

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

32nd Report of Session 2014–15

**Public Bodies Act 2011:
three 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;
 - (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
 - (f) that there appear to be inadequacies in the consultation process which relates to the instrument.
- (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

Baroness Andrews	Lord Eames	Baroness Stern
Lord Bichard	Rt Hon. Lord Goodlad (<i>Chairman</i>)	Lord Plant of Highfield
Lord Borwick	Baroness Hamwee	Lord Woolmer of Leeds
Lord Bowness	Baroness Humphreys	

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 hlseclegscrutiny@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 Second Report

PUBLIC BODIES ACT 2011: THREE YEARS ON

1. Each year, since the Public Bodies Act 2011 (“the 2011 Act”) came into force, the Secondary Legislation Scrutiny Committee has published a report on activity under the Act, as it has the role of scrutinising Orders made under its provisions.¹ The latest report, at the end of the third year, was published on 4 December 2014.² It concluded that of the 58 Orders originally expected under the 2011 Act, 29 had been laid and only a maximum of a further four would follow.
2. Since the Report was published the Committee has considered two Orders – one on the abolition of the Home Grown Timber Advisory Committee and another on the abolition of the Advisory Committees on Pesticides.
3. The Report was critical of the potential waste of the Parliamentary time used in debating the 2011 Act, if only 60% of the reforms originally proposed under it are likely to be made. The Report suggested that the post-legislative review would wish to examine this point carefully. The Report also stated that examining the adequacy of the Government’s preparation prior to proposing the original list of bodies for reform by means of the 2011 Act might provide the eventual post-legislative review with much food for thought.
4. We publish at Appendix 1 the Government response, from the Rt Hon Francis Maude MP, Minister for the Cabinet Office. He welcomes the Report’s more positive messages. We note, however, that he states that where a change has been achieved by a means other than a Public Bodies Order this is due to information that only became evident at a later stage or where an alternative means could achieve the change more quickly. **He also states that the 2011 Act “provided one option for reform to public bodies, but was never intended to preclude the use of other means if more appropriate.” The House may wish to examine that comment more closely.**
5. The Minister’s letter concludes with “Thank you for your suggestions on what may be included in any post-implementation review. We will consider these and draw on them if such a review is undertaken.” It is understood that the Government have committed to publish, within 3-5 years of their passing, post-legislative assessments of almost all Acts passed since 2005. **This Committee would therefore find it surprising if there was no post-legislative review of an Act that was so controversial during its passage through the House.**

¹ See *Public Bodies Act 2011 : one year on 19th Report, Session 2012-13* (HL Paper 90) and *Public Bodies Act 2011 : two years on 22nd Report, Session 2013-14* (HL Paper 98).

² *Public Bodies Act 2011 : three years on 17th Report, Session 2014-15* (HL Paper 73)

APPENDIX 1: CORRESPONDENCE ON SPECIAL REPORT: PUBLIC BODIES ACT 2011: THREE YEARS ON

Letter from the Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, Cabinet Office.

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

The Government's Public Bodies Reform Programme has made excellent progress in the biggest reform of the public bodies' landscape in a generation. To date, the programme has reduced the number of public bodies by over 285 and improved accountability through bringing the functions of over 75 bodies closer to democratically elected representatives. The programme is on track to exceed cumulative spend reductions of £2.6 billion by the end of March 2015. The reforms achieved under the Public Bodies Act (PBA) have supported the delivery of the programme's objectives.

My officials work with departments to continue to improve the quality of statutory instruments and supporting documents and to drive forward the remaining orders under the programme. The Cabinet Office has worked with departments to tighten the scrutiny of draft orders and associated documents. The suite of programme planning tools developed to improve the quality of statutory instruments continues to be actively used by departments and my officials have encouraged the greater involvement and communication between departmental and Cabinet Office legal colleagues. These measures have resulted in a greater understanding of the processes involved and these are embedded in departments. My officials will continue to work with departments to consider all the points raised in the Committee's report and recommendations.

I note the point raised in the report regarding the number of orders made compared to the number of orders originally envisaged by the PBA. While it is certainly the case that several reforms have been achieved through alternative legislation or through voluntary means, I remain of the view that the PBA, whose scope was determined after thorough consultation and agreement, has proved highly effective. It has been a central element of the reform programme, crucial to its success. Where reform has been completed through other means, this has been for reasons which only became evident at a later stage, such as where the statutory requirements to lay an order under the PBA could not be met or where the scope of policy proposals changed. In these cases it is quite proper that the Government has pursued reform proposals through alternative, appropriate measures.

The report in particular highlights four reforms which were completed under the Enterprise and Regulatory Reform Act 2013 (ERRA). Three of these reforms related to the abolition of the Agricultural Wages Board and associated committees. The use of the ERRA enabled the Government to complete these reforms within a more appropriate timeframe than what would have been achievable under the PBA. The fourth reform related to changes to the Commission for Equality and Human Rights, originally proposed under Schedules 3, 4 and 5 of the PBA. In the event the scope of the reform was extended, such that alternative legislation had to be used. The PBA provided one option for

reform to public bodies, but was never intended to preclude the use of other means, if more appropriate.

In the cases where the decision has been made not to proceed with the reform, I assure you that this has been for very good reason which only became evident at a later date. One example would be the proposed abolition of the Valuation Tribunal Service and transfer of its functions to Her Majesty's Courts and Tribunals Service. This was halted due to the significant pension liabilities that would have been incurred, making such a reform unviable on cost grounds. Any such changes to the original proposed reform are subject to my agreement and clearance by the Home Affairs Committee.

The report also commented that it was not clear how the total administrative cost reduction figure was calculated. The figure of £126.5 million is the aggregated administrative cost reductions relative to the 2010 baseline for bodies reformed, merged or abolished under the Public Bodies Act. This is the total of the administrative spend reductions reported for the individual bodies reformed under the Act by departments to the Cabinet Office; the figures were all calculated using the same, specific Cabinet Office methodology, as audited by the National Audit Office, and relate to cost reductions within the current Spending Review period. The £126.5 million is a subset of the estimated £2.6 billion cumulative administrative spend reductions for the Public Bodies Reform programme. Your report referred to some figures varying between a per annum figure, a gross figure for the Spending Review period and savings over a specified number of years. These are the figures quoted by departments in the explanatory documents that accompanied individual orders; these figures were forecasts calculated up to three years ago and have not been used to calculate the total administrative cost reduction. My officials will be happy to talk through the figures with the clerk to your Committee.

Thank you for your suggestions on what may be included in any post-implementation review. We will consider these and draw on them if such a review is undertaken.

20 March 2015

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 24 March 2015 Members declared no relevant interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Borwick, Lord Bowness, Lord Goodlad, Baroness Hamwee, Baroness Humphreys, Lord Plant of Highfield, Baroness Stern and Lord Woolmer of Leeds.