

PUBLIC BODIES BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Public Bodies Bill [HL] as introduced in the House of Lords on 28th October 2010. They have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. Clauses 1 to 6 confer powers on a Minister of the Crown to make orders in relation to certain public bodies and offices. Clauses 8 to 10 contain supplementary provision. Clause 11 contains a power to add to the bodies and offices which are subject to the powers in clauses 1 to 6. Clause 12 stipulates the procedure for making an order under clause 11.

4. Clauses 13 to 16 confer on Welsh Ministers order-making powers in relation to environmental bodies in Wales,

5. Clauses 17 to 19 relate to forestry. Clause 17 is concerned with the powers of the Secretary of State under the Forestry Act 1967 and clause 18 with the Forestry Commissioners.

6. Clauses 20 to 22 set out some general restrictions on order-making powers in the Bill.

7. Clause 23 provides a power for Ministers to make transfer schemes in connection with orders under the Bill. Clause 24 provides a power for the Treasury to make an order providing for tax neutrality in relation to such schemes.

8. Clause 26 is concerned with the power of a Minister of the Crown to add categories of employment to Schedule 1 to the Superannuation Act 1972.

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as introduced in the House of Lords on 28th October 2010 [HL Bill 25]*

9. The Schedules to the Bill specify the bodies or offices in respect of which the order-making powers contained within clauses 1 to 6 and clause 11 may be used.

10. The impetus for the Bill comes from the Government's review of public bodies in 2010, and the outcome of this review as reported to Parliament in oral and written statements by the Minister for the Cabinet Office, *Public Bodies Review Programme*, on 14th October 2010.

TERRITORIAL EXTENT

11. This Bill extends to England and Wales, Scotland and Northern Ireland. An order made under the Bill which repeals, revokes or amends an enactment extending to any other jurisdiction may also extend there.

TERRITORIAL APPLICATION: WALES

12. Orders under clauses 1 to 6 of the Bill may affect matters which are the responsibility of the devolved institutions in Wales, in the following respects:

- It is possible that, in relation to some bodies and offices, the exercise of the powers in clauses 1 to 6 may affect functions of the Welsh Ministers or relate to matters within the legislative competence of the National Assembly for Wales. Clause 9 of the Bill provides that orders made under clauses 1 to 6 which modify functions of the Welsh Ministers (excluding certain functions such as those in relation to 'constitutional arrangements' of bodies or offices), or which include provision which they could make themselves, require the consent of Welsh Ministers. Orders which make provision which would be within the legislative competence of the National Assembly for Wales if it were contained in a Measure or an Act of that Assembly will also require the consent of the Welsh Ministers.
- Clause 1 of the Bill names the Welsh Ministers as "an eligible person". Under provisions in Clauses 1, 2 and 5, Ministers can transfer functions to an eligible person from bodies or offices listed in Schedules 1, 2 and 5. Under clause 6, Ministers can permit bodies and offices in Schedule 6 to delegate functions to an eligible person. Clause 7(2) and (4) allow for consequential changes to the eligible person's functions. Orders under these powers which transferred functions to the Welsh Ministers, or modified their existing functions, would be subject to the consent requirement in clause 12.

13. Clauses 13 to 16 provide Welsh Ministers with powers to effect changes to environmental bodies in Wales. The provisions relate to the Countryside Council for Wales, the Forestry Commissioners and the Environment Agency.

TERRITORIAL APPLICATION: SCOTLAND

14. Orders under clauses 1 to 6 of the Bill may affect matters which are the responsibility of the devolved institutions in Scotland, in the following respects:

- Clause 9(1) of the Bill provides that orders made under clauses 1 to 6 which contain provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament would require the consent of Scottish Ministers.
- Clause 1 of the Bill names Scottish Ministers as “an eligible person”. Under provisions in clauses 1, 2 and 5, Ministers can transfer functions to an eligible person from public bodies listed in Schedules 1, 2 and 5. Under provisions in clause 6, Ministers can permit public bodies in Schedule 6 to delegate functions to an eligible person.

15. At introduction, this Bill contains provisions that trigger the Sewel Convention. These provisions relate to the creation of order-making powers which may be used to make provision relating to public bodies or offices which would be within the legislative competence of the Scottish Parliament if contained within an Act of that Parliament. Consent for these provisions will be sought from the Scottish Parliament. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

TERRITORIAL APPLICATION: NORTHERN IRELAND

16. Orders under clauses 1 to 6 of the Bill may affect matters which are the responsibility of the devolved institutions in Northern Ireland, in the following respects:

- Clause 1 of the Bill names a Northern Ireland department as “an eligible person”. It is normal practice in Northern Ireland for functions to be conferred on Departments rather than Ministers. Under provisions in clauses 1, 2 and 5, Ministers can transfer functions to an eligible person from public bodies listed in Schedules 1, 2 and 5. Under provisions in clause 6, Ministers can permit public bodies in Schedule 6 to delegate functions to an eligible person.
- Clause 9 of the Bill provides that orders made under clauses 1-6 which make provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, require the consent of the appropriate Northern Ireland department.

COMMENTARY

Clause 1: Power to abolish

17. Clause 1 confers on a Minister the power to make provision by order to abolish any body or office listed in Schedule 1. As *subsection (2)* describes, such an order can include provision transferring any or all of the functions of an abolished body or office to an “eligible person” (as defined in *subsection (3)*). On this basis, an order made under clause 1 might, for instance, abolish all of the functions of a body or office as a consequence of abolishing the body or office itself, or might transfer some or all of a body’s functions to a Minister, to another person exercising public functions, a company limited by guarantee, or any other eligible person permitted by *subsection (3)*.

Clause 2: Power to merge

18. Clause 2 confers on a Minister the power to make provision by order to merge any group of bodies or offices (or both) listed in Schedule 2. Such provision might involve the establishment of a new body corporate or office (including provision for constitutional arrangements) to replace the bodies being merged, or the abolition of all but one body or office in a group (in which case the remaining body or office would assume some or all of the functions previously held by the group). For example, the functions of three separate regulatory bodies might be placed under the purview of a single body through an order made under this clause. An order under this clause may also include a transfer of functions to an eligible person (as defined in clause 1(3)) which is not included in the group of bodies or offices involved in the merger.

Clause 3: Power to modify constitutional arrangements

19. Clause 3 confers on a Minister the power to make provision by order to modify the constitutional arrangements of any body or office listed in Schedule 3. The term “constitutional arrangements” refers to a wide range of arrangements relating to the structure, governance and functions of an office or body; these are described in *subsections (2) and (3)* for bodies and offices respectively. Examples of orders that could be made under clause 3 might include:

- Provision to ensure a particular number of non-executive directors on the Board of a body or office;
- Provision requiring a body to report publicly on how it has sought to increase efficiency in the exercise of its functions;
- Provision requiring permission from a Minister in relation to employment of staff, or remuneration of staff in excess of an agreed threshold;

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- Provision requiring that the chair of a body, or an office-holder, be required to undergo a pre-appointment hearing process before taking up their post.

Clause 4: Power to modify funding arrangements

20. Clause 4 confers on a Minister the power to make provision by order to modify the funding arrangements of a body or office listed in Schedule 4. *Subsection (2)* clarifies the scope of the power, to include alterations to the funding a body or office receives from a Minister, or giving a body or office-holder the power to charge a fee for a function that body or office carries out. For example, an order made under this clause might give a body which issues licences for a particular purpose the power to charge a fee for the issue of a licence. Alternatively, an order made under this clause might require a body to collect funding for its operation through a fee imposed on its clients, replacing or complementing direct funding by a Minister.

Clause 5: Power to modify or transfer functions

21. Clause 5 confers on a Minister the power to make provision by order to modify the functions of a body or office-holder, or to transfer the functions of a body or office-holder to an eligible person. In either case, the body or office must be listed in Schedule 5. *Subsection (2)* describes the modification of a function as including the conferral of new functions, the abolition of functions, or changes to the purposes for which, or conditions under which, functions are exercised. Therefore, an example of an order made under clause 5 might be one which gives new functions to a body, while transferring some of its existing functions to a Minister or other eligible person.

Clause 6: Power to authorise delegation

22. *Subsection (1)* confers on a Minister the power to make provision by order to authorise a body or the holder of an office listed in Schedule 6 to delegate some or all of its functions to an eligible person. *Subsection (2)* stipulates that an order made under subsection (1) may be either unconditional or conditional in nature, and will in either case be applicable for a specified period not exceeding ten years. *Subsection (3)* provides that arrangements made under an order made under subsection (1) do not discharge a body or office-holder which has delegated its functions from responsibility for the delivery of those functions or prevent the body or office-holder from exercising those functions. *Subsection (3)* also makes provision for the body or office-holder authorised to enter into the arrangement to revoke them at any point.

23. An order under clause 6 might be used where there is a policy justification for a body to retain its legal status, but where there are justifications (for example aligned to the factors that a minister is required to have regard to in clause 8) for some of that body's functions to

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be carried out by an eligible person (this could, for example, include a situation where one body provides back-office functions on behalf of a number of others).

Clause 7: Consequential provision etc

24. Clause 7 provides that an order under clauses 1 to 6 may include consequential, supplementary, incidental or transitional provisions or savings. This would allow an order under clauses 1, 2 or 5 transferring functions, to make consequential provisions to: modify functions of the transferor or transferee; or modify the constitutional or funding arrangements of the transferor or transferee. An example of a consequential provision which could be made under this clause might be one which would change the statutory number of board members of a body being merged with another body.

Clause 8: Matters to be considered

25. Clause 8 stipulates the objectives to which the Minister must have regard when making orders under clauses 1 to 6. These are: achieving increased efficiency, effectiveness and economy in the exercise of public functions; and securing appropriate accountability to Ministers in the exercise of such functions. The Minister may for example, therefore, make an order to merge two regulatory bodies having had regard to increasing their efficiency through eliminating a duplication of their functions.

26. *Subsection (2)* places restrictions on orders made by a Minister in that the Minister may only make an order if the Minister considers that it 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.

Clause 9: Devolution

27. Clause 9 limits the powers of Ministers in relation to devolved matters.

28. *Subsection (1)* provides that orders made under clauses 1 to 6 which contain provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament require the consent of Scottish Ministers.

29. *Subsection (2)* provides that orders made under those clauses which contain provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly require the consent of the appropriate Northern Ireland department. *Subsection (3)* provides that the stipulation in subsection (2) does not apply if a Bill for an Act of the Northern Ireland Assembly containing the provision would require the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

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30. *Subsection (4)* provides that an order made under those clauses requires the consent of the Welsh Ministers if the order contains provision which would be within the legislative competence of the National Assembly for Wales if contained in a Measure or Act of that Assembly, or which modifies a function of the Welsh Ministers, the First Minister for Wales or the General Counsel to the Welsh Assembly Government, or could be made by any of those persons. *Subsection (6)* sets out limitations on the definition of “function” for the purposes of subsection (4) (b).

Clause 10: Procedure for orders

31. This clause sets out the procedure applicable to any order made under clauses 1 to 6 of the Bill. It stipulates any such order must be approved by Parliament through the use of the affirmative procedure. This requires that a draft of the statutory instrument containing the order must be laid before each House of Parliament, and cannot be made until it has been approved through a vote in each House.

Clause 11: Power to amend Schedules 1 to 6

32. This clause makes provision for a Minister to add a body or office specified in Schedule 7 to the other Schedules. *Subsection (1)* confers on a Minister power to make such an addition by order. In relation to Schedule 2 (mergers) it will be possible either to add a body to an existing group or to add a new group (see *subsection (3)*).

33. *Subsection (4)* secures that a body which is specified in Schedule 1 (abolition) or Schedule 2 (merger) cannot be subject to another order-making power (since to make it subject to another order-making power would be inconsistent with the abolition or merger). *Subsection (5)* provides that an order made under clauses 3 to 6 in relation to a body or office may remove the body or office from the corresponding Schedule. In such an event (which would occur when the policy objective which predicated the inclusion of a body or office in that Schedule would be achieved by that order), the body or office would remain listed on Schedule 7.

34. *Subsection (6)* provides that where an order is made under clause 2, the new or remaining body or office which exists following the merger may be added to Schedule 7. This is the only way in which, under the Bill, Schedule 7 can be amended.

Clause 12: Procedure for orders under section 11

35. Clause 12 sets out the form and procedure applicable to any order made under clause 11 of the Bill.

36. *Subsection (1)* requires that any such order must be approved by Parliament through the use of the affirmative procedure. This requires that a draft of the statutory instrument must

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be laid before each House of Parliament, and cannot be made until it has been formally approved through a vote in each House.

37. *Subsection (2)* specifies that an order made under clause 11 of the Bill cannot be included in the same instrument as another order made under this Bill. The effect of this provision is that the process of making changes to a body or office listed in Schedule 7 would involve the use of two statutory instruments. The first of these would, if approved by Parliament, add a body or office from Schedule 7 to a different Schedule. The second would then be used to make substantive changes to the body or office as enabled by its inclusion in one or more of Schedules 1 to 6.

Clause 13: Powers relating to environmental bodies

38. Clause 13 confers a power on Welsh Ministers to, by order, modify and transfer the functions of the Countryside Council for Wales, the Environment Agency as it relates to Wales, and the Forestry Commissioners as they relate to Wales. *Subsections (4) and (5)* create further powers for Welsh Ministers to transfer any of their own functions relating to the environment, or to transfer any Welsh devolved functions relating to the environment which are exercisable by other persons. Transfers made under subsections (4) and (5) can be to a new body, or to any of the bodies named in subsection (1).

39. *Subsection (6)* confers a power on Welsh Ministers to establish a new body corporate for the purposes of this clause.

40. *Subsection (7)* provides that an order made by Welsh Ministers under this clause requires the consent of the Secretary of State where the order affects a function which is not a Welsh devolved function, or transfers a function to a body or person which did not previously exercise Welsh devolved functions.

41. *Subsection (9)* stipulates the objectives to which the Welsh Ministers must have regard when making orders under clause 13. These are: achieving increased efficiency, effectiveness and economy in the exercise of public functions; and securing appropriate accountability to Welsh Ministers in the exercise of such functions. The Welsh Ministers may for example, therefore, make an order to merge two regulatory bodies having had regard to increasing their efficiency through eliminating a duplication of their functions.

42. *Subsection (10)* places restrictions on orders made by the Welsh Ministers. They may only make an order if they consider that it 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.

Clause 14: Powers relating to environmental bodies: consequential provisions

43. Clause 14 provides that an order made under clause 13 may include consequential or supplementary provision.

44. *Subsection (3)* stipulates that an order made under clause 13 requires the consent of the Secretary of State, where such an order includes consequential or supplementary provision which does not relate to Welsh devolved functions.

45. *Subsection (4)* provides that where an order under clause 13 modifies functions of, or transfers functions to or from, the Environment Agency or Forestry Commissioners, the Secretary of State may by order make consequential or supplementary provision modifying its or their constitutional funding arrangements.

Clause 15: Delegation etc

46. Clause 15 provides that the Environment Agency or the Forestry Commissioners may make arrangements with the Countryside Council for Wales or a new body established for the purposes of an order made under clause 13; these arrangements can include co-operation in respect of functions, the exercise of a function of one body by another, or the provision of services by one body to another.

47. The clause confers power on the Welsh Ministers to make provision about how this is to be done.

Clause 16: Procedures for orders under sections 13 to 15

48. *Subsection (1)* specifies that an order made under clause 13 or 15 is subject to the affirmative resolution procedure in the Welsh Assembly.

49. *Subsection (2)* specifies that an order made under clause 14 (4) is subject to the affirmative procedure in both Houses of Parliament.

Clause 17: Powers relating to functions of Secretary of State

50. *Subsections (1)* and *(2)* allow the Secretary of State to make an order amending the Forestry Act 1967 in relation to the exercise of certain functions, including those of managing, using, letting and disposing of forestry land. *Subsection (3)* allows the order to secure that the Secretary of State may exercise those functions for any purpose or without condition.

51. *Subsections (5)* and *(6)* allow the Secretary of State to delegate those functions to any person for a specified time and whether or not subject to conditions.

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52. *Subsection (7)* allows the Secretary of State to revoke any delegation arrangements at any time. Delegation arrangements do not affect the responsibility of the Secretary of State in relation to the functions delegated.

53. *Subsection (8)* provides that the Secretary of State may in particular enter into arrangements with the Forestry Commissioners under subsection (5).

Clause 18: Powers relating to functions of Forestry Commissioners

54. *Subsection (1)* allows the Secretary of State by order to modify the constitutional arrangements of the Forestry Commissioners; to modify their functions relating to land in England; to transfer those functions and to delegate those functions to someone else.

55. *Subsections (2) and (3)* make similar provision concerning the conditions to which a delegation is subject, the duration of any delegation and the overall responsibility of the Forestry Commissioners to those found in clause 17(6) and (7).

56. *Subsections (4) to (6)* deal with consequential, supplementary, incidental, transitional and savings provisions.

57. *Subsection (7)* stipulates the objectives to which the Secretary of State must have regard when making orders under clause 18, namely achieving increased efficiency, effectiveness and economy in the exercise of public functions and securing appropriate accountability to Ministers in the exercise of such functions

58. *Subsection (8)* provides that an order may only be made under this clause if the Secretary of State considers that it does not remove any necessary protection and does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

Clause 19: Procedure for orders under sections 17 and 18

59. Clause 19 stipulates that an order made under clause 17 or 18 is subject to the affirmative procedure in both Houses of Parliament.

Clause 20: Restriction on creation of functions

60. Clause 20 stipulates that an order made under the preceding provisions of the Bill may not create or authorise the creation of powers of forcible entry, search or seizure, a power to compel the giving of evidence, or a power to make subordinate legislation. *Subsection (2)* authorises the repeal and subsequent re-enactment of an existing power (for example, a power might be repealed in relation to one body and then re-enacted for exercise by another).

Clause 21: Restriction on transfer and delegation of functions

61. Clause 21 restricts the order-making powers in the preceding provisions of the Bill in respect of the transfer or delegation of functions to eligible persons who do not already exercise public functions. Firstly, a transfer may only be made with the consent of such a person (*subsection (2)*). Secondly, an order may not transfer or delegate a function specified in *subsection (3)* to such a person.

Clause 22: Restriction on creation of criminal offences

62. Clause 22 restricts the order-making powers in the preceding provisions of the Bill in respect of the creation (or the authorisation of the creation) of criminal offences. *Subsection (1)* stipulates that an order under the Bill cannot create an offence punishable by a term of imprisonment of over two years (for offences punishable on indictment), or by a term exceeding the normal maximum term or a fine exceeding level 5 on the standard scale (for offences punishable on summary conviction).

63. *Subsection (2)* defines the term “normal maximum term” as used in *subsection (1)(b)(i)*.

64. *Subsection (6)* stipulates that the provisions of clause 22 do not prevent an order being used to repeal and re-enact an existing offence (for example, where there has been a transfer of functions and the offence attaches to the exercise of that function by the transferee).

Clause 23: Transfer schemes

65. Clause 23 confers a power to make a scheme to transfer property, rights and liabilities on Ministers in connection with an order under clauses 1 to 6, on Welsh Ministers under clause 13, and on the Secretary of State under clause 18(1)(c).

66. In the case of a scheme under *subsection (1)(a)* (schemes made by a Minister), the transfer of property, rights and liabilities must be to an eligible person or any body corporate unless constitutional or funding arrangements are being modified under clauses 3 or 4, in which case the transfer must be to a Minister. In the case of a scheme under *subsection (1)(b)* or *(1)(c)*, the transfer must be to the person to whom the function is transferred.

67. *Subsection (5)* lists supplementary, incidental and transitional provision that may be made by a transfer scheme. These include making provision the same as or similar to the TUPE regulations (the Transfer of Undertakings (Protections of Employment) Regulations 2006 (S.I. 2006/246)). *Subsection (7)* makes provision in relation to individuals holding employment in the civil service. A Minister could, in connection with an order abolishing a public body and transferring the functions to a Government Department, make a transfer

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scheme to transfer the terms and conditions of the employees but modify them to bring them under the terms and conditions of the Civil Service, employed by the Crown.

Clause 24: Transfer schemes: procedure

68. This clause stipulates that transfer schemes may be included within the order to which they relate. If they are not included within the order, they must be laid before the appropriate legislative body (Parliament for schemes in connection with clauses 1 to 6 and clause 18, or the Welsh Assembly for schemes in connection with clause 13) after being made.

Clause 25: Transfer schemes: taxation

69. Clause 25 confers power on the Treasury to make provision by order varying the way in which tax provisions will be applied either for anything transferred under a scheme made under clause 23, or anything done for the purposes of, or in relation to a transfer under such a scheme.

70. Any such order is to be subject to the negative resolution procedure in the House of Commons (see *subsection (4)*).

Clause 26: Scope of power to amend Schedule 1 to Superannuation Act 1972

71. Clause 27 amends section 1(6) of the Superannuation Act 1972. It clarifies that when an employment or office is added by order to Schedule 1 of the Superannuation Act 1972 (which enables the staff of that body to become members of the Principal Civil Service Pension Scheme and linked schemes), the condition that the remuneration of staff in the employment or office must be paid out of moneys provided by Parliament, the Consolidated Fund or the Scottish Consolidated Fund applies only at the time that the addition to Schedule 1 is made.

Clause 27: Orders: supplementary

72. *Subsection (4)* stipulates that a draft instrument laid under this Bill cannot be treated as a hybrid instrument by either House, regardless of whether the content of said draft instrument would normally identify it as a hybrid instrument for such a purpose. This is designed to ensure that all orders made under this Bill are subject to a consistent level of Parliamentary scrutiny through the affirmative procedure.

Clause 28: Interpretation

73. This clause defines terms used throughout the Bill.

Clause 29: Extent

74. Generally, the Bill extends to the whole of the United Kingdom. *Subsection (2)* provides that an order made under this Bill which repeals, revokes or amends any enactment extending outside England, Scotland, Wales or Northern Ireland may have the same extent as the original enactment. For example, an order which amends an Act of Parliament which extends to the Channel Islands would have the same extent as the amended Act.

Schedule 1: power to abolish: bodies and offices

75. This Schedule specifies the bodies and offices which are subject to the power to abolish described in clause 1.

76. Where a body or office is specified in Schedule 1, it cannot be listed in any of Schedules 2 to 6 (see the note on clause 11 above).

Schedule 2: Power to merge: bodies and offices

77. This Schedule specifies the groups of bodies and offices which are subject to the power to merge described in clause 2.

78. Where a body or office is specified in Schedule 2, it cannot be listed in Schedule 1, or in any of Schedules 3 to 6 (see the note on clause 11 above).

Schedule 3: Power to modify constitutional arrangements: bodies and offices

79. This Schedule specifies the bodies and offices which are subject to the power to modify constitutional arrangements described in clause 3.

80. A body or office specified in Schedule 3 can also appear on any or all of Schedules 4 to 7, as the powers with which these Schedules are associated do not exclude one another. For example, it is possible for a body both to have its constitutional arrangements modified, and to be authorised to delegate functions, and there may be policy objectives which would be fulfilled by this combination of changes. In such a case, that body would be listed in Schedules 3 and 6.

Schedule 4: Power to modify funding arrangements: bodies and offices

81. This Schedule specifies the bodies and offices which are subject to the power to modify funding arrangements described in clause 4.

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82. A body or office specified in Schedule 4 can also appear in any or all of Schedules 3 and Schedules 5 to 7, as the powers with which these Schedules are associated do not exclude one another.

Schedule 5: Power to modify or transfer functions: bodies and offices

83. This Schedule specifies the bodies and offices which are subject to the power to modify or transfer functions described in clause 5.

84. A body or office specified in Schedule 5 can also appear on any or all of Schedules 3, 4, 6 and 7, as the powers with which these Schedules are associated do not exclude one another.

Schedule 6: Power to authorise delegation: bodies and offices

85. This Schedule specifies the bodies and offices which are subject to the power to authorise delegation, as described in clause 6.

86. A body or office specified in Schedule 6 can also appear on any or all of Schedules 3 to 5 and Schedule 7, as the powers with which these Schedules are associated do not exclude one another.

Schedule 7: Bodies and offices subject to power to add to other Schedules

87. Schedule 7 specifies the bodies and offices which are subject to the power to add to other Schedules, as described in clause 11. This Schedule includes bodies and offices where there is (at the time these explanatory notes were produced) no policy intention to make changes to their status or functions. These bodies and offices are listed as they were subject to the review process that was the impetus for this Bill, and any changes that might be brought forward following a future review process, or the conclusion of the existing review process (in the case of bodies or offices which are still under consideration at the time of the production of these explanatory notes) would require legislation. Including these bodies and offices in Schedule 7 provides that legislative framework, using the power described in clause 11. It should be additionally noted that this list includes bodies and offices where it is envisaged that some functions would be excluded from future use of the powers in the Bill (for example, an economic or network regulatory function where the risk associated with the potential use of the powers could impact on regulatory stability or the cost of capital).

88. A body or office specified in Schedule 7 can also appear in any or all of Schedules 3 to 6, as the powers with which these Schedules are associated do not exclude one another. However, if a body or office specified in Schedule 7 also appears in any of Schedules 3 to 6, it would not be possible for an order under clause 11 to move the body or office from Schedule 7 to Schedules 1 or 2, as stipulated by Clause 11 (4).

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89. It should be noted that where a body or office appears in Schedule 7 only, the process to make an order in relation to the said body or office under clauses 1 to 6 of the Bill would require the making of an initial order under clause 11(1) to make an addition to Schedules 1 to 6. Both this order, and the subsequent order made under clauses 1 to 6, would be subject to the affirmative procedure.

FINANCIAL EFFECTS

90. We do not anticipate new costs falling upon either the National Loans Fund or the Consolidated Fund as a result of the provisions in this Bill. Orders made under the provisions of this Bill may impact upon public expenditure; it is not possible to describe the nature of this impact until the content of any such orders has been determined.

PUBLIC SECTOR MANPOWER

91. The Bill itself has no impact upon public sector manpower. Orders made under the provisions of this Bill may have an impact on public sector manpower; it is not possible to describe the nature of this impact until the content of any such orders has been determined.

SUMMARY OF THE IMPACT ASSESSMENT

92. The Cabinet Office has produced an impact assessment for the Bill. Members of Parliament can obtain a copy of the impact assessment from the Vote Office in the House of Commons, or the Printed Paper Office in the House of Lords.

93. The Impact Assessment is also available on the Better Regulation Executive website.¹

94. The Bill confers a series of enabling powers on Ministers, and accordingly has no directly attributable impact on business, the voluntary sector or the environment that could be captured through an impact assessment. It is therefore not possible to provide details of the likely costs and impacts of the Bill, as any costs or impacts arising from its use relate to orders made under its powers rather than to the Bill itself. When Departments use the powers, they will produce full impact assessments of the change or changes they are seeking where required.

95. The Cabinet Office has undertaken an Equality Impact Assessment screening for the Bill to determine whether a full Equality Impact Assessment is required. In line with the overall Impact Assessment, the Bill has been assessed as having no directly attributable impact on equality. Consequently, a full Equality Impact Assessment has not been undertaken. When Departments develop statutory instruments to affect changes using the

¹ <http://www.ialibrary.berr.gov.uk>

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powers, they will also be required to conduct separate Equality Impact Assessment screening to assess whether a full Equality Impact Assessment is required. Members of Parliament can obtain a copy of the Equality Impact Assessment screening decision, along with supporting evidence, from the Vote Office in the House of Commons, or the Printed Paper Office in the House of Lords.

COMPATABILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

96. Lord Taylor of Holbeach has made the following statement pursuant to clause 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Public Bodies Bill [HL] are compatible with the Convention Rights.”

97. The Government does not consider that the Bill directly engages any Convention rights. The Bill contains a set of order-making powers, set out in clauses 1 to 6 of the Bill, which may be used in relation to the bodies listed in Schedules 1 to 6 to the Bill. Clause 11 contains a power to add to the bodies and offices which are subject to the powers in clauses 1 to 6. There are separate order-making powers for Welsh Ministers in relation to environmental bodies in clause 13, and for the Secretary of State in relation to the Forestry Commissioners in clause 18. No body is subject to substantive changes on the face of the Bill.

98. Orders under the Bill will be subject to affirmative resolution procedure, and therefore, in accordance with normal practice, the Explanatory Memorandum accompanying the instrument will include a statement of compatibility with the Convention.

99. The exceptions to this are (i) transfer schemes made under clause 23 which may be made by order, but need not be in all cases (a scheme not made by order must be laid before Parliament after being made) and (ii) orders making provision for tax neutrality under clause 25, which are subject to negative resolution procedure in the Commons.

100. There is nothing in the powers contained in the Bill to prevent them being exercised in a way that is fully compatible with the Convention.

101. Indeed, the Bill affords certain protections in this regard, in particular clause 8(2), which provides that a Minister can only make an order under clauses 1 to 6 if he is satisfied that the order does not remove any necessary protection and that the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. This provision is mirrored in clauses 13(10) and 18(8) of the Bill.

*These notes refer to the Public Bodies Bill [HL]
as introduced in the House of Lords on 28th October 2010 [HL Bill 25]*

102. The Bill contains a separate order-making power to allow the Secretary of State to make an order amending the Forestry Act 1967 in relation to the exercise of certain functions, including those of managing, using, letting and disposing of forestry land. The Government does not consider that this provision directly engages any Convention rights.

103. The Bill also contains an amendment to section 1(6) of the Superannuation Act 1972 but the Government does not consider that the amendment engages any Convention rights.

104. Consequently, it is considered that that the Bill does not give rise to any Convention rights issues.

COMMENCEMENT DATE

105. Clause 30 provides for commencement two months after Royal Assent.

PUBLIC BODIES BILL [HL]

EXPLANATORY NOTES

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