HOUSE OF LORDS

Merits of Statutory Instruments Committee

56th Report of Session 2010-12

Public Bodies Order:
Draft Advisory Committee on Hazardous Substances (Abolition) Order 2012

Plus Information Paragraphs on 3 Instruments

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The Select Committee on the Merits of Statutory Instruments

The Committee has the following terms of reference:

(1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), consider—

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament, with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).

(2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives.

(3) The exceptions are—

(a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;

(b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;

(c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

(4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.

(5) The Committee shall also consider such other general matters relating to the effective scrutiny of the merits of statutory instruments and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members
Rt Hon. Baroness Butler-Sloss GBE  Lord Methuen
Baroness Eaton  Rt Hon. Baroness Morris of Yardley
Lord Eames OM  Lord Norton of Louth
Rt Hon. Lord Goodlad (Chairman)  Lord Plant of Highfield
Baroness Hamwee  Rt Hon. Lord Scott of Foscote
Lord Hart of Chilton

Registered interests
Information about interests of Committee Members can be found in Appendix 4.

Publications
The Committee’s Reports are published on the internet at www.parliament.uk/hlmeritspublications

Information and Contacts
If you have a query about the Committee or its work, including concerns or opinions on any new item of secondary legislation, please contact the Clerk of the Merits of Statutory Instruments Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk.

Statutory instruments
Fifty-sixth Report

PUBLIC BODIES ORDER

Draft Advisory Committee on Hazardous Substances (Abolition) Order 2012

1. The draft Advisory Committee on Hazardous Substances (Abolition) Order 2012 (“the draft Order”) was laid on 27 February 2012 under section 1 of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order was laid by the Department for Environment, Food and Rural Affairs (“Defra”) with an Explanatory Document (“ED”). Defra have also provided the Committee with copies of the consultation responses. Given the limited information in the ED in a number of key areas, the Committee sought further information from Defra which they have provided (see Appendix 1).

2. The purpose of the draft Order is to abolish the Advisory Committee on Hazardous Substances (“the ACHS”), established under section 140(5) of the Environmental Protection Act 1990 (“the 1990 Act”). It also makes repeals and revocations (including the repeal of the power to appoint a committee) associated with the abolition. The Government’s intention is to reconstitute the body as an expert scientific committee (which does not require legislation).

3. Amendments 1 were tabled in debates in both Houses to prevent ACHS from being listed in Schedule 1 of the 2011 Act. Although Lord Whitty withdrew his amendment at Committee Stage on 29 November 2010, he did so saying 2 he was “not utterly convinced that the expert panel is much different from a statutory body in terms of the quality of its advice or procedures and, clearly, there is no great cost advantage.” A subsequent Report Stage amendment moved by Baroness Quin was withdrawn 3 on 23 March 2011 after Lord Henley, the then Parliamentary Under-Secretary of State at Defra, provided more information.

Overview of the proposal

4. The ACHS currently meets four times a year and last met on 13 December 2011. Existing members will automatically become members of the new committee and serve the remainder of their 3-year terms on the body. New members for the new committee will be appointed on the basis of their individual expertise as required for the committee to fulfil its remit. All appointments will be made in line with the new Code of Practice for Appointments to Public Bodies which will come into effect on 1 April 2012 (see Appendix 1). The ED says that the successor body to the ACHS will

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2 HL Deb 29 November 2010 col 1362

3 HL Deb 23 March 2011 col 747
operate within an enhanced framework for scientific bodies in Defra and with new terms of reference which reflect changes in the regulatory landscape for hazardous substances since the ACHS was established twenty years ago (ED paragraph 7). The ED also says that the successor body will continue to provide expert, impartial and independent advice to Ministers and others (ED paragraph 7). These are both areas on which we sought further information from Defra.

5. The new body will de facto be in existence as soon as the Order comes into force. In their further information to the Committee, Defra say that this will be done administratively and seamlessly without any breaks in the cycle of quarterly meetings (see Appendix 1). The existing committee membership and work will be carried forward onto the new body. Also in the further information, Defra expand on the working arrangements for the new body. They say that it will operate within a closer network of expert scientific committees overseen by Defra’s Chief Scientific Adviser (“the CSA”), supported by Defra’s Science Advisory Council (“the SAC”). The ACHS Chair will now meet Defra’s CSA to discuss the work of the committee at least once a year, thus helping provide the CSA with greater oversight of scientific advice across the department. The ACHS Chair will also have the opportunity to discuss the committee’s work at an annual meeting of Defra’s SAC, as well as have the opportunity to summarise the work of the committee in SAC’s annual report. Defra say that the greater level of oversight, challenge and scrutiny of the work of the ACHS will help yield a greater and more co-ordinated level of evidence assurance to meet Defra’s needs (see Appendix 1). Written Statements⁴ were made to both Houses of Parliament on the new working practices on 26 January 2011.

Role of the Committee

6. The Committee’s role as set out in its Terms of Reference is to “report on draft orders and documents laid before Parliament under section 11(1) of the 2011 Act in accordance with the procedures set out in sections 11(5) and (6)”. A key aspect of this role is the Committee’s power to trigger the enhanced affirmative procedure which would require the Government to have regard to any recommendations made by the Committee during a 60 day period from the date of laying. The Committee may also consider taking oral or written evidence in order to aid its consideration of the orders.

Title of the Order

7. This is the third such draft Order under the 2011 Act considered by the Committee. Unlike the previous two, the draft Order does not include the words, “Public Bodies” in the title. Despite the explanation provided by Defra (see Appendix 1) the Committee consider that departments will greatly assist the House in following this type of legislation through

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Parliament if the titles for all such orders include the words “public bodies … order” as set out in Cabinet Office guidance⁵.

Consultation

8. Defra ran a consultation on the future of the ACHS from 7 July to 14 October 2011. The consultation invited views on the proposed abolition of the ACHS as a statutory Non Departmental Public Body (“NDPB”) and the Government’s preferred option to simultaneously reconstitute the body as a new expert scientific committee; as well as the proposed new Terms of Reference, and a name for the successor body (ED paragraph 8.1 and 8.2). The ED says that there was limited public interest in the consultation as only 16 responses were received, only 13 of those giving a view on the options for the future of the ACHS of which 11 favoured the Government’s preferred option.

Tests in the Public Bodies Act 2011: assessment of the proposals

9. A Minister may only make an order under sections 1 to 5 of the 2011 Act if the Minister considers that the order serves the purpose of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers (section 8 of the 2011 Act). Defra have put forward only a very thin case for achieving this statutory purpose in the ED; and the Committee therefore asked them to expand on this, setting out with evidence how the change will improve the exercise of public functions.

Economy

10. During the passage of the 2011 Act through Parliament, Lord Henley⁶ said that the Government are not looking particularly for savings from the abolition of the ACHS, and the savings will in fact be negligible. Defra say that the current body costs about £30k per year in fees for members and in expenses for meetings including travelling and subsistence, and they envisage the same level of expenditure for the new body (see Appendix 1). The ED says that the draft Order has no impact on business, charities or voluntary bodies, and does not impose any new costs, administrative burdens or information obligations. The ED also says that the impact on the public sector is neutral as a successor body will be established with the same level of Secretariat support from Defra (ED paragraph 10.1). In their further information to the Committee, Defra confirm that there are no costs as a result of the changes and there are no transitional costs, legal fees or recruitment costs.

Efficiency and effectiveness

11. Defra say that the improvement in the exercise of public functions, particularly in terms of effectiveness and efficiency, will come from the new context in which the committee is working, as one of a number of scientific advisory bodies with oversight from the CSA; and its new Terms of

⁵ Available at: http://www.cabinetoffice.gov.uk/sites/default/files/resources/Public_Bodies_Act_2011_Guidance_for_Officials.pdf

⁶ HL Deb 29 November 2010; Col 1361
Reference (see Appendix 1). Defra also say that the current Terms of Reference, which are bound in the 1990 Act, have been overtaken by the new regulatory arrangements for chemicals and are now preventing the committee being endowed with new Terms of Reference so that it can play a more strategic, flexible and proactive role. They consider also that the broader scientific context and the enhanced role for the new committee represent better value for the modest amount of taxpayer money that goes into funding its operation (see Appendix 1).

**Accountability to Ministers**

12. The further information from Defra says that the proposed Terms of Reference for the new committee are also more explicit on its relationship with, and accountability to, Ministers. The Terms of Reference have not yet been formally agreed by Ministers but Defra’s intentions are to have arrangements for routine reporting after quarterly meetings, in addition to reports for specific projects and an annual report. These could run in parallel with any other reporting (on the committee) to Ministers that will stem from the CSA/SAC oversight of the committee. Defra say that the possibility of Ministers attending part of the committee meetings from time to time will also be considered, but they will need to strike a balance between the frequency and intensity of contact between Ministers and the committee and the independence from Ministers that needs to be safeguarded for such bodies (see Appendix 1). The possible attendance of Ministers at the committee meetings is an unusual aspect of the proposals and Defra are right to give careful consideration to managing this appropriately.

13. **It is not clear from the ED or further information from Defra to what extent some of the changes which they say will improve efficiency, effectiveness or accountability could have been made under the current arrangements.**

**Independent advice**

14. Defra acknowledge that the key risk as a result of the change is that it could be seen wrongly as an attempt to restrict the independence of the committee (see Appendix 1). However, they say that because of the proposed Terms of Reference, and the requirement to comply with the Government’s Code of Practice for Scientific Advisory Committees (“the Code of Practice”)\(^7\), the committee is not more likely to be vulnerable to political interference by Ministers as a result of its change of status (see Appendix 1).

15. The issue of the independence of the advice given to Ministers was prominent\(^8\) in the debates in the House on the amendments to prevent ACHS from being listed in Schedule 1 of the 2011 Act. The Committee also notes that the Royal Society of Chemistry\(^9\) said in response to the consultation that they did not support the Government’s proposals because they appeared very similar to the original proposals made to Parliament in 1989/90; and at that time, Parliament, the House of Lords in particular,

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\(^8\) HL Deb 29 November 2010; Col 1355 to 1361

\(^9\) Response by the Royal Society of Chemistry to the 2011 consultation by Defra on the future of the UK Advisory Committee on Hazardous Substances
insisted that the ACHS was established as a statutory committee, it being clear that Parliament did not completely trust Ministers and officials always to seek proper scientific advice before taking decisions on controls being applied to chemicals.

16. **Given the importance of this issue, the Minister may wish to use the debate to set out exactly how the Government will ensure that the newly constituted committee will be able to, in the words of the Code of Practice**\(^\text{10}\), “expect to operate free of influence from the sponsor department officials or Ministers, and remain clear that their function is wider than simply providing evidence just to support departmental policy.” As part of the Government’s argument for improved accountability and independence of advice hinges on the proposed new Terms of Reference, the Minister may also wish to say whether they have now been agreed in a form that would support this before the draft order is approved.

**Safeguards**

17. Section 8(2) of the 2011 Act requires that a Minister may make an order only if the Minister considers that (a) the order does not remove any necessary protection, and (b) 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. Notwithstanding the issues around the independence of the advice, there is nothing in the ED or responses to the consultation to suggest the draft Order does not meet the tests.

**Conclusion**

18. The changes proposed by the Government do not appear to be of broad interest or to be generally contentious. This is possibly due to the limited nature of the changes, and the Committee struggles to see much discernible benefit in the proposals. The Government has presented a case to Parliament for the draft Order improving the exercise of public functions as required by the 2011 Act. Although this is far from compelling, the Committee considers that it probably just crosses the statutory threshold. Despite the deficiencies in the ED, they are not sufficient grounds to trigger the enhanced procedure; and on that basis we are content to clear the draft Order under within the 40 day affirmative procedure.

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\(^{10}\) Code of Practice for Scientific Advisory Committees; paragraph 31
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this report.

OTHER INSTRUMENTS OF INTEREST

Draft Misuse of Drugs Act 1971 (Amendment) Order 2012

19. This draft instrument supersedes the draft of the same title which was laid before Parliament on 16 January 2012 and identified by the Committee as an instrument of interest. The draft instrument will classify a number of drugs for control as class B and C drugs under the Misuse of Drugs Act 1971 (“the 1971 Act”). At the request of the Committee, the Home Office has provided an explanation as to why the earlier draft legislation has been replaced (see Appendix 2). They say that this follows further advice to Ministers from the Advisory Council on the Misuse of Drugs on the 2 steroids which were to be classified under the 1971 Act by the earlier draft. This advice took into account the latest evidence available and informed that the harms of these drugs do not warrant inclusion under the 1971 Act.

Local Authority (Referendums Relating to Council Tax Increases) Regulations 2012 (SI 2012/460)

20. These Regulations make minor changes to the requisite calculations which local authorities must make when calculating their council tax for a financial year to reflect provisions introduced by the Localism Act 2011. If these calculations are “excessive” (as defined), then the billing authorities must hold a council tax referendum, these Regulations also set time limits and provisions for the handling of costs relating to such a referendum. When considering the instrument the Committee found the need for an aide memoire on how the calculations work and this is reproduced in Appendix 3.

Syria (European Union Financial Sanctions) (Amendment) Regulations 2012 (SI 2012/639)

21. These Regulations amend the Syria (European Union Financial Sanctions) Regulations 2012 (“the 2012 Regulations”) which put in place penalties for breach of EU financial sanctions in relation to Syria. The Regulations implement Council Regulation (EU) No. 168/2012 of 27 February 2012 which gives effect to additional restrictive measures, imposing an asset freeze on additional individuals and an entity, the Central Bank of Syria. The asset freezing measures in respect of the Central Bank of Syria are subject to

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11 51st Report of Session 2010-12; 2 February 2012
12 For 2012-13 a council tax referendum will be triggered if an authority proposes to set a council tax increase which exceeds the following provisional limits:
   • 3.5% for most principal authorities;
   • 3.75% for the City of London; and
   • 4% for the Greater London Authority, police authorities, and single purpose fire and rescue authorities.
derogations permitting certain transfers of funds or economic resources to and from the Central Bank of Syria connected to trade contracts and in order to provide financial institutions in the EU with liquidity for the financing of trade; these Regulations amend the 2012 Regulations to reflect the derogations (Explanatory Memorandum paragraph 7.3).
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft instruments subject to affirmative approval

- Industrial Training Levy (Construction Industry Training Board) Order 2012
- Industrial Training Levy (Engineering Construction Industry Training Board) Order 2012
- Misuse of Drugs Act 1971 (Amendment) Order 2012
- Postal Services Act 2011 (Disclosure of Information) Order 2012
- Schedule 5 to the Anti-terrorism, Crime and Security Act 2001 (Modification) Order 2012
- Statistics and Registration Service Act 2007 (Disclosure of Social Security and Revenue Information) Regulations 2012

Instruments subject to annulment

- SI 2012/460 Local Authority (Referendums Relating to Council Tax Increases) Regulations 2012
- SI 2012/462 Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2012
- SI 2012/469 Insolvency (Amendment) Rules 2012
- SI 2012/470 National Health Service (Charges for Drugs and Appliances) Amendment Regulations 2012
- SI 2012/476 Special Health Authorities (Establishment and Constitution Orders) Amendment Order 2012
- SI 2012/501 Welfare of Animals (Slaughter or Killing) (Amendment) (England) Regulations 2012
- SI 2012/502 National Health Service (Primary Dental Services) (Miscellaneous Amendments) Regulations 2012
- SI 2012/504 Medicines (Products for Human Use) (Fees) Regulations 2012
- SI 2012/505 Civil Procedure (Amendment) Rules 2012
- SI 2012/511 Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) (Amendment) Regulations 2012
- SI 2012/515 National Health Service (Optical Charges and Payments) (Amendment) Regulations 2012
| SI 2012/528 | Pension Protection Fund and Occupational Pension Schemes (Levy Ceiling and Compensation Cap) Order 2012 |
| SI 2012/532 | Statistics of Trade (Customs and Excise) (Amendment) Regulations 2012 |
| SI 2012/534 | Thurrock Development Corporation (Transfer of Property, Rights and Liabilities) Order 2012 |
| SI 2012/535 | Urban Development Corporations (Planning Functions) Order 2012 |
| SI 2012/536 | Police Authority (Amendment) Regulations 2012 |
| SI 2012/539 | Occupational and Personal Pensions Schemes (Levies – Amendment) Regulations 2012 |
| SI 2012/542 | Occupational Pension Schemes (Contracting-out and Modification of Schemes) (Amendment) Regulations 2012 |
| SI 2012/573 | Social Security (Contributions) (Amendment) Regulations 2012 |
| SI 2012/574 | Lincolnshire (Coroners’ Districts) Order 2012 |
APPENDIX 1: DRAFT ADVISORY COMMITTEE ON HAZARDOUS SUBSTANCES (ABOLITION) ORDER 2012

Department for Environment, Food and Rural Affairs officials have provided the following responses to the questions put by the Committee:

Background

Q. Do you have the Hansard references for the debates in the House of Lords on the ACHS amendments?
A. Yes.

http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129-0003.htm#1011306000071

http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110323-0001.htm#11032365000792

Operations of the Committees

Q. How often does the current Committee meet?
A. The current Committee meets four times a year.

Q. When did the current Committee last meet?
A. The current Committee last met on 13 December 2011.

Q. How will the new body be set up?
A. The new body will be in de facto existence as soon as the Order comes into force. This will be done administratively and seamlessly without any breaks in the cycle of quarterly meetings. The existing Committee membership and work will be carried forward onto the new body.

Q. Is it correct that the new Committee will have no statutory basis?
A. Yes.

Q. Do you envisage that the new Committee will have substantially different Terms of Reference from the current Committee?
A. As stated in the Explanatory Document we have already consulted on proposed Terms of Reference for the new Committee. The current ACHS Terms of Reference and the proposed ones for the successor body are annexed to this briefing note for ease of reference.

Q. The EM says at paragraph 7 that “the work of the successor body will fall under new arrangements to strengthen the science and evidence base to support policy across Defra” and “this will provide greater scrutiny and co-ordination of scientific advice in the Department”. How do you intend these new arrangements to operate?
A. Written statements about this were made to both Houses of Parliament on 26 January 2011.

The new body will operate within a closer network of expert scientific committees overseen by Defra’s Chief Scientific Adviser (CSA), supported by Defra’s Science Advisory Council (SAC). The ACHS Chair will now meet Defra’s CSA to discuss the work of the committee at least once a year, thus helping provide the CSA with greater oversight of scientific advice across the Department. The ACHS Chair will also have the opportunity to discuss the committee’s work at an annual meeting of Defra’s SAC, as well as have the opportunity to summarise the work of the committee in SAC’s annual report. This greater level of oversight, challenge and scrutiny of the work of the ACHS will help yield a greater and more co-ordinated level of evidence assurance to meet Defra’s needs.

Q. What is the sanction for breaches of the Code of Practice for Scientific Advisory Committees?
A. COPSC states that “Government departments and their independent scientific advisers should raise issues of concern over the application of the Principles, or other guidance, with the relevant departmental Chief Scientific Adviser (CSA). If the matter of concern cannot be effectively resolved or is especially serious CSAs should approach the Government Chief Scientific Adviser (GCSCA) and Ministers should approach the GCSCA and the Minister for Science. The matter will be examined against a clear set of criteria.”

Clearly any breach of COPSC would not be good for the reputation of the Committee nor the Department. This in itself will be a powerful reason for breaches to be avoided. If a breach did happen, then clearly there would be pressure from Defra’s CSA, the GCSCA, and from Ministers to quickly correct the breach. If the breach was serious enough the ultimate sanction would be for the Department to replace the relevant member and/or close down the committee. However, this would represent a last resort, and alternative arrangements would then need to be set up for the Department to continue to receive support and advice on the subject of hazardous substances.

Q. Have you identified any risks as a result of the change?
A. Yes. The key risk is that this change could be seen, wrongly, as an attempt to restrict the independence of the Committee.

Members
Q. What will happen to existing Committee members?
A. They will automatically become members of the new Committee and serve the remainder of their 3-year terms on that body. All members are aware that their current office would straddle the existing and new Committees.

Q. How will you identify the members for the new Committee?
New members for the new Committee will be appointed on the basis of their individual expertise as required for the Committee to fulfil its remit. All appointments will be made in line with the new Code of Practice for Appointments to Public Bodies which will come into effect on 1 April 2012.
Q. Will the members of the new body have the same terms and conditions and same level of contractual protection as the current Committee members?
A. Yes.

Impact

Q. Are there definitely no costs as a result of the changes? Are there no transition costs, legal fees, recruitment costs etc?
A. Yes - there are no costs as a result of these changes. There are no transition costs, legal fees or recruitment costs.

Q. What are the running costs of the current body and the new body?
A. The current body costs about £30K per year in fees for members and in expenses for meetings including travelling and subsistence. We envisage the same level of expenditure for the new body.

Improving the exercise of public functions

Q. Please expand on paragraph 7 of the EM i.e. how exactly will the change improve the exercise of public functions? Please give evidence where possible and make specific reference to efficiency, effectiveness, economy and accountability to Ministers.
A. As the Committee is being reconstituted the improvement in the exercise of public functions, particularly in terms of effectiveness and efficiency, will come from the new context in which the Committee is working, as one of a number of scientific advisory bodies with oversight from the Department’s Chief Scientific Adviser (see answer to Q7 above); and its new Terms of Reference.

The current Committee’s Terms of Reference which are bound in the Environmental Protection Act 1990, have been overtaken by the new regulatory arrangements for chemicals and are getting in the way of the Committee being endowed with new Terms of Reference so that it can play a more strategic, flexible and proactive role. We consider too that this broader scientific context, and the enhanced role, for the new Committee represent better value for the modest amount of taxpayer money that goes into funding its operation.

The proposed Terms of Reference for the new Committee are also more explicit on its relationship with, and accountability to, Ministers. These have not yet been formally agreed by Ministers but our intentions are to have arrangements for routine reporting after quarterly meetings, in addition to reports for specific projects and an annual report. These could run in parallel with any other reporting (on the Committee) to Ministers that will stem from the Chief Scientific Adviser/Science Advisory Council oversight of the Committee. The possibility of Ministers attending part of Committee meetings from time to time will also be considered. We will, however, need to strike a balance between the frequency and intensity of contact between Ministers and the Committee and the independence from Ministers that needs to be safeguarded for such bodies.

Q. Is there a risk that if the Committee ceases to be an NDPB it is more likely to be vulnerable to political interference by Ministers? If so, what would be the safeguards?
A. No – because of the required compliance with the Code of Practice for Scientific Advisory Committees; and also because the proposed Terms of
Reference for the new committee explicitly provide for it to be able to “advise to officials, Ministers and other relevant bodies, on request or otherwise”.

Naming of order

Q. In the naming of the draft Order, why has Defra not followed the Cabinet Office guidance?

A. The requirements for the naming of statutory instruments are set out in the Statutory Instrument Practice (SIP), paragraph 2.3.11 – “The title should give an accurate indication of the nature of the instrument, and distinguish it from all others; every care must be taken to ensure that no two instruments have the same title…. Subject to these requirements, the title should be short.” Paragraph 4.1 of the Cabinet Office guidance advised that a particular format be used for the title, but clearly stated that: “However, titles are ultimately for departments to decide”. The title to our order is in accordance with both these documents, although we chose not to follow the suggestion made in the guidance.

We consider that the title chosen for our order best reflects the requirement in paragraph 2.3.11 of the SIP; the “Advisory Committee on Hazardous Substances (Abolition) Order” is a short title that gives an entirely accurate indication of the nature of the instrument, and distinguishes it from all others. It is clear in several places on the first page of the order that public bodies are involved (the italicised headnote, the subject heading of ‘Public Bodies’ and the preamble recital of the use of the Public Bodies Act powers), without that additionally having to be mentioned in the title.

ACHS Terms of reference: current and proposed

Current

- To advise the Secretary of State for the Environment, Transport and Regions, the Minister of the Environment, Northern Ireland, the Scottish Ministers, and the First Minister, National Assembly for Wales and other Ministers (hereafter collectively known as “the Ministers”) as appropriate on the exercise of the power to make Regulations under Section 140 of the Environmental Protection Act 1990 to prohibit or restrict the importation, use, supply or storage of specified substances or articles including nanomaterials

- To advise the Ministers on the exercise of the power to make Regulations under Section 142 to obtain information about potentially hazardous substances including nanomaterials

- To advise the UK Chemicals Stakeholder Forum and other bodies as appropriate on criteria, prioritisation and risk assessment of potentially harmful substances including nanomaterials

- To advise the Ministers, the UK Chemicals Stakeholder Forum and other bodies as appropriate on research needs and the development of relevant indicators.

Proposed

(For successor body as set out in 7 July 2011 consultation, to be agreed by Ministers in due course)
To advise officials, UK Ministers, and other relevant bodies, on request or otherwise:

- on matters of relevance at a domestic, European and global level, relating to the protection of the environment, and human health via the environment, from potentially hazardous substances and articles, including nanomaterials; including on future issues of concern, on impacts and on wider strategic linkages;

- on the assessment of risks associated with potentially hazardous substances and articles, including nanomaterials;

- on research needs and other evidence gaps relating to potentially hazardous substances and articles, including nanomaterials; including analysing, interpreting, and assessing the quality and relevance of evidence.

To advise officials and UK Ministers, on request or otherwise, on policy development and evaluation, including the impact of different policy options; the assessment of new regulations and deregulation, and the development of voluntary initiatives, best practice advice and formal guidance, which are relevant to its remit.

To report to, and engage with, the Defra Chief Scientific Adviser, and through them, the Defra Science Advisory Council.

To support the Defra Chief Scientific Adviser, as necessary, during emergencies.

To operate in line with the Government’s Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees.

The lead Defra Minister for this committee will:

- Set Terms of Reference for the committee;

- Agree strategic work plans, receive reports and advice; and

- Receive periodic reviews of the committee’s functions and value for money;

- Consult the Devolved Administrations and other Departments as appropriate, about the committee and its work.

Department for Environment, Food and Rural Affairs
March 2012

13 Includes Ministers in the Devolved Administrations
APPENDIX 2: DRAFT MISUSE OF DRUGS ACT 1971 (AMENDMENT)
ORDER 2012

The Home Office withdrew the earlier version of the draft Order following further advice on the 2 steroids (7-hydroxy-dehydroepiandrosterone and 7-keto-dehydroepiandrosterone) from the Advisory Council on the Misuse of Drugs (ACMD), which took into account the latest evidence available and informed that the harms of these drugs do not warrant inclusion under the Misuse of Drugs Act 1971. The ACMD’s further advice is available at http://www.homeoffice.gov.uk/publications/agencies-public-bodies/acmd1/acmd-steroids-advice-2012?view=Binary. This advice was accepted by Home Office Ministers and in the circumstances, the earlier draft Order in its original form could not be taken forward, and had to be withdrawn. The current draft Order has now been revised to exclude the steroids that were originally listed in Article 3(b)(i) of the earlier draft Order.

Home Office
March 2012
APPENDIX 3: AIDE MEMOIRE ON COUNCIL TAX INCREASE CALCULATIONS

The Coalition Programme for Government included a commitment to give residents the power to veto excessive council tax increases, to ensure that excessive council tax increases occur only where there is a clear mandate from local people by means of a referendum.

*The calculation of a proposed Council Tax increase*

The basis of liability for Council Tax is the value-band to which a dwelling has been assigned. Value bands range from A to H, and the relative liabilities of each band are expressed in terms of Band D. Thus a Band A dwelling gives rise to a liability of $6/9$ths that of a band D, a band E to $11/9$ths, and a band H to $18/9$ths. The overall tax base of an area (amount “$T$” in the legislation) is expressed in terms of the number of “equivalent Band D dwellings in the area”, calculated by using these ratios.

When an authority sets its council tax, it does so by calculating the total amount of council tax it needs to raise – the difference between its gross planned expenditure, and the income it can raise from government grants and other sources. This is the “council tax requirement” – amount “$R$” in the legislation. It then calculates its “basic amount of council tax” – the amount of tax to be levied on a Band D dwelling in the area – by dividing the council tax requirement by the council tax base. Thus, the basic amount is calculated by the formula $R/T$. The amount to be levied on dwellings in other bands is then calculated using the ratios mentioned above.

For the purposes of determining whether an authority’s council tax increase is excessive, and a referendum must therefore be held, the Localism Act 2011 requires an authority to also calculate its “relevant basic amount of council tax”. This calculation is as described above, but excludes from planned expenditure the cost of levies issued to the authority by bodies entitled to do so. It is therefore an adjusted band D amount. The policy reason for excluding levies from the calculation is so that the determination of excessiveness is applied to expenditure over which a local authority has direct control, and the council tax that the authority will collect to spend on its own activities.

Determining whether a council tax increase is excessive

Under the council tax referendum provisions in the Localism Act an authority is required to determine whether its council tax increase from one year to the next is ‘excessive’. It must do so by calculating the increase in its ‘relevant basic amount’, and determining whether that increase is excessive by reference to principles which have been set by the Secretary of State with the approval of the House of Commons. For 2012-13 a council tax referendum will be triggered if an authority

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14 These bodies are very diverse and include – for example - the South Yorkshire Integrated Transport Authority, Internal Drainage Boards and Garden Square Committees in the Royal Borough of Kensington and Chelsea.
proposes to set a council tax increase which exceeds the following provisional limits:

- 3.5% for most principal authorities;
- 3.75% for the City of London; and
- 4% for the Greater London Authority, police authorities, and single purpose fire and rescue authorities.

If it is ‘excessive’, the authority must hold a referendum or, if it is a precepting authority request that the billing authorities in its area organise them. Council tax referendums will generally be held on the first Thursday in May to coincide with local elections (and must not be later than that).
APPENDIX 4: INTERESTS AND ATTENDANCE

Committee Members’ registered interests may be examined in the online Register of Lords’ Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the meeting on 13 March 2012 Members declared no interests.

Attendance:

The meeting was attended by Baroness Butler-Sloss, Baroness Eaton, Lord Goodlad, Lord Hart of Chilton, Lord Methuen, Baroness Morris of Yardley, Lord Norton of Louth and Lord Scott of Foscote.