Public Bodies Order

Draft Public Bodies (Abolition of the Committee on Agricultural Valuation) Order 2014

Renewables Obligation (Amendment) Order 2014

Includes 2 Information Paragraphs on 2 instruments

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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 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 4.

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
Thirty Fourth Report

PUBLIC BODIES ORDER

A. Draft Public Bodies (Abolition of the Committee on Agricultural Valuation) Order 2014

Introduction

1. The draft Public Bodies (Abolition of the Committee on Agricultural Valuation) Order 2014 has been laid by the Department for Environment, Food and Rural Affairs (Defra) under sections 1(1), 6(1) and (5) and 35(2) of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order has been laid with an Explanatory Document (ED).

Overview of the proposal

2. The draft Order abolishes the Advisory Committee on Valuation of Improvements and Tenant-Right Matters (“the Committee on Agricultural Valuation”, or CAV) and repeals its functions under section 92 of the Agricultural Holdings Act 1986 (“the 1986 Act”).

3. In the ED, Defra states that the CAV was originally established under the Agricultural Holdings Act 1948 (“the 1948 Act”), to advise Ministers about provisions to be included in regulations on the amount of compensation for improvements etc. to be paid to tenants at the end of an agricultural tenancy in England and Wales. When the 1948 Act was repealed, provision was made in the 1986 Act to keep the CAV in existence.

4. Defra says that the 1986 Act provides that tenants are entitled to the payment of compensation by the landlord on the termination of the tenancy, or quitting the holding, for improvements carried out on the holding or for tenant-right matters. The sole function of the CAV is to advise Ministers as to the provisions to be included in regulations regarding the amount of compensation. There is no requirement for the Minister to be bound by the advice of the Committee, but he has a duty (under section 92 of the 1986 Act) to establish a Committee to advise him on such regulations.

5. Defra explains that the CAV has not met for over 20 years, and that, since 2003, advice to Ministers on tenancy matters, including end-of-tenancy compensation, has been provided by the Tenancy Reform Industry Group (TRIG), an informal, non-statutory body comprising representatives of the main industry organisations and professional bodies.¹

¹ Defra states that TRIG is chaired by an independent Chair, and comprises representatives of the National Farmers Union, Tenant Farmers Association, Country Land and Business Association, Farmers Union of Wales, National Federation of Young Farmers Clubs, Association of Chief Estate Surveyors in Local Government, Royal Institution of Chartered Surveyors, Central Association of Agricultural Valuers and Agricultural Law Association.


**Role of the Committee**

6. 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 take oral or written evidence in order to aid its consideration of the orders.

**Tests in the Public Bodies Act 2011: assessment of the proposals – section 8 of the Explanatory Document**

7. A Minister may make an Order under sections 1 to 5 of the 2011 Act only if he considers that it serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy, and securing appropriate accountability to Ministers (section 8 of the 2011 Act). Section 8(2) of the 2011 Act specifies two conditions: that an Order does not remove any necessary protection, and does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. The ED for the draft Public Bodies (Abolition of the Committee on Agricultural Valuation) Order 2014 deals with the statutory tests in paragraphs 8.2 to 8.5, and with the conditions in paragraph 9.

*Efficiency*

8. Defra states that the proposal is driven by a desire to remove a non-departmental public body which is effectively moribund and whose functions could be carried out by a non-statutory group, the TRIG.

*Effectiveness*

9. The Department says that the CAV has not existed as a functioning body for more than 20 years, and that advice on agricultural tenancy matters is now provided by TRIG.

*Economy*

10. Defra states that abolition of the CAV will not result in savings to the Government: CAV does not have any budget, employees, pension liabilities, or assets. It explains that, while the functions of the CAV have been carried out by TRIG since 2003, TRIG has not been set up as a consequence of the proposal to abolish the CAV; and that, while the Chairman of TRIG is fee-paid, this is not a new cost resulting from abolition of the CAV.

*Accountability*

11. The Department says that abolition of the CAV does not create issues of accountability given that the body is no longer operational. TRIG will continue to provide advice on tenancy matters, including end-of-tenancy compensation, but it is a non-statutory body and accountability for legislation on end-of-tenancy compensation remains with the Minister.
Necessary protection; right or freedom

12. Defra states that abolition of the CAV will not alter any of the existing protection given to tenants under the 1986 Act to claim compensation for improvements and tenant-right matters at the end of a tenancy. It also says that abolition of the CAV will not prevent parties to tenancies under the 1986 Act from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. Tenants will still be able to claim compensation for improvements and tenant-right matters at the end of a tenancy.

Consultation – section 11 of the Explanatory Document

13. Defra and the Welsh Government carried out consultation on the proposed abolition of the CAV over three weeks to 7 October 2013. Five responses were received, four from industry bodies (including TRIG) and one from an individual. Defra states that, while all respondents agreed with the proposal to abolish the CAV, the four industry bodies expressed a view that abolition should be delayed until the Agriculture (Calculation of Value for Compensation) Regulations 1978 (SI 1978/809) had been amended.

14. In the ED, Defra says that the Government response to the consultation was published on 11 December 2013. The Departments states that it explained that the Government were considering wider reform of agricultural tenancy legislation; that amendment of SI 1978/809 would be considered as part of that overall package; and that the Government did not wish to delay abolition of the CAV until the wider reform of the legislation had been completed.

15. We sought additional information from the Department about the consultation exercise, and are publishing it at Appendix 1. In general terms, we are concerned that Government Departments should allow interested parties long enough to prepare and submit consultation responses. In this case, as noted above, Defra allowed three weeks. We would not generally regard this as a long enough period. In this case, however, we note the Department's explanation that there had been prior informal engagement with industry about abolition of the CAV, and we are not minded to criticise this aspect of the consultation.

16. We also note, however, that the Department has decided to press ahead with abolition of the CAV now, even though the four industry bodies respondents proposed a delay while the Agriculture (Calculation of Value for Compensation) Regulations 1978 (SI 1978/809) were amended. Defra has told us that it will be consulting on all proposed amendments to agriculture tenancy legislation in spring 2014 with a view to making the changes in this Parliament, where the legislative timetable permits. It seems to us regrettable that the Department could not better co-ordinate the timing of abolition of the CAV and these wider legislative changes, and that, after failing to achieve such co-ordination, it appears to have closed its mind to the main message that came to it from consultation respondents. In the context of our wider

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consideration of the Government’s policy on consultation, we see this as poor practice. However, we do not see it as a ground for objection to the draft Order.

**Conclusion**

17. We consider that, in the ED, the Department has dealt adequately with the tests and conditions set out in the 2011 Act; and that, while its handling of the consultation process did not exemplify good practice, it is not a ground to object to the draft Order.

18. **On balance, we consider that the Government have demonstrated 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. We are content to clear it within the 40-day affirmative procedure.**
INSTRUMENT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instrument and has determined that the special attention of the House should be drawn to it on the ground specified.

B. Draft Renewables Obligation (Amendment) Order 2014

Date laid: 10 February 2014
Parliamentary Procedure: Affirmative

Summary: The Renewables Obligation (RO) has been in place since 2002, as a measure to encourage the deployment of large-scale renewable electricity generation. The Government are introducing a new financial support mechanism for large-scale low-carbon electricity generation, called the Contract for Difference (CFD). This draft Order, which amends earlier secondary legislation in this policy area, serves to prevent duplication of support between the RO and the CFD, and to provide for a choice of support under these two sets of arrangements in some circumstances. It also improves the reporting requirements on the use of biomass under the RO. After multiple amendments, the RO secondary legislation provides for a complex raft of incentives and requirements, and we urge the Department to make its consolidation a priority.

We draw this instrument to the special attention of the House on the ground that it is politically or legally important and gives rise to issues of public policy likely to be of interest to the House.

19. The Department for Energy and Climate Change (DECC) has published this draft Order, with an Explanatory Memorandum (EM) and impact assessment. The Minister of State for Energy and Climate Change made a Written Statement about the draft Order on 10 February 2014.  

20. The Renewables Obligation (RO) has been in place since 2002. In the EM, DECC says that the RO is currently the Government’s main policy measure to incentivise the deployment of large-scale renewable electricity generation, including using biomass. The RO plays a major role in helping the UK meet its target under the Renewables Directive (2009/28/EC) to obtain 15% of energy from renewable sources by 2020.

21. The Department says that, as set out in the July 2011 White Paper “Planning our electricity future”, it is introducing a new financial support mechanism for large-scale low-carbon electricity generation. This mechanism is called the Contract for Difference (CFD), and will be offered to nuclear, carbon capture and storage, and renewable electricity generators. DECC says that, while CFD support is expected to be open to applications from eligible renewable generators from the second half of 2014, there will be a transitional period during which applications can be made for support from both the RO and the CFD.

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1 HC Deb, 10 February 2014, col 39WS.
22. DECC says that, in amending the Renewables Obligation Order 2009 ("the 2009 Order": SI 2009/785), the latest draft Order serves to prevent duplication of support between the RO and the CFD, and to provide for a choice of support under these two sets of arrangements in some circumstances, and improves the reporting requirements on the use of biomass under the renewables obligation. It also includes reference to the latest Combined Heat and Power Quality Assurance Standard and Guidance Notes.

23. The Department says that it consulted on the detailed transitional arrangements over ten weeks to 25 September 2013. 46 responses were received, from renewable electricity generators, suppliers and trade associations, and financial institutions. DECC explains that the majority supported the policy intent as implemented by this Order; and also that respondents suggested some adjustments to the detailed arrangements, to make these more efficient and less burdensome. Some changes were made as a result. While DECC did not publish the Government response when the Order was laid, DECC has said that publication should take place in the first week of March.

24. As regards the biomass reporting requirements, the Department carried out consultation over 12 weeks to November 2012. 73 responses were received from across the biomass industry, including trade associations, power station developers, manufacturers, supply-chains and financiers, and also from certification bodies, non-government organisations, a local authority and individuals. DECC says that it also received some 2,000 responses as part of a biomass campaign by Friends of the Earth; and also 540 responses in response to a separate campaign by the Renewable Energy Association. In addition there were a large number of meetings with stakeholders and a significant amount of evidence was provided and considered.

25. The Government response was published in August 2013. 7 Dealing with responses to the 14 questions asked in the consultation paper, it states that some responses provided general evidence rather than specific answers, and that some responses addressed only some of the questions, so that the total number of responses received to each question varies between nine and 46. It highlights, as the main element of the response, that the Government have decided to bring in robust sustainability controls for solid biomass and biogas that go beyond those currently recommended or required in the EU and internationally. However, this Order does not provide that the criteria for those controls are yet mandatory. In the EM, DECC states that the reporting and audit requirements for biomass under the RO, as provided for by this Order, will enable generators to become familiar with the sustainability criteria before the Department amends the RO (intended to be done in 2015) to make compliance with the sustainability criteria mandatory for

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6 “Proposals to enhance the sustainability criteria and to ensure affordability for the use of biomass feedstocks under the Renewables Obligation”. See: https://www.gov.uk/government/consultations/ensuring-biomass-affordability-and-value-for-money-under-the-renewables-obligation

7 See same web-link as given in footnote 4.
generating stations of 1MW and above. We obtained further information from the Department about this which we are publishing at Appendix 2.

26. DECC acknowledges that this is the fifth instrument to amend the 2009 Order, and that it has so far failed to carry out a consolidation as it had undertaken to do in 2013.\footnote{DECC states that an informal consolidated version of the Renewables Obligation Order will be made available at: https://www.gov.uk/government/publications} The Department says that it intends to make further amendments to the Order this year, so as to implement the outcome of consultation processes carried out in 2013, and that in doing so it will consolidate the Order. Given that it must be in the interests of all concerned to have a clear picture of what is a complex raft of incentives and requirements, we urge the Department to make such consolidation a priority.
OTHER INSTRUMENTS OF INTEREST

Draft Contracting Out (Local Authorities Social Services Functions) (England) Order 2014

27. The Order forms a bridge between a pilot scheme and the planned implementation of the Care Bill in April 2015. It extends the power to start contracting out social services functions from the seven pilot areas to all local authorities in England. Clause 78 of the Care Bill is intended to place the same activities on a more permanent footing. The Department of Health states that, by giving the power to local authorities now, it can commence the rather prolonged contract bidding process and that those schemes already set up in the pilot areas will be able to continue.

Olive Oil (Marketing Standards) Regulations 2014 (SI 2014/195)

28. The Department for Environment, Food and Rural Affairs (Defra) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. In the EM, Defra states that the Regulations provide powers to enforce new and amended EU legislation on marketing standards for olive oil, including powers to allow for effective inspections and enforcement and provision for penalties and an appeals mechanism. We obtained additional information from the Department about the Regulations, including about the potential geographical overlap between bodies designated as appropriate authorities: we are publishing this information at Appendix 3. We note that the Department states that guidance will be issued to avoid potential replication of enforcement activity: it is desirable that such guidance should be in place from the start of implementation of these provisions.

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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**

- Barnsley, Doncaster, Rotherham and Sheffield Combined Authority Order 2014
- Combined Authorities (Consequential Amendments) Order 2014
- Contracting Out (Local Authorities Social Services Functions) (England) Order 2014
- Domestic Renewable Heat Incentive Scheme Regulations 2014
- Guardian’s Allowance Up-rating Order 2014
- Guardian’s Allowance Up-rating (Northern Ireland) Order 2014
- Halton, Knowsley, Liverpool, St Helens, Sefton andWirral Combined Authority Order 2014
- Immigration (Employment of Adults Subject to Immigration Control) (Maximum Penalty) (Amendment) Order 2014
- Immigration and Nationality (Fees) Regulations 2014
- Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2014
- Pneumoconiosis etc. (Workers’ Compensation) (Payment of Claims) (Amendment) Regulations 2014
- Tax Credits (Late Appeals) Order 2014
- Tax Credits Up-rating Regulations 2014
- Urban Development Corporations in England (Area and Constitution) Order 2014
- West Yorkshire Combined Authority Order 2014
Instruments subject to negative procedure

- SI 2014/195 Olive Oil (Marketing Standards) Regulations 2014
- SI 2014/204 Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2014
- SI 2014/217 West Northamptonshire Development Corporation (Transfer of Property, Rights and Liabilities) Order 2014
- SI 2014/231 Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) (Amendment) Regulations 2014
- SI 2014/238 Disclosure and Barring Service (Core Functions) (Amendment) Order 2014
- SI 2014/240 Parole Board (Amendment) Rules 2014
- SI 2014/242 Charities (Exception from Registration) (Amendment) Regulations 2014
- SI 2014/255 Environmental Permitting (England and Wales) (Amendment) Regulations 2014
- SI 2014/259 Fixed Penalty (Amendment) Order 2014
- SI 2014/260 Road Traffic Offenders (Additional Offences) Order 2014
- SI 2014/264 Road Vehicles (Construction and Use) (Amendment) Regulations 2014
- SI 2014/267 Road Safety (Financial Penalty Deposit) (Amendment) Order 2014
- SI 2014/290 Further Education Loans (Amendment) Regulations 2014
- SI 2014/308 Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2014
- SI 2014/322 Local Justice Areas Order 2014
APPENDIX 1: DRAFT PUBLIC BODIES (ABOLITION OF THE COMMITTEE ON AGRICULTURAL VALUATION)
ADDITIONAL INFORMATION FROM DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Q1: Why did Defra allow such a short period of time (three weeks) for the consultation period?

A1: Defra takes its obligations to carry out public consultation seriously. It did not intend any offence to the Committee by providing for a 3 week consultation rather than a 6 week consultation.

The Government’s New Consultation Principles advocate a proportionate and realistic approach to allow stakeholders sufficient time to provide a considered response and are designed to encourage active consideration of what period is appropriate to each individual exercise. They provide for departments to adopt a range of timescales, particularly where there has been previous engagement on the subject, and these might typically vary between 2 and 12 weeks.

The Government has given a commitment to reduce the number of unnecessary public bodies. The Public Bodies Act provides a legislative mechanism for achieving this aim.

The Committee on Agricultural Valuation (CAV) has a limited function under the agricultural tenancy legislation and its abolition would have minimal impact. It is effectively a moribund body, which has not met for over 20 years. There are no current members of the CAV. The official policy on the Committee, which is well known to industry, is that it has “withered on the vine”. Prior to the public consultation exercise, there had already been some informal discussion about the abolition of the Committee with the Tenancy Reform Industry Group (TRIG), which comprises the main industry organisations. This suggested that there would be support for abolition.

Given that the CAV has been inactive for over 20 years, its narrow scope and the previous informal engagement on abolition, Defra felt that a 3 week consultation period was justified.

The consultation on the CAV was a joint consultation between Defra and the Welsh Government. Throughout the process we have agreed our approach with the Welsh Government.

Q2: Did any of the consultation respondents criticise the time allowed to comment; and were any other comments received by Defra after 7 October 2013?

A2: Of the 5 responses received, one of the responses was received on 8 October. There were no other comments received after 7 October. None of the respondents criticised the length of the consultation period.

Q3: Can you confirm that, even though 4 out of 5 consultation responses, all from industry bodies, called for delay, the Government have decided not to heed this advice?

A3: As part of the agriculture theme of the Red Tape Challenge process, Defra is taking forward a package of measures to reform agricultural tenancy legislation to simplify and modernise the rules governing the relationship between landlord and tenants. This includes amendments to the Agriculture (Calculation of Value for Compensation) Regulations 1978 following recommendations made by the Tenancy Reform Industry Group (TRIG). It is important that the legislative changes being proposed are complementary to one another and are considered in
the round rather than in isolation. To that end, Defra will be consulting on all proposed amendments to agriculture tenancy legislation in spring 2014 with a view to making the changes in this Parliament, where the legislative timetable permits.

The majority of the respondents to the consultation on the abolition of the CAV are represented on TRIG and as paragraph 11.7 of the Explanatory Document confirms George Eustice, Parliamentary Under-Secretary of State for Farming, wrote to the Chairman of TRIG to explain why the Government was not intending to delay abolition. A copy of the Minister’s letter is attached for information.10 There has been no formal response to the letter but in discussion with TRIG members they have accepted the Government’s position to abolish the CAV prior to amending the Agriculture (Calculation of Value for Compensation) Regulations.

Moreover, as section 92 of the Agricultural Holdings Act 1986 currently stands, there could be a risk of argument that if the Compensation Regulations were to be amended, Defra would be obliged to reconvene the CAV in order to “advise” the Minister on the Regulations. As there are no existing members of the Committee, this would involve carrying out a public consultation exercise to recruit new members. This would neither be sensible, nor cost effective and would delay amendments to the Compensation Regulations, which the industry has called to be done as soon as possible.

Taking all the various factors into account, Defra did not consider that there were compelling reasons to delay abolition of the Committee on Agricultural Valuation until the wider tenancy reforms have been completed.

Q4: Can you confirm that Defra considers that the consultation process in relation to this PBO is consistent with the Government’s consultation principles of July 2012?

A4: Given the explanations above, Defra considers that the consultation process was consistent with the Government’s New Consultation Principles. There had already been some prior informal engagement with industry about abolition of the CAV and, taking this into account, the length of the consultation period was considered proportionate to the nature of the Committee. Defra has listened to the industry concerns about the amendments to the Agriculture (Calculation of Value for Compensation) Regulations and is taking these forward as part of a separate exercise. Therefore we are satisfied that the decision to proceed with abolition of the CAV without delay has been based on sound reasoning.

17 February 2014

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10 Mr Eustice’s letter of 4 December 2013 is not reproduced in this Report: its contents are entirely in line with the additional information from Defra set out in this Appendix.
APPENDIX 2: DRAFT RENEWABLES OBLIGATION (AMENDMENT) ORDER 2014
ADDITIONAL INFORMATION FROM DEPARTMENT FOR ENERGY AND CLIMATE CHANGE

Q1: Why is the UK Government bringing in sustainability criteria that go beyond that currently recommended or required by the EU?

A1: The UK Government is bringing in sustainability criteria for solid biomass and biogas to reflect the following policy aims and considerations:

Public money needing to deliver public good - The Renewables Obligation (RO) seeks to deliver cost-effective renewable energy to help meet the 15% renewable energy target in 2020 and support the UK’s wider climate and energy goals. The costs of the Renewables Obligation are ultimately placed on energy bills. Therefore, this use of public money should deliver on a wide range of benefits besides the main goal of bringing forward additional renewable electricity deployment. The introduction of sustainability criteria that go beyond that recommended or required by the EU will help to maximise the carbon savings from bioenergy as well as minimise environmental risks, such as to biodiversity.

Ensuring good use of a limited resource - Bioenergy differs from other sources of renewable energy, such as wind and solar, because of its on-going need for feedstocks. These feedstocks, typically forestry residues in the form of wood pellets or agricultural residues such as straw, have alternative uses and only a certain quantity will be annually available to the UK. Therefore the available supplies need to be used wisely, considering both energy and non-energy uses, and the potential socio-economic and environmental benefits and risks. Moreover, the harvesting, processing and transport of the feedstock will have its own associated carbon emissions (e.g. shipping/road transport). Sustainability criteria will help to ensure that the carbon savings from substituting biomass for fossil fuel are not exceeded by those from the production and transport of the biomass itself. The criteria will also ensure that land of high biodiversity and carbon value is protected and will encourage and monitor the continued mixed use of harvested timber.

Delivering policy that reflects agreed cross-government strategy - Reflecting the above concerns, in April 2012, DECC, Defra and DfT jointly published the UK Bioenergy Strategy11 - This Strategy set out a number of agreed cross-government principles for future bioenergy policies, these principles included ensuring that genuine carbon emission savings result from the use of biomass for energy. It also confirmed that robust sustainability controls were essential for the use of biomass – solid, liquid or gaseous – for energy generation in the UK, and that these controls would need to get tighter over time reflecting the UK’s ambitions on climate change and energy looking out to 2050.

Recognising that biomass imports will be important to the UK - The UK has the twin challenges of a relatively high population relative to its land area, and a low level of forest cover – 12% of land use, compared to an EU average of 40%. This means that our analysis shows over 90% of the biomass used for electricity generation will be imported. In the short-term this will largely come from North America, but supplies from Africa and Asia are likely to also become important in the longer-term. Bringing in sustainability criteria will help to ensure, irrespective of where

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the biomass is sourced from, that environmental degradation is avoided, biodiversity is protected and genuine carbon savings are delivered.

Supported by the stakeholders on which the additional costs will fall - consultation responses demonstrate that the UK bioenergy industry generally supports the introduction of biomass sustainability criteria. It is recognised that sustainability criteria are essential to secure the support of the general public, and to manage risks to the reputation of the UK bioenergy industry. Some large companies are working together to develop sustainability standards, and are using the UK’s own approach to sustainability criteria as its basis.

Q2. Why is there a 1 year delay before the sustainability criteria are to be made mandatory?

A2: Generating stations supported under the renewables obligation already have to report on the biomass that they use (there are certain exceptions, including for microgenerators). The Renewables Obligation (Amendment) Order 2014 amends the reporting requirements, including the sustainability criteria that are to be reported against.

After one year of reporting against the revised sustainability criteria, the intention is to make compliance with the sustainability criteria mandatory from 1 April 2015 in order to receive support under the renewables obligation for the electricity generated from the solid or gaseous biomass (there will be certain exceptions, including for stations below 1MW capacity).

The aim of the policy is to introduce sustainability criteria in a way that seeks to avoid sudden changes to the renewables obligation that could create uncertainty or disruption that could act as an unnecessary barrier or discouragement to investment in new bioenergy generation or in new sustainable feedstock supply-chains. Generators have made it clear in their responses to the consultation that they need time to familiarise themselves with the new requirements; for example, to update their internal IT systems and agree new data gathering practices with their supply-chains (as the majority of biomass used by large-scale generators is provided under long-term contracts).

Generators will, during the transition period to April 2015, be required to report on the biomass that they have used as well as those generators of 1MW and above being subject to a new requirement to provide an independent audit with their sustainability reports. The transition provides a learning period for generators, biomass suppliers and for Ofgem as administrators of the renewables obligation. It is a period during which generators can see how they are performing against the sustainability criteria and make appropriate changes, before compliance with the criteria becomes linked to support. Information provided by the generators is published by Ofgem. Therefore, we consider the benefits from providing this transition period, exceeds any associated risks from the possible use of feedstocks with lower sustainability performance.

Background on the UK and EU approach to biomass sustainability

Although Directive 2009/28/EC (“the Renewables Directive”) imposes harmonised sustainability criteria on bioliquids, it does not impose any sustainability criteria on solid biomass or biogas. In the “Report from the Commission to the Council and the European Parliament on sustainability requirements for the use of solid and gaseous biomass sources in electricity, heating and cooling” (COM 2010/11) the European Commission recommended that where Member States impose sustainability criteria, they should be in most
respects the same as the sustainability criteria imposed by the Renewables Directive for bioliquids. The European Commission have not yet published the expected update to their 2010 report.

The sustainability criteria introduced by the UK Government for solid biomass and biogas took into consideration the recommendations of the Commission report. In those areas where the UK approach departs from the Commission report these were to make the sustainability criteria more robust in order to better achieve the policy aims outlined above under the response to Q1.

3 March 2014
APPENDIX 3: OLIVE OIL (MARKETING STANDARDS) REGULATIONS 2014 (2014/195)
ADDITIONAL INFORMATION FROM THE DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Q1: Regulation 2 contains the following:

2.—(1) In these Regulations—
“appropriate authority” means—
(a) the food authority;
(b) in England, the Secretary of State;
(c) in Wales, the Welsh Ministers;
(d) in Scotland, the Scottish Ministers; and
(e) in Northern Ireland, the Department of Agriculture and Rural Development;
“food authority” means—
(a) in England—
(i) any county council;
(ii) any district council;
(iii) any London borough council;
(iv) the Common Council of the City of London (including the Temples) in its capacity as a local authority; or
(v) the Council of the Isles of Scilly;
(b) in Wales, any county council or any county borough council;
(c) in Scotland, any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a); and
(d) in Northern Ireland, any district council.

In the case of the bodies listed for England, there is clearly a geographical overlap between, for example, some county councils and some district councils. How is this overlap handled? How do the Government ensure that action taken by one appropriate authority does not replicate action taken by another?

A1: The primary enforcement authority throughout the UK is the Secretary of State (acting through the Rural Payments Agency (RPA)). However regulation 17(2) states: “…each food authority in its area may also enforce these Regulations.” (italics added). Should, therefore, a local authority, when performing its other enforcement roles, come across a circumstance which might constitute a breach of these Regulations, it may enforce these Regulations itself. Moreover, guidance or clarification will be issued as part of the implementation by DEFRA to ensure that, where there is a geographical overlap between the areas covered by food authorities (as defined), potential replication of enforcement activity by those food authorities is avoided.

Q2: Regulation 6 contains the following:

(4) An authorised officer must, if requested to do so, produce a duly authenticated authorisation document.

What is a duly authenticated authorisation document? How does an officer obtain this, and from whom?

A2: Each authorised officer is issued with an authorisation card. This card bears the signature of a person authorised by the Secretary of State to act as “certifier”. That person certifies, by their signature on the card, that the person described on
the card as an authorised officer for the purpose of the Regulations has been authorised to act as such by the Secretary of State. The card also bears the signature of the person who is an authorised officer for the purpose of the Regulations. The card is issued to the authorised officer by (on behalf of) the Secretary of State. Due to the existence of agency agreements between the Secretary of State and, respectively, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Department of Agriculture and Rural Development, the Secretary of State authorises an officer to act, in relation to the Regulations, in any part of the United Kingdom.

3 March 2014
APPENDIX 4: INTERESTS AND ATTENDANCE

Committee Members’ registered interests may be examined in the online Register of Lords’ Interests at www.publications.parliament.uk/pa/ld/idreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 4 March 2014 Members declared no interests.

Attendance:

The meeting was attended by Lord Eames, Lord Goodlad, Lord Norton of Louth, Lord Plant of Highfield, Lord Scott of Foscote and Lord Woolmer of Leeds.