

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

31st Report of Session 2012-13

**Public Bodies Orders –
One Year on:
Government Response**

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Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (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 secondary legislation 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

Lord Bichard	Lord Methuen
Baroness Eaton	Rt Hon. Baroness Morris of Yardley
Lord Eames	Lord Norton of Louth
Rt Hon. Lord Goodlad (<i>Chairman</i>)	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 2.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

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 Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email seclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Thirty-First Report

PUBLIC BODIES ORDERS: GOVERNMENT RESPONSE

1. In December 2012, the Committee published a Special Report¹ about how scrutiny of Public Bodies Orders had operated in the House of Lords, during the 12 months since Royal Assent to the Public Bodies Act 2011. On 19 February 2013, the Rt Hon. Francis Maude, MP, Minister for the Cabinet Office, sent to the Committee the Government's response: we reprint this as an Appendix. In our Report, we recommended that the Government should provide a statement of the net savings arising from public bodies reforms since Royal Assent to the Act. In response, Mr Maude has included relevant information as an annex to his letter.

¹ "Public Bodies Act 2011: one year on": 19th Report of Session 2012-13 (HL Paper 90)

APPENDIX 1: PUBLIC BODIES ORDERS: GOVERNMENT RESPONSE

I am writing in response to your Committee's Special Report *Public Bodies Act 2011: one year on*. I welcome the findings of your Report, and I am pleased to inform you that the Government are already taking a number of steps to address the issues you highlight. I also welcome the recommendation you make in relation to savings from the reforms, and my officials have been working with their counterparts in departments to provide you with an aggregate figure, which is set out in more detail in annex A. In addition I would like to thank you for your positive engagement in the delivery of the Coalition's programme for public bodies reform; to make the landscape smaller, more efficient, and less costly.

In the report, your Committee raised concerns about the robustness of the Government's case for individual orders, and the evidence provided to show that the statutory tests in the 2011 Act have been met. I can reassure you that systems are already in place for managing the planning and production of draft orders. My officials continue to work with departments to ensure that Government provide consistency when producing evidence for each reform by ensuring a comprehensive audit by officials within the Cabinet Office, and I hope you will agree that the standard and consistency of explanatory documents improved in the latter part of 2012. We will ensure in future that we build extra scrutiny time into the process so that the standard of explanatory documents is maintained by all departments.

In line with the requirements of the Act, departments will provide robust evidence to demonstrate how the reform proposals will meet the statutory test of improving the exercise of public functions, and will explicitly make reference to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers.

I was pleased to note that departments have universally responded positively to requests for further information from the Committee in relation to this point. I hope you will agree with me that any inconsistencies in meeting the statutory tests in Section 8 of the Act are therefore not the result of deliberate attempts to circumvent the scrutiny process, but rather the fact that departments have been getting used to an entirely new Parliamentary procedure. Now one year in to the process, these inconsistencies will have been resolved.

In the report, your Committee raised concerns about the Government's approach to consultation and ongoing engagement with stakeholders. A great deal of work is already being done to address the consultation requirement under section 10 of the Act. Presently the Explanatory Document lists consultations and responses where formal public consultation has taken place. My officials will work to ensure that explanatory documentation clearly states who the interested parties are; provides an explanation for the extent of consultation; and states the duration of the consultation. I have asked them to update the guidance accordingly.

Your Committee also raised concerns about the arrangements that the Government has put in place to ensure the future monitoring of reforms. Again, this is something I have asked my officials to include in the Cabinet Office guidance to ensure that departments have considered, and set out in the explanatory document, how they are going to monitor the medium and long-term impacts of legislative reforms. Where Impact Assessments have been published, departments are also obliged to conduct Post Implementation Reviews at regular intervals to ensure that the impact of the reforms is measured.

The report contained a specific recommendation: “that the Government provides a statement of the net savings arising from reforms to public bodies and offices under the Public Bodies Act 2011 one year on from Royal Assent.”

In order to be able to provide an aggregate figure using a consistent methodology, my officials have been working with their counterparts in departments. They have collated the net reductions in administration spending within the current spending review period for public bodies affected by the orders laid in 2012. This uses the same methodology used by departments and the Cabinet Office to estimate the total reductions in the administration costs of all public bodies. These figures are provided in detail in annex A to this letter.

In all cases specific information regarding the financial implications of reforms will have already been provided in documentation accompanying the draft Order such as explanatory documents and Impact Assessments. However, this information will have been provided to help the committee understand the impact of each specific order rather than to aggregate the total impact of all orders. Consequently, some explanatory documents contained figures presented over a longer time frame, and some included reductions in programme and capital spending where this would help the Committee with their scrutiny. Where the net reductions in administrative spending differ from figures represented in Impact Assessments or explanatory documents, departments have provided a note to help the Committee to understand these figures. Going forward, I have asked my officials to amend the guidance to ensure that departments include an estimate of the net reduction in administration expenditure (using the Cabinet Office’s existing methodology) in all future explanatory documents to be supplemented with further background where departments consider this is necessary.

FRANCIS MAUDE

19 February 2013

Body	Dept	Latest admin reductions reported in line with CO methodology (£m)*	Note on variance in administration spending vs data in explanatory documents
Advisory Committee on Hazardous Substances	Defra	£0.0	
British Waterways Board	Defra	£0.0	
Commission for Rural Communities	Defra	£17.6	The decision to abolish CRC instead of 'retain and substantially reform' the body released a further £0.6m over the spending review period
Inland Waterways Advisory Council	Defra	£0.0	
Environment Protection Advisory Committee	Defra	£0.0	The £0.2m per year savings reported in the Explanatory Document have been reinvested in new ways of working so situation is cost neutral.
Regional and Local Fisheries Advisory Committees	Defra	£0.0	The £0.2m per year savings reported in the Explanatory Document have been reinvested in new ways of working so situation is cost neutral.
Drinking Water Inspectorate	Defra	£3.8	The £3.8m is expected as receipts against programme expenditure, and do not align with the agreed CO Public Bodies Reform Programme methodology on admin reductions

Courts Boards (x 19)	MoJ	£1.4	Savings were originally estimated at £400k for each year of SR10. The figures were revised to £450k savings. There were no savings made in 2011/12 due to a later closure date.
HM Inspectorate of Court Administration	MoJ	£6.3	
Public Guardian Board	MoJ	£0.4	
Crown Court Rule Committee	MoJ	£0.0	
Magistrates' Courts Rule Committee	MoJ	£0.0	
Disability Living Allowance Advisory Board	DWP	£0.0	
Child Maintenance and Enforcement Commission	DWP	£0.0	
Railway Heritage Committee	DfT	£0.2	
Aircraft and Shipbuilding Industries Arbitration Tribunal	BIS	£0.0	
British Shipbuilders	BIS	£0.0	
Office of Fair Trading	BIS	£0.0	

NESTA	BIS	£0.0	The £1.84m savings referred to in the Explanatory Document are RAME and RDEL admin savings to NESTA and BIS respectively. This is wider than the CO Public Bodies Reform Programme methodology on administrative spending reductions (RDEL admin only).
		£29.6	

APPENDIX 2: 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 business taken at the meeting on 5 March 2013 Members declared no interests.

Attendance:

The meeting was attended by Lord Goodlad, Baroness Hamwee, Lord Methuen, Baroness Morris of Yardley, Lord Norton of Louth, Lord Plant of Highfield, and Lord Scott of Foscote.