

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

33rd Report of Session 2013-14

**Public Bodies Orders:
Two Years On
Government Response**

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*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 Richard	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 (<i>Chairman</i>)	Lord Norton of Louth	

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’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

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

Thirty Third Report

PUBLIC BODIES ACT 2011: TWO YEARS ON - GOVERNMENT RESPONSE

1. On 12 December 2013 the Committee published a report to mark the second anniversary of the Public Bodies Act 2011 (“the 2011 Act”).¹ It included a commentary on the progress towards completing the list of potential Orders that the 2011 Act contains and observations on the quality of the supporting material presented with each Order so far.
2. In particular the Report included the following comments:

“With the exceptions mentioned, the standard of supporting evidence for these Orders has been much better in the second year. For the Orders yet to come we would simply repeat our earlier recommendations:

 - The responsibility lies with the Minister to put a convincing case to Parliament (where possible with evidence) on how the proposal complies with the 2011 Act’s requirements; it is not sufficient for the Explanatory Document simply to assert that the tests have been met;
 - Where the body is still functional the Committee expects to see that there has been adequate consultation both with the body itself and its constituency, with an effective solution proposed to any concerns raised by the consultation; and
 - Where the Order merges existing functions into another organisation, to satisfy the tests in section 8(2) of the 2011 Act the Government needs to explain how they will operate in the new regime and how Parliament will be able to monitor future performance of those functions.

As soon as possible the Cabinet Office should publish an aggregate figure for net administrative reductions from orders laid under the Public Bodies Act to date. It should also be prepared to provide a similar aggregate figure for Orders laid in year 3 before the end of November 2014.”
3. The response from the Cabinet Office Minister, the Rt Hon. Francis Maude MP, addresses those three points (see Appendix 1). It also provides the financial summary requested – concluding that the aggregate savings from the Public Bodies Orders laid to date are £108.5 million.

¹ 22nd Report (HL Paper 98).

APPENDIX 1: GOVERNMENT RESPONSE

I am writing in response to your Committee's Special Report *Public Bodies Act 2011: Two Years On*. I welcome the findings of the report, and am pleased that you recognise the positive steps taken by the government to improve the quality of the public bodies' orders under the Act.

The government's public bodies reform programme is the largest restructuring of public bodies for a generation, making the landscape smaller, more efficient, more accountable, less costly, and offering better value for money to the public. To date, the total number of public bodies in scope of the reform programme has been reduced by more than 280, leading to a reduction of over £1billion in the cost of government administration since May 2010. Reform delivered under the Public Bodies Act is supporting the delivery of programme objectives.

My officials are working with departments to continuously improve the standard of secondary legislation and to drive forward the remaining statutory instruments. A Statutory Instrument network has been established to coordinate advice and expertise and ensure the transfer of essential skills between departments. We are also working with departments to tighten Cabinet Office scrutiny of draft orders.

The Statutory Instruments guidance document continues to be reviewed and updated to ensure the evidence underpinning each reform stands up to scrutiny. I am grateful for the input your Committee continues to provide in supporting the development of guidance on the laying of draft orders, particularly as we now face more complex and difficult reforms.

I would like to assure you that we will continue to ensure draft orders provide robust evidence to demonstrate how reform proposals meet the statutory test of improving the exercise of public functions. Draft orders will also explicitly make reference to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers. I hope you will agree that any inconsistencies in meeting the statutory tests in Section 8 of the Act have largely been due to the controversial nature of the orders.

Your report highlights ongoing work to finalise and update administrative reductions and the cost of reform. I am pleased to say that this exercise is now complete. We now have an updated aggregate figure, totalling £108.5m; further details are set out at Annex A.

The report also raises concerns about the government's commitment to use the Public Bodies Act to ensure reforms are enacted. I can reassure you that this government is committed to the public bodies reform programme. Cabinet Office officials will continue to work with departments to ensure that the Act is used to deliver reforms to those bodies set up in statute. However, on the few occasions where it is evident that the statutory requirements of the Act cannot be satisfied, such as achieving the appropriate devolved administration consent or changes to policy proposals as a result of further consultation, government will pursue policy proposals through appropriate measures but in a way that does not add to the regulatory burden of government.

The report raises concerns about the arrangements the government has in place to ensure the future monitoring of reforms. Cabinet Office guidance clearly states that departments should consider, 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. My officials are already working with departments to gather empirical evidence and case studies to demonstrate the benefits achieved through reform.

Francis Maude MP, Minister for the Cabinet Office
12 February 2014

Annex A – Use of Public Bodies Act 2011 and estimated savings from PBA as reported by Departments as at November 2013

Public Body	Orders Under the Public Bodies Act 47 orders scheduled for reform 2011 - 2013 *3 additional orders brought forward	Proposed Reform	Progress update as at November 2013	Latest admin reductions reported in line with CO methodology (£m)*	Notes
BIS	Aircraft and Shipbuilding Industries Arbitration Tribunal	No longer an NDPB	Already laid	£0.00	
BIS	British Shipbuilders	No longer a Public Corporation	Already laid	£0.0	
BIS	Office of Fair Trading	Transfer of consumer and enforcement and information/education functions (followed by a merger of competition functions with the competition commission)	Already laid	£13.6	
BIS	NESTA	No longer an NDPB	Already laid	£0.0	
Culture, Media and Sport (DCMS)	Ofcom	Several Ofcom duties remain to be removed or modified (Merger with Postcomm completed in October 2011)	Already laid	£0.0	

DCMS	Gambling Commission National Lottery Commission	Merge	Already laid	£0.0	
DCMS	Registrar of Public Lending Right	No longer an NDPB	Already laid	£0.2	
Environment, Food and Rural Affairs (DEFRA)	Advisory Committee on Hazardous Substances	No longer an NDPB	Already laid	£0.00	
DEFRA	Drinking Water Inspectorate	-	Already laid		£3.8m is expected as receipts against programme expenditure. These do not align with the agreed CO Public Bodies Reform Programme methodology on admin reductions.
DEFRA	British Waterways Board	No longer a Public Corporation	Already laid	£0.00	
DEFRA	Commission for Rural Communities	No longer an NDPB	Already laid	£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.

DEFRA	Environment Protection Advisory Committee	-	Already laid	£0.0	The £0.2m per year savings reported in the Explanatory Document have been reinvested in new ways of working so this is cost neutral.
DEFRA	Regional and Local Fisheries Advisory Committees	-	Already laid	£0.0	The £0.2m per year savings reported in the Explanatory Document have been reinvested in new ways of working so this is cost neutral.
DEFRA	Inland Waterways Advisory Council	No longer an NDPB	Already laid	£0.00	
DfT	Railway Heritage Committee	No longer an NDPB	Already laid	£0.2	
DfT	BRB (Residuary) Ltd	No longer a statutory body	Already laid	£4.9	
Dept for Work and Pensions (DWP)	Child Maintenance and Enforcement Commission	No longer an NDPB	Already laid	£61.2	Explanatory Documents recorded nil admin reductions as functions were transferred into the Department. These figures reflect our improved understanding of costs and savings through the Spending Review
DWP	Disability Living Allowance / Advisory Board	No longer an NDPB	Already laid	£0.0	

Ministry of Justice (MoJ)	Administrative Justice and Tribunal Council	No longer a statutory body	Already laid	£3.1	
MoJ	Courts Boards (x 19)	No longer an NDPB	Already laid	£1.4	Savings were originally estimated at £400k for each year of SR10. The figures were revised to £450k annual savings. There were no savings made in 2011/12 due to a later closure date.
MoJ	HM Inspectorate of Court Administration Public Guardian Board	No longer a statutory body	Already laid	£6.0 £0.3	
MoJ	Magistrates' Courts Rule Committee Crown Court Rule Committee	No longer a statutory body	Already laid	£0.0 £0.0	
MoJ	Victims' Advisory Panel	No longer a statutory body	Already laid	£0.0	
				£108.5	

12 February 2014

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 25 February 2014 Members declared no interests.

Attendance:

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