

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

2nd Report of Session 2012-13

**Public Bodies Order:
Draft Public Bodies (Abolition of Her
Majesty's Inspectorate of Courts
Administration and the Public
Guardian Board) Order 2012**

Includes Information Paragraphs on 3 Instruments

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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 the Appendix.

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.

Second Report

PUBLIC BODIES ORDER

Draft Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012

Introduction

1. The draft Order was laid before Parliament by the Ministry of Justice (MOJ) along with an Explanatory Document covering both bodies and an Impact Assessment covering Her Majesty's Inspectorate of Courts Administration. It seeks to abolish Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board.

Overview of Her Majesty's Inspectorate of Courts Administration

2. Her Majesty's Inspectorate of Courts Administration (HMICA) was set up under the Courts Act 2003 to report to the Lord Chancellor on the administration supporting Crown, county and magistrates' courts. It reported five times before the previous government announced in December 2009 that it would be abolished as a cost saving measure. The current government confirmed the decision to abolish it following a Cabinet Office review of public bodies to determine whether their role was needed to provide a technical function, act independently to establish facts or be politically impartial. HMICA has been wound up administratively and it has not been operating since 31 December 2010.
3. Some of its functions for the physical inspection of premises have been transferred to Her Majesty's Chief Inspector of Prisons and similar bodies, and that arrangement is formalised by this draft Order. HMICA's role in inspecting the way courts are administered - for example, the accurate and timely reporting of court decisions, has been overtaken by the formation of HM Courts and Tribunals Service (HMCTS), and its external audit function by the National Audit Office. The MOJ states that the main reason for abolishing HMICA is to remove unnecessary duplication.

Consultation

4. A combined consultation was run for all ten bodies included in the Public Bodies Act 2011 connected with the MOJ from 12 July to 11 October 2011. In relation to HMICA there were 18 responses of which seven opposed the proposal, three expressed concerns about aspects of the proposal, six were broadly supportive and the remaining two were neutral. The chief concern raised by respondents was the loss of independent review and whether it was appropriate for HMCTS to monitor its own performance.

Tests in the Public Bodies Act 2011: Assessment of the Proposals

5. 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).

- *Efficiency and effectiveness:* In paragraph 7.15 of the Explanatory Document (ED) MOJ states that efficiencies will be realised from the removal of the duplication of the oversight functions. The abolition of HMICA has allowed for the redeployment of 36 staff and its £2m per annum budget which will be used more effectively elsewhere in the department.
- *Economy:* Paragraph 7.15 iii identifies the cumulative savings, net of all costs, to be achieved in the current spending review period, ending 2014-15, as £6.4m. Staff have either been redeployed in MOJ or the wider civil service or have accepted voluntary redundancy at a cost of just under £0.5m. The HMICA premises are in the process of being disposed of.
- *Accountability to Ministers:* This draft Order will place the monitoring of courts administration under the auspices of HM Courts and Tribunal Service (an executive agency of the MOJ) and it will therefore be more directly accountable to Ministers. Inspection of custodial premises in court buildings has been allocated to existing inspectorates which are already accountable to Ministers and the draft Order formalises this arrangement.

Safeguards

6. Paragraph 7.16 of the ED states that the order (a) does not remove any necessary protection and (b) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. It bases this statement largely on the fact that inspection of custody premises has been transferred to other agencies. A concern reiterated by most of those who opposed the abolition in the consultation exercise was that the abolition of HMICA left a government body without an independent monitor and thus reduced necessary protection. The MOJ argues that it is subjecting the courts administration to a different but equally rigorous scrutiny through HMCTS and ultimately the NAO auditing procedure. **The Committee accepts that the alternative arrangements proposed in the draft Order should provide equivalent protection and meet the safeguards test but recommends that public reassurance would be enhanced by the results of the HMCTS scrutiny of courts administration being published on an annual basis.**

Conclusion

7. As the HMICA has already ceased functioning this is essentially a technical Order to tidy up loose ends. The Committee considers that there is nothing in the ED or responses to the consultation to suggest the draft Order does not meet the statutory tests.

Overview of the Public Guardian Board

8. The Public Guardian Board (PGB) was established by the Mental Capacity Act 2005 to review the way the Office of the Public Guardian (OPG) discharges its functions. The seven member Board played an important part in ensuring that the early problems in delivering the role envisaged for the OPG were resolved but the Government has now decided that the OPG can

be effectively managed in-house and the independent Board is being wound up.

Consultation

9. This body was also included in the combined consultation exercise from 12 July to 11 October 2011. There were 12 responses of which 10 had no objection to the abolition of the PGB providing that robust alternative governance structures were put in place - in particular respondents suggested that the operation of the OPG should be strengthened by the inclusion of members with external experience to increase its business efficiency. The two respondents opposed to the abolition were concerned that the PGB's functions would not be carried out by other means. The Government explains at paragraph 7.15 ii of the ED the stronger internal governance structure that it plans for OPG, including three non-executive directors drawn from the business and financial management sectors and from those with experience of dealing with people who lack capacity. We agree that this should meet the concerns identified in the responses to consultation.

Tests in the Public Bodies Act 2011: Assessment of the Proposals

10. 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).
 - *Efficiency and effectiveness*: Paragraph 7.15 of the ED states that efficiencies will be realised from the removal of the duplication of the oversight functions. The Government believes that this can be delivered more effectively in house by strengthening the internal governance structure of the OPG. These new arrangements will include three non-executive directors with business or finance or care experience.
 - *Economy*: Paragraph 7.15 iii identifies the cumulative savings to be achieved as £0.4m net in the current spending review period. This is because savings from the administrative changes will be offset by the cost of the recruitment and remuneration for the non-executive directors. There are no redundancy costs.
 - *Accountability to Ministers*: The OPG is an executive agency of the MOJ and is therefore accountable to Ministers.

Safeguards

11. 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. The Government sought to address concerns about potential weaknesses in the governance structure of OPG by the introduction of three non-executive Directors. The degree of improvement they make will depend on the individuals chosen and how they perform but there is nothing in the ED or responses to the consultation to suggest that the solution would not be satisfactory or that, subject to these changes, the draft Order would not meet the safeguard tests.

Conclusion

12. The abolition of the Public Guardian Board will save costs although these are largely offset by enhancements to the governance of the OPG which should make the system more effective and efficient. The Committee considers that there is nothing in the ED or responses to the consultation to suggest the draft Order does not meet the statutory tests.

Overall Conclusion

13. The content of the ED was adequate to explain the draft order but the Committee found its presentation confusing. The ED, like the draft Order, covers the abolition of two evidently unrelated public bodies, and rather than dealing with them separately and sequentially, it jumps between the two throughout. This presentation did not aid clarity when considering the draft Order. **We recommend that in future the Explanatory Document laid with any omnibus Order that contains provisions about unrelated public bodies deals with each body separately and sequentially as this Report does.**
14. The HMICA element of the Order is largely technical, tidying up an already extinct body and the savings, though real, are notional from the reallocation of MOJ budgets. The abolition of the Public Guardian Board will save costs although these are largely offset by enhancements to the governance of the OPG which are intended to make the system more effective and efficient. Levels of protection and accountability appear to be maintained. **In the light of the concerns expressed in consultation responses about independent oversight, we recommend that the Ministry of Justice should demonstrate that the changes have been successful by publishing the outcome of the new arrangements at suitable intervals; we would suggest that material be included in the successor bodies' annual reports in a comparable form to that in the reports of the precursor agencies. In the debate the Minister may wish to explain to the House how this will be done.**
15. The proposals appear to the Committee to meet the tests set out in the 2011 Act and it is content to clear the draft Order within the 40 day affirmative procedure.

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 Electoral Registration Data Schemes Order 2012

16. In order to modernise the electoral registration system and tackle fraud, the Government intends to amend the current system so that electors will be asked to register individually from 2014. Electors will be asked to provide identifying information which will be checked before they are added to the electoral register. The initial phase of the preparatory process tested the efficiency of a number of different data sources against which electors' details can be checked. The current draft Order is the next phase which would allow registration officers in 17 areas in England, Wales and Scotland to use data sets kept by the Department for Work and Pensions (including data kept on behalf of the Department for Social Development in Northern Ireland and Her Majesty's Revenue and Customs) to enable them to improve the accuracy and completeness of their electoral registers. Depending on the outcome of these pilot schemes, the Government intends that this process of data matching will be used nationally and will enable the majority of electors to be automatically transferred to the individual electoral role without being required to register again. For that reason it is important that these pilot schemes take place during the summer and early autumn of 2012 so that any necessary business processes and digital and IT arrangements can be put in place in time for 2014. The draft Order also sets the date by which the Electoral Commission must evaluate the pilot schemes.

Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012 (SI 2012/1201)

17. The Regulations apply the Academies Act 2010 to Pupil Referral Units (PRUs) in order to create the legal framework that allows PRUs to become alternative provision (AP) Academies. The instrument also reintroduces the statutory duty on PRUs to co-operate with local authorities to improve the well being of children in the authority's area.

Police (Complaints and Misconduct) Regulations 2012 (SI 2012/1204)

18. These Regulations consolidate existing legislation about police complaints procedures, with some changes to reflect amendments made by the Police Reform Act 2011 to policing governance in England and Wales. The Independent Police Complaints Commission, as guardians of the entire police complaints system, conducted a review of the system following four years of operational experience. The review found that some of the statutory provisions for the handling of complaints contained processes which are either unnecessarily bureaucratic, or which are no longer necessary. The majority of the amendments made to the 2002 Act, and to Regulations by means of this instrument, are as a result of this review. The changes aim to

make the police complaints system more effective and efficient and improve the system both for those who operate it and for members of the public, giving greater focus to dealing with the complainant's dissatisfaction rather than the bureaucratic processes.

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

Electoral Registration Data Schemes Order 2012

Gambling Act 2005 (Amendment of Schedule 6) Order 2012

Draft Instrument subject to annulment

Proposal by the Secretary of State for Culture, Olympics, Media and Sport to designate Baroness Shephard of Northwold, Mr Ian David Muspratt and Mr James Anthony Lake as Chair and Vice-Chairs of the Video Standards Council under the Video Recordings Act 1984

Instruments subject to annulment

- SI 2012/1102 Textile Products (Labelling and Fibre Composition) Regulations 2012
- SI 2012/1107 Wiltshire Council (Arrangements for the Provision of Suitable Education) Order 2012
- SI 2012/1153 Education Act 2011 (Abolition of the GTCE Consequential Amendments and Revocations) Order 2012
- SI 2012/1186 Care Quality Commission (Registration and Membership) (Amendment) Regulations 2012
- SI 2012/1201 Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012
- SI 2012/1203 Registration of Births and Deaths Regulations 1987 (Amendment) Regulations 2012
- SI 2012/1204 Police (Complaints and Misconduct) Regulations 2012
- SI 2012/1215 Offender Management Act 2007 (Establishment of Probation Trusts) (Amendment) Order 2012
- SI 2012/1223 Control of Dogs (Designation of the Common Council of the City of London as a Secondary Authority) Order 2012
- SI 2012/1234 Penalty Charges Enforcement (London) Regulations 2012
- SI 2012/1243 Export Control (Iran Sanctions) Order 2012

APPENDIX 1: 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 22 May 2012 Members declared no interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Eames, Lord Goodlad, Baroness Hamwee, Lord Hart of Chilton, Baroness Morris of Yardley, Lord Scott of Foscote.