute a new section for section 61 of the Broadcasting Act 1990, relating to the funding arrangements of Sianel Pedwar Cymru (“S4C”). The effect of the new section 61 would be to remove the existing provision for S4C’s current funding arrangements to be linked to the retail price index. It would instead make provision for the Secretary of State to secure such funding as he considers sufficient in 2012, and each subsequent year, to cover the costs of S4C providing public services and the broadcasting or distribution of such services.

27. *Subsection (2)* of the new clause would allow the Secretary of State to either make payments himself or enter into an agreement with another person to do so, or both.

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28. The effect of *subsection (3)* is that if S4C were paid an amount under subsection (1) that exceeded the costs it could pay back the difference to the person from whom the money was received.

29. The provision made makes it unnecessary for there to be power to amend the funding arrangements of S4C by order. Commons Amendment 52 would accordingly remove S4C from Schedule 4. Commons Amendment 61 would amend the long title of the Bill consequentially.

***Commons Amendments 28, 37, 38, 62***

30. Commons Amendment 28 would insert a new clause to amend the National Heritage Act 1983, so that certain institutions governed by the 1983 Act would have the same powers to form trading subsidiaries as similar institutions governed by the Museums and Galleries Act 1992.

31. Amendments 37 and 38 amend clause 30 (extent) to provide that the amendments made by the new clause have the same extent as the enactments which they amend. Commons Amendment 62 would amend the long title of the Bill consequentially.

***Commons Amendments 40 and 41***

32. Commons Amendments 40 and 41 amend clause 31 (commencement) to provide that clauses 10 and 11 (consultation and procedure) and clauses 31 to 35 (final) come into force on the day on which the Bill is passed. This is intended to make it clear that Ministers can lay draft orders under clauses 1 to 5 of the Bill on Royal Assent in order to begin the Parliamentary scrutiny process under clause 11 (procedure) as soon as possible. Ministers must still comply with the requirement for consultation under clause 10 of the Bill before laying a draft order in accordance with clause 11.

***Commons Amendment 43***

33. Commons Amendment 43 would amend clause 32 (short title) to remove the “privilege amendment” inserted by the Lords at third reading.

***Commons Amendment 44***

34. The Football Licensing Authority was renamed the Sports Grounds Safety Authority in the Sports Grounds Safety Authority Act 2011, which received Royal Assent on 12 July 2011. Commons Amendment 44 would amend the Bill accordingly.

***Commons Amendment 46***

35. Commons Amendment 46 would insert the Registrar of Public Lending Right in Schedule 1. This would allow a Minister to make an order under clause 1 (power to abolish) in relation to it and transfer its functions to an eligible person.

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***Commons Amendment 47***

36. Commons Amendment 47 would insert an entry for the Youth Justice Board in Schedule 1. Again, this would allow a Minister to make an order under clause 1 (power to abolish) in relation to it and transfer its functions to an eligible person. The Youth Justice Board had been included in Schedule 1 to the Bill as introduced in the House of Lords but was removed on Report in the House of Lords.

***Commons Amendments 49, 50, 51, 54***

37. Commons Amendment 49 would remove the group of entries for the Administrative Justice and Tribunals Council and the Civil Justice Council from Schedule 2, so that a Minister would no longer have the power to make an order under clause 2 (power to merge) in relation to them. Amendments 50, 51 and 54 would remove the entries for the Civil Justice Council from Schedules 3, 4 and 5 so that a Minister would no longer have the power to make an order under clause 3 (power to modify constitutional arrangements), clause 4 (power to modify funding arrangements) or clause 5 (power to modify or transfer functions) in relation to the Council.

***Commons Amendment 53***

38. Commons Amendment 53 would insert an entry for the Chief Coroner, Deputy Chief Coroners, Medical Advisers to the Chief Coroner and Deputy Medical Advisers to the Chief Coroner in Schedule 5, which would allow a Minister to make an order under clause 5 (power to modify or transfer functions) in relation to those offices. The entry had been included in Schedule 1 to the Bill as introduced in the House of Lords but was removed in Committee in the House of Lords.

***Commons Amendments 55 and 57***

39. Commons Amendment 55 would insert an entry for the Dover Harbour Board in Schedule 5, which would allow a Minister to make an order under clause 5 (power to modify or transfer functions) in relation to that body. The effect of Amendment 57 would be that the restrictions on transfers contained in clause 22(1) and (2)(a) would not apply to a transfer of functions from the Dover Harbour Board (restrictions on transfers to persons not otherwise exercising public functions).

***Commons Amendment 56***

40. Commons Amendment 56 would insert an entry for Her Majesty's Stationery Office ("HMSO") in Schedule 5, which would allow a Minister to make an order under clause 5 (power to modify or transfer functions) in relation to it. This is intended to facilitate a wider set of reforms including the Advisory Council on Public Records, Keeper of Public Records and the Public Record Office listed in Schedule 5.

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