



# HOUSE OF LORDS

## Procedure Committee

---

---

7th Report of Session 2010–12

Orders laid under clauses 7(2) and 9 of the  
Localism Bill

Orders laid under the Public Bodies Bill

---

Ordered to be printed 24 October 2011

---

Published by the Authority of the House of Lords

*London* : The Stationery Office Limited  
£price

HL Paper 206

### *The Procedure Committee*

The Select Committee on Procedure of the House is appointed each session to consider any proposals for alterations in the procedure of the House that may arise from time to time, and whether the standing orders require to be amended.

### *Current Membership*

The members of the Procedure Committee are:

Baroness Anelay of St Johns  
Lord Bassam of Brighton  
Lord Brabazon of Tara (*Chairman*)  
Baroness D'Souza (*Lord Speaker*)  
Lord Goldsmith  
Baroness Gould of Potternewton  
Lord Harries of Pentregarth  
Lord Jopling  
Lord Laming  
Lord Low of Dalston  
Lord McNally  
Baroness Royall of Blaisdon  
Baroness Shephard of Northwold  
Lord Shutt of Greetland  
Lord Strathclyde  
Baroness Thomas of Winchester  
Lord Tyler  
Viscount Ullswater  
Baroness Wall of New Barnet

Alternate members:

Lord Campbell-Savours  
Viscount Craigavon  
Baroness Hamwee  
Lord Hunt of Wirral  
Viscount Montgomery of Alamein

### *General Information*

General information about the House of Lords and its Committees is on the Internet at <http://www.parliament.uk/lords/index.cfm>.

### *Contacts for the Procedure Committee*

All correspondence should be addressed to the Clerk to the Procedure Committee, House of Lords, London, SW1A 0PW.

The telephone number for enquiries regarding the Committee's work is 020 7219 8796.

## SEVENTH REPORT FROM THE PROCEDURE COMMITTEE

---

### Orders laid under clauses 7(2) and 9 of the Localism Bill

1. We have considered proposals from the Leader of the House on how the House should scrutinise draft orders laid under clauses 7(2) and 9 of the Localism Bill<sup>1</sup>, in the event that the bill currently before Parliament is enacted.
2. The procedures for making orders under the Localism Bill are modelled on the procedures for making Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. The House already has processes in place for scrutinising draft orders laid under that Act (see Paragraphs 10.19–10.31 of the *Companion to the Standing Orders*). **We therefore recommend that the same processes should apply to draft orders laid under clause 7(2) of the Localism Bill, and section 5E(2) of the Fire and Rescue Services Act 2004 as inserted by clause 9 of the Localism Bill.**
3. **We further recommend that the House should appoint the Delegated Powers and Regulatory Reform Committee as the committee charged with reporting on draft orders laid clauses 7(2) and 9 of under Localism Bill, and that the revised Terms of Reference of the committee given in the Appendix be agreed to.**

### Orders laid under the Public Bodies Bill

4. We have considered proposals from the Leader of the House on how the House should scrutinise draft orders laid under clause 11(1) and (8) of the Public Bodies Bill<sup>2</sup>, in the event that the Bill currently before Parliament is enacted. A summary of the relevant provisions in the Bill is given below.

#### *Provisions in the bill*

5. Clause 11(1) of the bill provides that the Minister may lay a draft order and accompanying Explanatory Memorandum before Parliament no sooner than 12 weeks after the day on which the consultation period began.
6. The bill sets out the information that the Explanatory Memorandum must present.
7. From the day on which the draft order is laid, a 30-day period starts ticking. Within this period, the bill provides that either House of Parliament may decide that an enhanced affirmative procedure should apply to the draft order. This can be triggered in one of two ways: by resolution of either House, or on the recommendation of a committee of either House charged with reporting on the draft order, provided that the recommendation of that committee is not rejected by resolution of the relevant House within the 30-day period.
8. If the 30-day period lapses without either House or a Committee of either House triggering the application of an enhanced affirmative procedure, then the draft order may be approved by a resolution of each House of Parliament

---

<sup>1</sup> References to clause numbers are to the Localism Bill (As Amended on Report), HL Bill 100-I.

<sup>2</sup> References to clause numbers are to the Public Bodies Bill (as first printed for the Commons), Bill 188.

once a further 10 days have elapsed (creating a 40-day scrutiny period in total), and the Minister may subsequently make an order in those terms.

9. If, however, either House or a Committee of either House has—within the 30-day period—triggered the application of an enhanced affirmative procedure, then a further 30-day period must be allowed to lapse (creating a 60-day scrutiny period in total).
10. The Bill provides that where the enhanced affirmative procedure has been applied, the Minister “must have regard to (a) any representations, (b) any resolution of either House of Parliament, and (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft order, made during the 60-day period”.
11. Once the 60-day period has lapsed, the draft order may be approved by a resolution of each House of Parliament, or, if the Minister wishes to make material changes to the order, a revised draft order and accompanying statement summarising the changes proposed may be laid before Parliament. No further scrutiny period applies before the revised draft order may be approved by a resolution of each House.

#### *Scrutiny arrangements*

12. Under the proposals brought forward by the Leader of the House, which we endorse, draft orders under the Public Bodies Act would be subject to scrutiny by the Joint Committee on Statutory Instruments in the normal way.
13. In this House, the Merits of Statutory Instruments Committee would be charged with reporting on draft orders laid under the Public Bodies Act. The Committee would have the following roles:
  - Recommending whether the enhanced affirmative procedure should apply in respect of specific draft orders (see paragraph 31 above);
  - Reporting as to whether the statutory tests for orders set out in Clauses 8 and 10 have been met;
  - Where an enhanced affirmative procedure has been applied and the Committee wishes to do so, making recommendations in respect of the draft order within the 60-day period
14. The House would retain the right to override the Committee’s recommendation on the procedure that should apply to a draft order by resolution, and it would be open to any Member to table such a resolution. Where the Committee had recommended an enhanced affirmative procedure, a resolution seeking to override that recommendation might take the following form:
 

**[Title] Order 2011** Lord xxx to move that, notwithstanding the recommendation of the Merits of Statutory Instruments Committee in its xxth Report (HL Paper xx), the [title] Order 2011 shall be subject to the ordinary affirmative procedure.
15. It would also be open to any Member of the House to table a free-standing motion for resolution seeking to apply the enhanced affirmative procedure. Either form of resolution would have to be passed by the House within the 30-day period in order to take effect. We expect that to facilitate this process the Merits Committee would report as early as possible within the 30-day

period and that the House would normally wait for the Committee to report before debating and deciding on a resolution.

16. The Merits Committee's Terms of Reference would be amended to reflect its role in scrutinising draft orders laid under the Public Bodies Act, and revised terms of reference are set out in the Appendix.

*Approval by resolution of draft orders*

17. Draft orders laid under the Public Bodies Act would be subject to approval by resolution of both Houses after the expiry of the relevant scrutiny period.
18. When a draft order which has been subject to the enhanced affirmative procedure is presented to the House for approval, the Minister will be expected to explain how regard has been had to any representations, resolutions of either House or recommendations of the committee charged with reporting on the draft order received within the 60-day period. This explanation would either be given at the despatch box, during the debate on the draft order, or by means of a Written Ministerial Statement laid prior to the debate.
19. Rather than proceeding with the original draft order, the Minister may under clause 11(8) choose to lay a revised draft order incorporating material changes. A revised order should be accompanied by a statement summarising the changes proposed. Revised draft orders laid under clause 11(8) would be subject to scrutiny by the Joint Committee on Statutory Instruments in the same way as other draft orders subject to the affirmative procedure, and in respect of any material changes, by the Merits of Statutory Instruments Committee.

*Recommendation*

20. **We recommend the procedures described in paragraphs 12–19 above, in respect of the scrutiny of draft orders laid under clause 11(1) and (8) of the Public Bodies Bill, should the bill currently before Parliament be enacted, to the House. We further recommend that the amended terms of reference of the Merits of Statutory Instruments Committee, set out in the Appendix to this Report, be agreed to.**

## APPENDIX

---

### **Proposed revised terms of reference of the Delegated Powers and Regulatory Reform Committee**

The Committee shall:

- (i) report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) report on documents and draft orders laid before Parliament under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006;
- (iii) report on documents and draft orders laid before Parliament under or by virtue of section 7(2) of the Localism Act 2011 or under or by virtue of section 5E(2) of the Fire and Rescue Services Act 2004; and
- (iv) perform, in respect of draft orders referred to in paragraphs (ii) and (iii) above, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments.

### **Proposed revised terms of reference of the Merits of Statutory Instruments Committee**

(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;
- (a) 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;
- (b) 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.