Public Bodies (Abolition of Food from Britain) Order 2014

Includes 3 Information Paragraphs on 3 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
Rt Hon. Lord Goodlad (Chairman)
Lord Plant of Highfield
Lord Eames
Baroness Hamwee
Lord Woolmer of Leeds

Registered interests
Information about interests of Committee Members can be found in Appendix 1.

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
A. Draft Public Bodies (Abolition of Food from Britain) Order 2014

Introduction

1. The draft Public Bodies (Abolition of Food from Britain) Order 2014 has been laid by the Department for Environment, Food and Rural Affairs (Defra) under sections 1(1), 6(1) and (5), 24(1) 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 proposes the abolition of the body known as Food from Britain (FFB) (established as a Non-Departmental Public Body (NDPB) under section 1 of the Agricultural Marketing Act 1983: “the 1983 Act”).

3. In the ED, Defra states that FFB came into existence in March 1983, originally to develop and coordinate the marketing of UK food, and later focusing on promoting exports and assisting the marketing of quality regional food. Following a reduction in its grant-in-aid by Defra Ministers, the FFB Council took a decision in 2008 to cease FFB’s activities. The decision to close FFB was announced in a written Ministerial Statement1 to Parliament on 26 March 2008. FFB ceased operating in March 2009.

4. Defra explains that, while FFB no longer exists as an operating body, the legislation which established FFB – the 1983 Act – does not provide for its abolition; and that FFB was included in Schedule 1 to the Public Bodies Act 2011 in order to achieve its legislative dissolution. An announcement on Defra’s proposals to reform a number of public bodies, including FFB, was made in July 2010 by the then Secretary of State for Environment, Food and Rural Affairs.

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

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1 See: http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080326/wmstext/80326m0001.htm#column_10WS.
Tests in the Public Bodies Act 2011: assessment of the proposals – section 8 of the Explanatory Document

6. 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 Food from Britain) Order 2014 deals with the statutory tests in paragraphs 8.1 to 8.5, and with the conditions in paragraph 9.

Efficiency

7. Defra states that the proposal to abolish FFB is driven by a desire to remove a defunct NDPB whose continued legislative existence results in an unnecessary annual cost to the taxpayer. Whilst the 1983 Act remains in force, Defra and the Devolved Administrations continue to have a legal obligation to publish Annual Report and Accounts for FFB which must be laid before UK Parliament and each National Assembly/Parliament each year, at an annual cost to Defra of around £5,000.

Effectiveness

8. The Department says that FFB has not existed as a functioning body for almost five years; and that it is essentially a defunct body, with no staff, premises, assets or liabilities. Its former functions are carried out by other Government Departments and industry bodies. More light is shed on the effectiveness with which these functions are carried out by some of the consultation responses: see paragraph 12 onwards, below.

Economy

9. Defra states that there is no budget allocated for FFB; and that, as explained above, its abolition will result in savings in the region of £5,000 per annum.

Accountability

10. The Department says that abolition of FFB does not create any issues of accountability given that the body is no longer operational. It adds that the Government are committed to working closely with industry stakeholders to boost exports, promote innovation and encourage further growth, particularly amongst SMEs.

Necessary protection; right or freedom

11. Defra states that abolition of FFB will not result in the removal of any protection for the businesses that made use of its former services; and that its abolition will not prevent any business or individual from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.
Consultation – section 11 of the Explanatory Document

12. Defra and the Devolved Administrations carried out consultation on the proposal to abolish FFB over six weeks from 19 September 2013, a period considered sufficient given that the body had in practice been defunct for over four years. Defra says that eight responses were received; and that no criticism of the timescale for consultation was made by respondents. Four supported the Government’s preferred option, one was opposed, and two did not provide a clear view either way (one anonymous respondent did not want their response made public). Defra has included a summary of responses in the ED.

13. We note that, while responses showed a good level of agreement to the proposal, some respondents from the food and drink sector expressed concern about the lack of support for that sector demonstrated by the previous Government’s reduction in grant-in-aid to FFB in 2008 and about the subsequent policy vacuum, only now being redressed. The Food and Drink Federation (FDF), for example, stated that “FFB played a valuable role in supporting exporters but this support was not adequately replaced. The lack of export support from organisations and Government in recent years has left businesses unaware of the opportunities overseas.” FDF’s response acknowledged, however, that progress had been made over the last year with close co-operation between the sector and Government “to inspire businesses to begin exporting”, particularly through efforts under the new UK Food and Drink Action Plan.

14. Defra deals with Government support for food and drink exports in paragraphs 7.11 to 7.16 of the ED. In particular, the Department states that the Government are committed to working closely with industry stakeholders to boost exports, promote innovation and encourage further growth; and that key to this activity is the Food and Drink Exports Action Plan, which was launched in October 2013, and which aims to contribute £500m to the economy through assisting up to 1,000 UK companies by 2015 and contribute to an increase in UK exports of at least £1bn by 2015.

Conclusion

15. We consider that, in the ED, the Department has dealt adequately with the tests and conditions set out in the 2011 Act. It seems clear that statutory abolition of the FFB will in itself make a small contribution to improving the exercise of public functions, by removing the need for Government to present the accounts for a defunct body each year. As for FFB’s original purpose, of promoting exports of UK food, the ED contains information about the efforts now being made by Government to assist this purpose, and to fill what may otherwise have been a policy vacuum (as identified by a consultation respondent).

16. 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.

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INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this report.

INSTRUMENTS OF INTEREST

Draft Health Care and Associated Professions (Indemnity Arrangements) Order 2014

17. In 2010, the Finlay Scott Review examined the current provision for medical indemnity and found that practice varied between the different health professions. The main conclusion of the review was that a statutory condition of registration would be the most cost effective and proportionate means of achieving full cover. This Order implements the principal recommendations of the Finlay Scott Review and also Article 4(2)(d) of the Directive 2011/24/EU on the application of patients’ rights in cross-border healthcare which requires Member States to have in place systems of professional liability insurance in respect of health care treatment provided in that Member State. The Order also allows a regulatory body to remove or refuse a practitioner’s registration if they cannot demonstrate appropriate cover. The Department of Health states that the vast majority of regulated healthcare professionals in the UK already have cover by virtue of their employer’s liability, or via a professional body which offers an indemnity arrangement as a benefit of membership, but it will be for individual healthcare professionals to assure themselves that appropriate cover is in place for all the work they undertake.


18. Occupational pension schemes offer either money purchase benefits or non-money purchase benefits. The Government’s view is that the term ‘money purchase benefits’ should only refer to those pension rights which are wholly backed by matched assets and cannot develop surpluses or deficits. The Supreme Court judgment in Bridge Trustees v Houldsworth and another (2011) decided that certain benefits could be considered money purchase benefits even though it was possible for them to have a shortfall in their funding. This created uncertainty and was addressed by section 29 of the Pensions Act 2011 which clarifies the definition of money purchase benefits by limiting it to those benefits that cannot have a funding shortfall. These Regulations set out what existing schemes that do not meet the clarified definition will need to do to comply with pension protection measures. In most cases schemes will not need to revisit past decisions but the Regulations will ensure that in the future members’ benefits are protected.

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3 [2011] UKSC 42.
Draft Universal Credit (Transitional Provisions) Regulations 2014 (SI 2014/1230)

19. These Regulations make provision for the second phase of the introduction of Universal Credit, and represent a change from the structured plans for the roll out of Universal Credit set out in the previous Regulations. Much of the content is as expected, with the initial piloting stage allowing only simple, new claims to Universal Credit to enable the systems to be tested. As the cadre expands these Regulations provide for some of the more complex transitional situations that will arise when dealing with families and those on a wider range of existing benefits. Some minor changes to policy are included for example in the way overpayments are to be recovered and from whom (see regulation 10).

20. In line with an announcement made on 5 December 2013, the Department for Work and Pensions now expects the “majority” of existing benefit claimants to be transferred to Universal Credit by the end of 2017, that is, around 6.5 million people. DWP officials state that “decisions on the later stages of Universal Credit (UC) roll out will be informed by the development of the enhanced IT but some Employment Support Allowance claimants may be moved on to UC more slowly because they have already experienced the move from the old Incapacity Benefit and they would not immediately benefit from the improved work incentives of Universal Credit”. The Committee was surprised to see this instrument accompanied by the original cost/benefit analysis from 2012, despite the well-publicised changes to the programme. DWP officials state that “the Impact Assessment published in December 2012 provides information based on the situation once Universal Credit (UC) is fully rolled out. Therefore, as there has not been any significant change since the Impact Assessment was published, we have not published an updated impact assessment for this instrument”. However, the House may wish to note that the end date for completion of the transition to Universal Credit has been made more flexible and can be “managed” if problems arise in a particular area. Such changes will be made by Commencement Orders, which are not subject to parliamentary scrutiny. These Regulations also now include provision to allow the Secretary of State discretion temporarily to stop taking Universal Credit claims in certain geographic areas or for certain groups of claimants, so that any issues can be resolved. Where this provision is exercised, anyone prevented from claiming Universal Credit will be able to claim existing benefits or credits.

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4 SI 2013/386 as amended, which is revoked by this SI.
5 http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131205/wmstext/131205m0001.htm.
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

- African Legal Support Facility (Legal Capacities) Order 2014
- Armed Forces Act (Continuation) Order 2014
- Co-operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulations 2014
- Health Care and Associated Professions (Indemnity Arrangements) Order 2014
- Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014
- Representation of the People (Supply of Information) Regulations 2014
- Transfer of Tribunal Functions (Mobile Homes Act 2014 and Miscellaneous Amendments) Order 2014

Draft instruments subject to annulment

- Selby (Electoral Changes) Order 2014
- Shepway (Electoral Changes) Order 2014
- Telford & Wren (Electoral Changes) Order 2014

Instruments subject to annulment

- SI 2014/981 Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) (No. 2) Regulations 2014
- SI 2014/1146 Local Government Pension Scheme (Offender Management) (Amendment) Regulations 2014
- SI 2014/1180 West Midlands Integrated Transport Authority (Decrease in Number of Members) Order 2014
- SI 2014/1183 Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014
- SI 2014/1185 Legal Services Act 2007 (Levy) (No. 2) (Amendment) Rules 2014
- SI 2014/1195 Financial Services Act 2012 (Relevant Functions in relation to Complaints Scheme) Order 2014
SI 2014/1197  Local Authorities (Goods and Services) (Public Bodies) (England) Order 2014
SI 2014/1231  Child Benefit (General) and Child Tax Credit (Amendment) Regulations 2014
SI 2014/1233  Civil Procedure (Amendment No. 5) Rules 2014
SI 2014/1292  Alternative Investment Fund Managers Order 2014
SI 2014/1293  Electricity and Gas Appeals (Designation and Exclusion) Order 2014
SI 2014/1313  Alternative Investment Fund Managers (Amendment) Order 2014
APPENDIX 1: INTERESTS AND ATTENDANCE

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

For the business taken at the meeting on 10 June 2014 Members declared no interests.

Attendance:

The meeting was attended by Lord Bichard, Lord Goodlad, Baroness Hamwee, Lord Woolmer of Leeds.