Public Bodies Order

Draft Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014

Ordered to be printed 21 January 2014 and published 22 January 2014

Published by the Authority of the House of Lords

London: The Stationery Office Limited

£price

HL Paper 116
Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note
In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012–3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

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    Baroness Hamwee    Lord Plant of Highfield
Lord Blackwell    Lord Methuen    Rt Hon. Lord Scott of Foscote
Lord Eames    Rt Hon. Baroness Morris of Yardley    Lord Woolmer of Leeds
Rt Hon. Lord Goodlad (Chairman)    Lord Norton of Louth

Registered interests
Information about interests of Committee Members can be found in Appendix 3.

Publications
The Committee’s Reports are published on the internet at [www.parliament.uk/seclegpublications](http://www.parliament.uk/seclegpublications)

Information and Contacts
If you have a query about the Committee’s work, 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
Twenty Sixth Report

PUBLIC BODIES ORDER

A. Draft Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014

Introduction

1. The draft Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in Relation to Estate Agents) Order 2014 has been laid by the Department for Business, Innovation and Skills (BIS), to be made under sections 1(1) and (2), 5(1)(b), 6(1), (2) and (5) and 35(2) of the Public Bodies Act 2011 (“the 2011 Act”). It is proposed to be made under the affirmative resolution procedure. BIS has also laid an Explanatory Document (ED) (with two draft transfer schemes among its annexes) and an impact assessment.

Overview of the proposals

2. In January 2013, we reported on a predecessor Order – the draft Public Bodies (The Office of Fair Trading Transfer of Consumer Advice Scheme Function and Modification of Enforcement Functions) Order 2013 (“the first PBO”) – which served substantively to transfer the consumer advice scheme function from the Office of Fair Trading (OFT) to Citizens Advice and to Citizens Advice Scotland, and make minor modifications to some OFT enforcement functions. Because we found that the ED to that Order did not comply with the requirements of the 2011 Act, we recommended that the Order should be subject to the 60-day enhanced affirmative procedure set out in the Act.

3. In the ED to the latest draft Order, BIS says that it has three main purposes:

- abolition of the National Consumer Council (the NCC) and transfer of relevant consumer advocacy functions to Citizens Advice, Citizens Advice Scotland (“the Citizens Advice services”) and the General Consumer Council for Northern Ireland (GCCNI), referred to collectively as the “consumer advocacy bodies”. The proposed date of abolition and transfer is 1 April 2014;

- transfer of the OFT’s estate agency functions to Powys local weights and measures authority (“Powys trading standards”) and HM Revenue and Customs (HMRC). The proposed date of transfer is 31 March 2014; and

- transfer of remaining functions of the OFT relating to its consumer advice scheme to Citizens Advice and Citizens Advice Scotland on 1 April 2014. BIS refers to the effect of the first PBO in making that transfer, and explains that a few remaining connected functions should also now be

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2 The Order was subsequently made on 27 March 2013; as made it is numbered SI 2013/783.
conferred on the Citizens Advice services, who are supporting the consumer advice scheme formerly operated by the OFT.

4. BIS sets these proposals in the context of what it calls institutional changes to the consumer landscape. It refers to a National Audit Office report (of June 2011) on “Protecting Consumers – the system for enforcing consumer law”, which identified a lack of clear lines of responsibility between enforcement agencies to tackle consumer detriment of at least £6.6 billion every year. It describes the purpose of the proposed reforms to the existing institutional arrangements as being to ensure that consumer advice, representation and enforcement are delivered effectively and efficiently.

Role of the Committee

5. 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. To assist our consideration of the latest draft Order, we obtained further information from BIS officials, which we are publishing at Appendix 1, and also wrote to the Secretary of State, in correspondence which we are publishing at Appendix 2.

Consultation

6. At section 8 of the ED, BIS describes the consultation which preceded the PBO process. The consultation ran for 14 weeks, closing on 27 September 2011. 184 responses were received: respondents included local authority Trading Standards Services, trade bodies, consumer organisations, businesses and individuals. The Government response was issued on 11 April 2012. BIS states that, following further assessment of the policy in relation to the transfer of the OFT’s supervision of estate agents under the Money Laundering Regulations 2007, BIS took the view that it was more appropriate for this function to transfer to HMRC (rather than to trading standards departments); the estate agency industry was consulted on these proposals in July 2013, and was content with the proposed arrangements. Further information has been provided in the information from BIS at Appendix 1.

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

7. A Minister may make an Order under sections 1 to 5 of the 2011 Act only if he 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). Section 8(2) of the 2011 Act specifies two conditions, namely: that an Order does not remove any necessary protection, and that it does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

8. At paragraphs 7.30 to 7.86, the ED sets out the ways in which, in the Government’s view, the two main elements of the Order comply with the 2011 Act. As regards the abolition of the NCC and transfer of relevant functions to the consumer advocacy bodies, paragraphs 7.31 to 7.55 deal with the considerations of efficiency, effectiveness, economy, and accountability; and paragraphs 7.78 to 7.82 with necessary protections, and rights and freedoms. As regards transfer of the OFT’s estate agency functions to Powys trading standards and HMRC, paragraphs 7.56 to 7.76 deal with the considerations of efficiency, effectiveness, economy, and accountability; and paragraphs 7.83 to 7.86 with necessary protections, and rights and freedoms.

Transfer of NCC functions to consumer advocacy bodies

9. As BIS explains at paragraph 4.6 of the ED, the NCC was established as a statutory body by the Consumers, Estate Agents and Redress Act 2007 (“the 2007 Act”): its establishment resulted from a merger of the National Consumer Council, Energywatch and Postwatch, combining bodies dealing with general consumer advocacy and advocacy on the regulated gas, electricity and postal services markets. In operational terms it was known as Consumer Focus, changing its name to Consumer Futures in May 2013 to reflect its changed role to that of a regulated industries unit.

Efficiency and effectiveness (ED paragraphs 7.31 to 7.39)

10. BIS states that publicly-funded consumer advocacy is carried out by a number of organisations, including the NCC, Citizens Advice, Citizens Advice Scotland and to some degree by the OFT, leading to significant overlap between these bodies. BIS says that the draft Order will create greater clarity for consumers, enhance the impact and effectiveness of publicly funded consumer advocacy, greatly reduce duplication of effort in consumer research and analysis, and improve sharing of best practice between all consumer representatives for regulated sectors.

11. We have referred above to our report on the first PBO which BIS laid in this area. That PBO was considered in Grand Committee on 12 March 2013, when issues were raised which are relevant to the latest draft Order. As regards the effectiveness of the transfer of the NCC’s consumer advocacy functions, a key concern raised at Grand Committee was whether the use of the information-gathering powers under section 24 of the 2007 Act would also be transferred to the Citizens Advice services. In the information at Appendix 1, at issue 1, BIS confirmed that those information-gathering powers will be transferred.

12. We noted, however, that BIS made the point that overuse of the powers “could represent an undue burden on business” and that the Department “will keep the use of this power under review, and retains the ability to

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6 HL Deb, 12 March 2013, col GC 59 et seq.
constrain this provision using s28 of the Act in the event of serious misuse”. We asked for clarification of the Government’s intentions on possible constraint of the use of these powers. In his reply of 17 January, which we are publishing at Appendix 2, the Secretary of State says that he has “every faith that the Citizens Advice service will use this power in a responsible and proportionate way but it seemed very much in the spirit of the Public Bodies Act 2011 to preserve protections where they exist.” While it may not be possible to say more at this stage, the House may wish to press the Government to keep it informed of whether constraint of these powers becomes necessary.

13. A related issue, also raised in Grand Committee consideration of the first PBO, is the extent to which, after the proposed transfer, the Citizens Advice services will be subject to Freedom of Information (FOI) requirements. Under issue 1 in BIS’ responses at Appendix 1, the Department states that the Citizens Advice services will indeed be brought under the requirements of the FOI Act 2000 and the FOI (Scotland) Act 2002 in respect of all the statutory functions transferred, including in relation to the information obtained under section 24 of the 2007 Act. BIS says, however, that FOI should not apply to other non-statutory functions exercised by the services which relate to other activities not transferred by this draft Order.

Economy (ED paragraphs 7.40 to 7.45)

14. BIS states that, while the main impact of the draft Order will be increased efficiency and effectiveness, some small cost savings have been identified. The explanation of those savings in the ED is far from clear. We asked BIS to provide further information, and this is reproduced as issue 4 in Appendix 1. The Department now expects that the NPV estimate of the benefits will rise to £8 million.

Accountability (ED paragraphs 7.46 to 7.55)

15. A further concern raised when the first PBO was considered in Grand Committee was the extent to which there would be oversight of the consumer advocacy functions once they were transferred to the Citizens Advice services. In the ED, BIS distinguishes between the Consumer Futures work in relation to the regulated gas, electricity and postal services markets, and other consumer advocacy work.

16. BIS says that funding for the delivery of Consumer Futures through the Citizens Advice services will remain as now, by means of a levy imposed on the regulated gas, electricity and postal industries; and that, to ensure transparency, the Citizens Advice services will be required to produce, and consult on, a draft work programme.

17. As regards the other consumer advocacy functions, however, BIS states that the Government are not transferring functions to the Citizens Advice services in relation to the need to provide forward work programmes, annual reports or accounts. “Instead these will be dealt with through the grant arrangements ...The bodies have well-established grant funding relationships with BIS and are made fully accountable for the use of BIS funding and levy funding through conditions placed in their annual grant letter.” Under issue 2, the information received from BIS at Appendix 1 covers these arrangements in more detail. Given BIS’ statement that the draft Order will create greater clarity for consumers, we asked for clarification of how the
Government intended to ensure that consumers understand the different accountability requirements for the different elements of the functions being transferred. In his reply of 17 January, the Secretary of State sets out the three ways in which the Government propose that this should be achieved: both directly, and indirectly, by communications from the Citizens Advice services; and also through statements by Government Ministers. **The House may wish to consider whether these activities will provide greater clarity for consumers: in our view, they offer good potential for doing so, which needs to be realised if proper understanding is to be secured.**

*Necessary protection; exercise of right or freedom (ED paragraphs 7.78 to 7.82)*

18. BIS explains again that Citizens Advice and Citizens Advice Scotland will be subject to the requirements of the FOI Act 2000 and the FOI (Scotland) Act 2002 in relation to the statutory functions transferred to them; and that any functions that they carry out outside of these statutory functions will not be subject to FOI requirements, as is the case now. It says that, given that all of the protections remain, the Minister considers that the conditions in section 8(2) of the PBA 2011 are satisfied.

*Transfer of OFT’s estate agency functions to Powys trading standards and to HMRC*

**Powys**

*Efficiency and effectiveness (ED paragraphs 7.56 to 7.63)*

19. The OFT has the power to issue warning and prohibition orders against estate agents who, for example, have committed an offence of dishonesty or breached certain provisions of the Estate Agency Act 1979. After conducting a fitness test, the OFT can ultimately prohibit those persons it considers “unfit” from carrying estate agency work. As regards transfer of these functions to Powys trading standards, BIS deals with efficiency and effectiveness considerations in paragraphs 7.58 to 7.61, albeit in a way which is less than explicit.

20. Noting that Trading Standards Departments of local authorities and the OFT have hitherto both possessed enforcement powers under the Estate Agents Act 1979, BIS says that transferring the OFT’s powers to trading standards, and giving them sole responsibility, will simplify the landscape of consumer enforcement. It comments that the supervision of warning and prohibition orders and approval of redress schemes will be more effectively coordinated at national level, through the appointment of a lead enforcement authority – Powys - to carry out this work on behalf of all authorities. BIS states that the Government are allocating discrete funding to the lead authority to discharge enforcement and redress functions, which is a more cost-effective solution. We asked for an explicit statement, which is not present in the ED, that the Government think that this proposed transfer will meet the considerations of efficiency and effectiveness specified in the 2011 Act. In his letter of 17 January, the Secretary of State gives explicit confirmation of this.
21. As in relation to the transfer of the NCC’s functions, BIS states of the transfer of OFT’s estate agency functions that the draft Order will primarily deliver increased efficiency and effectiveness; “the changes are not predicated on savings, although no additional ongoing operational costs are incurred.” BIS says that the effect of the transfer will be broadly cost-neutral, with a saving of approximately £55,377 per year.

Accountability (paragraphs 7.72 and 7.73 of the ED)

22. BIS states that, through the terms of grant, the lead enforcement authority – Powys – will be fully accountable for use of public monies; that this will be backed up through a framework agreement with the Trading Standards Institute (TSI), who will hold and allocate the budget for this work under the direction of the National Trading Standards Board (NTSB); and that the lead enforcement authority will be required to make monthly progress reports to the BIS Consumer and Competition Programme Board. We see a risk that these lines of accountability may get crossed. We asked for clarification of where the lead enforcement authority’s ultimate accountability would lie. In his letter of 17 January, the Secretary of State states that Powys’ ultimate accountability will be to the Department. We welcome this clarification, though the House may nonetheless wish to press the Government further on how readily Powys will be able to reconcile its accountability to several different bodies.

Necessary protection; exercise of right or freedom (ED paragraphs 7.83, 7.85 and 7.86)

23. BIS states that the public remains protected as the previous functions will not be reduced, but will instead be transferred in their current form, whilst being more efficiently administered; and that protection of estate agents through the right of appeal will also remain in place.

HMRC

Efficiency and effectiveness (ED paragraphs 7.62 to 7.63)

24. BIS says that, under the Money Laundering Regulations (the MLRs), HMRC currently supervises four sectors and around 19,000 businesses in 65,000 premises. Taking on the estate agency sector would be a further extension of its role, giving it the opportunity to exploit operational synergies and share information across HMRC regimes where non-compliance is identified, thus realising efficiencies and introducing more effective measures.

Economy (ED paragraphs 7.69 and 7.71)

25. BIS explains that consideration was given to whether trading standards should take on the functions in relation to the MLRs. Since this would have involved the cost of recruiting and training compliance officers, and HMRC

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7 At paragraph 2.6 of the ED, BIS states that the National Trading Standards Board (NTSB) was created in April 2012, taking administrative responsibility for prioritising national and cross-local authority boundary consumer enforcement.
already has this infrastructure largely in place, HMRC was seen as the most economically viable regulator. HMRC intends to operate the supervision of estate agents under the MLRs at full cost-recovery through supervision fees charged to the industry. The OFT’s fee arrangements currently cover 95% of the cost of operating the scheme.

Accountability (paragraphs 7.74 and 7.75 of the ED)

26. The Department says that accountability for functions under the MLRs will remain with HM Treasury Ministers.

Necessary protection; exercise of right or freedom (ED paragraphs 7.83, 7.85 and 7.86)

27. The statement quoted above (at paragraph 23) applies to this transfer of functions as well as to the transfer of functions to Powys.

Conclusion

28. This is a complex Order, proposing that functions of two bodies - the NCC and the OFT – should be transferred to five other bodies - Citizens Advice, Citizens Advice Scotland, the General Consumer Council for Northern Ireland, Powys trading standards and HM Revenue and Customs. The Explanatory Document reflects that complexity and, in places, does not succeed in clarifying fully the case for, and the effects of, all the changes proposed. We note the Government’s objective that the draft Order should create greater clarity for consumers; if this objective is to be fully achieved, the Government will need to explain and communicate the new arrangements more lucidly than is achieved in the ED.

29. As we have explained above, we saw the need to seek clarification of several issues through correspondence with the Secretary of State. His letter of 17 January, at Appendix 2, largely provides that clarification, albeit that final clarity on the issues of possible constraint of information-gathering powers by the Citizen Advice services, and of the lines of accountability for Powys, will only come from experience of the operation in practice of the arrangements proposed.

30. We see no reason to dissent from the view that the draft Order serves the purpose of improving the exercise of public functions as set out in the 2011 Act in line with the considerations contained in it. In the light of the information provided in the Secretary of State’s letter, as well as the ED itself, we are content to clear the Order within the 40-day affirmative procedure.
Information from the Department for Business, Innovation and Skills

Issue 1: Transfer and use of section 24 of the Consumers Estate Agents and Redress Act 2007 (information gathering powers) to Citizens Advice services

The information gathering powers, set out in section 24 of the Consumers, Estate Agents and Redress Act 2007, will be transferred to the successor bodies. This will enable the bodies to require information from certain regulators and any person who supplies goods or services in the course of a business. If a person fails to comply with a notice, the Citizens Advice services will be able to refer the matter to the appropriate regulator for enforcement, or where there is no such regulator, to the courts.

Respondents to the consultation were in broad agreement that these powers were essential for an effective consumer advocate. These powers will enable the bodies to gather detailed and perhaps confidential information from businesses in order to develop analysis and reports on practices or behaviours which disadvantage consumers. In practice we expect most requests for information to be satisfied informally, with the bodies resorting to formal requests for information in exceptional cases.

We recognise the serious nature of these powers and have therefore extended the safeguards that previously applied to NCC to the Citizens Advice services. Overuse could represent an undue burden on business and will expect the use of these powers to be carefully coordinated between the bodies to avoid multiple requests to the same organisation. BIS will keep the use of this power under review, and retains the ability to constrain this provision using s28 of the Act in the event of serious misuse.

Section 24 powers could be used to gather highly sensitive commercial information and personal information. We have therefore brought the successor bodies within the scope of Part 9 of the Enterprise Act 2002 (the information gateway provisions) to ensure that “specified information”, which is personal information, or information of a commercially sensitive nature obtained under statutory powers, would be safeguarded and only passed to other organisations in accordance with the gateways set out in Part 9; for example, to enable enforcement activity by another body with the appropriate designation under the Enterprise Act.

We have also ensured that relevant information may be passed to further the statutory functions of all the consumer advocacy bodies. Importantly, Citizens Advice and Citizens Advice Scotland will not be carrying out all their functions under statute, but we have provided that other bodies, who fall within Part 9 of the Enterprise Act, will still be able to share key information with the Citizens Advice services, where the information relates to functions they exercise which are equivalent to those exercised by GCCNI under sections 8 to 11 and 19 of CEARA.

Citizens Advice and Citizens Advice Scotland will also be brought under the requirements of the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 in respect of all the statutory functions
transferred to them, including in relation to the information obtained under section 24. FOI should not apply to other non-statutory functions exercised by the Citizens Advice services which relate to other activities carried out by these charities which are not transferred by this draft Order.

**Issue 2: Arrangements for the oversight of Citizen’s Advice services performance of the functions proposed for transfer under the draft PBO**

We recognise the importance of the continued effective delivery of these functions and have been mindful of how best to oversee delivery by the successor bodies in the future.

The Consumers, Estate Agents and Redress Act 2007 (CEARA) which established the NCC contains a number of provisions to ensure that the statutory body is well governed and accountable to the Consumer Minister for its delivery and appropriate use of its funding.

Citizens Advice and Citizens Advice Scotland are both charities, so the requirements for good corporate governance in relation to the Citizens Advice services will therefore be addressed through existing charity and company law. The bodies will submit full accounts in relation to their activities, including activities relating to the functions to be transferred by this order.

In addition, both of these bodies have well-established grant funding relationships with BIS. They are already made fully accountable for the use of BIS funding and levy funding through conditions placed in their annual grant letter. Additional terms will be added to these grant agreements to ensure that the functions transferred under this Order will be effectively delivered by the successor bodies. These terms will be reviewed annually to ensure that the bodies continue to deliver these important functions for consumers. Annex F of the Explanatory Document contains a draft grant agreement containing these additional terms but I address them further below.

Section 6 of CEARA sets out general provisions about functions and requires the NCC to have regard to vulnerable consumers. Citizens Advice and Citizens Advice Scotland have the needs of all citizens, including those that might be deemed “vulnerable”, such as the disabled, chronically sick and citizens of pensionable age, at the heart of their objectives and do not require a further statutory requirement to apply these principles in the work they carry out. We will however require Citizens Advice and Citizens Advice Scotland to have regard to these considerations through the requirements of the grant arrangements.

In addition, BIS will want to see these considerations addressed in the forward work programmes and the annual reports Citizens Advice and Citizens Advice Scotland will produce, which, as was the case with the NCC before, will be subject to the consultation requirements with relevant bodies and the Secretary of State and the devolved Governments.

Accountability will also be maintained through BIS’ grant arrangements with Citizens Advice services, requiring them to formally account for the delivery of their annual work programme in an annual report which will be published on their websites and sent in hard copy to the Department. A copy will be provided in the libraries of both Houses to enable scrutiny by members of Parliament. A draft Funding Agreement for Citizens Advice and Citizens Advice Scotland (subject to further amendments) has been included at Annex F.
Grant conditions will require the successor bodies to produce and consult on a draft work programme each year. This process will ensure that the bodies coordinate their efforts effectively between them, and enable industry stakeholders, regulators and consumer groups to comment on proposals and coordinate their own efforts, should they choose. The Citizens Advice services will also be required to consult the Secretary of State and the Welsh and Scottish Governments. In respect of any postal work planned on a UK wide basis, Citizens Advice Services will also be required to consult with the General Council for Consumers in Northern Ireland.

When published, this work programme will include not only the detail of projects to be carried out but also expected costings. These will form the basis of the budgets allocated to each of the successor bodies.

The various bodies will also be required to report on their performance against the published work programme on an annual basis, including details of expenditure and the value of any benefits realised. This annual report will be published on the bodies’ websites and sent in hard copy to the Department. A copy will be placed in the libraries of both Houses to enable scrutiny by members of Parliament. This process will enable the Secretary of State, the devolved Governments and interested regulators to scrutinise delivery and hold the bodies to account for their performance.

Issue 3: Consultation

[It may be helpful] to set out how both the Department and the various bodies had been consulting with key stakeholders since the publication of the Government response to the Consultation in 2012.

In July 2012 the NCC, Citizens Advice and Citizens Advice Scotland and BIS launched a joint consultation exercise to determine the design principles that would realise the Government’s support for a Regulated Industries Unit (the working title for the unit expected to transfer to the Citizens Advice services). A consultation paper was widely circulated over the summer of 2012 for general response by interested stakeholders. In addition the partners undertook a series of in-depth meetings with key stakeholders including regulated firms, regulators, other UK Government departments, Scottish and Welsh Government and the Northern Ireland Assembly.

The consultation process was completed in September 2012. Responses from stakeholders were overwhelmingly positive and constructive. Reflection on stakeholder feedback helped to construct the outline of the Regulated Industries Unit which in turn became the operating model of Consumer Futures. In January 2013 a further consultation on the work plan for the RIU was used to reflect the design of the RIU into an actual work programme for Consumer Futures.

Issue 4: Transfer of NCC functions to consumer advocacy bodies: economy

The original impact assessment (IA) calculated benefits of +£6.31m, as set out in the box on p19 of the ED. The information below shows how some of these estimated costs have shifted since the IA was published. Transition costs have essentially reduced from a projected £4.5m to £2.8m, based on best information at present. The NPV estimate of the benefits will therefore rise to +£8m.

Paragraph 7.45 discusses the expected £990k increased pension contributions per year. This figure is now likely to be close to zero as the staff will remain in the PCSPS scheme at close to their current contribution rate. If this cost falls away
then the NPV will rise. Contribution rates are also being reviewed across the whole scheme at the moment so we know that costs are likely to rise in 2015 anyway.

17 December 2013
APPENDIX 2: DRAFT PUBLIC BODIES (ABOLITION OF THE NATIONAL CONSUMER COUNCIL AND TRANSFER OF THE OFFICE OF FAIR TRADING’S FUNCTIONS IN RELATION TO ESTATE AGENTS ETC) ORDER 2014: CORRESPONDENCE

Letter from Lord Goodlad, Chairman, Secondary Legislation Scrutiny Committee to Rt Hon Vince Cable MP, Secretary of State, Department for Business, Innovation and Skills

The Secondary Legislation Scrutiny Committee has given a first consideration to this draft Order and agreed that I should write to you to seek clarification of certain aspects.

As regards the proposals to transfer the NCC’s consumer advocacy functions to the Citizen Advice services, together with information-gathering powers under the Consumers Estate Agents and Redress Act 2007 (“the 2007 Act”), we have been informed by your Department that the Government will keep the use of these powers under review, and retain the ability to constrain this provision in the event of serious misuse. We consider that your Department should set out more fully what constraints might be placed on the Citizen Advice services’ use of the information-gathering powers under the 2007 Act, and in what circumstances.

We also note that, as regards the consumer advocacy functions other than those so far delivered through Consumer Futures, the Explanatory Document (ED) says that accountability of the Citizens Advice services will come not through forward work programmes, but through grant funding relationships, including conditions placed in their annual grant letter. Given the complexity of what is proposed, we would like to know more about how the Government will ensure that consumers generally understand the accountability arrangements for the functions being transferred.

As regards the transfer of OFT’s estate agency functions to Powys trading standards, the ED states that the Government are allocating discrete funding to the lead authority to discharge enforcement and redress functions, which is a more cost-effective solution. However, there is no explicit statement that the transfer will meet the considerations of efficiency and effectiveness specified in the Public Bodies Act 2011. We consider that this should be made clear, if this is the Government’s view.

The ED also sets out that, through the terms of grant, Powys will be fully accountable for use of public monies, backed up through a framework agreement with the Trading Standards Institute (TSI), who will allocate the budget for this work under the direction of the National Trading Standards Board (NTSB); and that Powys will be required to make monthly progress reports to your Department. This suggests a complex “wiring diagram” for Powys’ lines of accountability. We consider that the Government should clarify whether Powys’ ultimate accountability is to your Department, the NTSB or the TSI.

15 January 2014

Letter from Rt Hon Vince Cable MP to Lord Goodlad

Thank you for your letter of 15 January on behalf of the Secondary Legislation Scrutiny Committee, seeking clarification on certain aspects of the above Order. I will respond to each of your points in turn.
You raised a question around the information gathering powers and associated protections set out in the Consumers, Estate Agents and Redress Act 2007 (the 2007 Act), which will transfer to the Citizens Advice service on abolition of the National Consumers Association (NCC). On transfer this power will enable the Citizens Advice Service to collect evidence on behalf of consumers in exactly the same way that the NCC currently does. However, we recognise that if used frivolously this power has potential to incur significant costs for legitimate businesses. We have therefore maintained the original provision at s28 of the 2007 Act which enables constraint of this power by use of a Statutory Instrument. I have every faith that the Citizens Advice service will use this power in a responsible and proportionate way but it seemed very much in the spirit of the Public Bodies Act 2011 to preserve protections where they exist. We have also agreed with the Citizens Advice service that they will report on their use of these powers as part of their reports back to my Department on delivery of their work programme.

We are keen to maintain transparency and accountability for the full range of functions which transfer to the Citizens Advice service on abolition of the NCC. To this end Citizens Advice will continue to produce and consult on an annual programme of work relating to the regulated gas, electricity and postal services sectors. Citizens Advice has a long track record of advocating on consumer matters and will therefore incorporate plans for general consumer advocacy into their existing strategic plan and annual work programme and make regular reports on their performance. The Consumer Affairs Minister will hold the Citizens Advice service to account for effective delivery of these functions on behalf of consumers.

In order for consumers to be able to gain a general understanding of these accountability arrangements, we are proposing three ways in which this can be best achieved:

Directly from the Citizens Advice service via publication of their annual plans, annual reporting, and ‘about us’ section of their websites and availability of appropriate publicly accessible corporate documents which will provide to those wanting to gain an understanding of how CF is incorporated into the service information they can quickly and easily understand;

Indirectly via Citizens Advice service statements, such as providing short information notes on appropriate reports or press statements which will ensure that public reporting of activity is able to reflect the accountability arrangements; and

Through the Consumer Affairs Minister and/or Scottish Government Ministers reaffirming accountability when any opportunity arises to provide general government information on publicly funded consumer information, advice and advocacy and through parliamentary scrutiny of the sponsorship activities of their Departments.

You also asked if the Department believes the transfer of the OFT’s functions under the Estate Agents Act 1979 to Powys County Council meets the considerations of efficiency and effectiveness specified in the Public Bodies Act 2011. I can confirm that we are confident that this is the case. Powys County Council was selected as the most appropriate local authority to discharge the functions following an open competition where all United Kingdom local authorities were invited to submit bids. Six bids were received and carefully scrutinised by a panel consisting of the National Trading Standards Board, Association of Chief Trading Standards Officers, Trading Standards Scotland, and BIS. Each bidder was required to demonstrate:
- How they would provide the services required under the 1979 Act
- How transitional planning will be monitored
- Expected costs of running the regime

Through careful analysis of bids, the panel was able to select the authority best placed to provide the most efficient and effective management of the function. Culturally, the operation of the unit will be more closely aligned with the other enforcement activity relating to estate agents that is already delivered by local authorities.

You also asked about grant accountability arrangements. While the Trading Standards Institute will have oversight of grant matters, Powys’ ultimate accountability will be to the Department.

I hope you will find this information helpful and would like to thank you for your help in this matter.

17 January 2014
APPENDIX 3: 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 21 January 2014 Members declared the following interests:

**Draft Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014**

Lord Bichard, as spouse of a member of the Citizens Advice Bureau.

**Attendance:**

The meeting was attended by Lord Bichard, Lord Blackwell, Lord Goodlad, Baroness Hamwee, Lord Methuen, Baroness Morris of Yardley, Lord Norton of Louth, Lord Plant of Highfield and Lord Woolmer of Leeds.