

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

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17th Report of Session 2014–15

**Special Report**  
**Public Bodies Act 2011:**  
**three years on**

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HL Paper 73

## *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 1.

### *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](mailto: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.

# Seventeenth Report

## PUBLIC BODIES ACT 2011: THREE YEARS ON

### **Introduction**

1. Each year, since the Public Bodies Act 2011 (“the 2011 Act”) received Royal Assent on 14 December 2011, the Secondary Legislation Scrutiny Committee has issued a report on activity under the Act.<sup>1</sup> This is our third such report.

### **Progress against the target**

2. The 2011 Act delegates to Ministers the power, by order, to abolish, merge or modify 285 bodies and offices listed in Schedules 1 to 5 to the Act. The Government originally envisaged that 58 Public Bodies Orders (PBOs) would be needed (later increased to 60 to take account of “omnibus” Orders).<sup>2</sup>
3. Table 1 below shows the Government’s assessment of the position at the end of November 2014. By the end of the first year of the operation of the 2011 Act 17 draft Orders (relating to 37 public bodies) had been laid before Parliament; in the second year, six draft Orders (relating to eight public bodies) were laid; in this, the third year, a further six were laid, one of which is still in progress. Table 1 indicates a maximum of six more Orders yet to come.

**Table 1: Progress under the Public Bodies Act 2011**  
(Information provided by Cabinet Office up to end November 2014)

	1	2	3	4	5	6	7
	Number of orders laid as at Nov 2014	Orders to be laid by Dec 2014 recess	Reform achieved via Alternative Legislative Vehicle (ALV) or voluntary means	Reform awaiting suitable ALV, voluntary or other means	Policy and/or vehicle under consideration	Remaining Orders	<b>Total</b>
Orders	29 (31) <sup>2</sup>	2	11	12	2	2	<b>(58) 60<sup>2</sup></b>
Bodies	51	2	42	183	2	5	<b>285</b>

<sup>1</sup> 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.

<sup>2</sup> In the first year the Government presented two “omnibus” Orders that each abolished two unconnected bodies. The Committee found that this was not a helpful mechanism as each proposal had to be scrutinised in its own right. The Cabinet Office revised the original estimate to indicate that omnibus Orders would instead be presented as individual items.

### **Bodies dealt with by other means**

4. The 2011 Act is time-limited to elapse after five years. The 29 Orders laid so far represent 50% of the total number envisaged after 60% of the period during which the Act is in force has passed. It is obvious that progress is slowing: two further Orders are scheduled to be laid before the end of 2014 (see Table 3), another two Orders are indicated (see Table 4) and two appear to be still under consideration as to whether the change will be made by this or another legislative mechanism (included in Table 5). On that basis, we deduce that a maximum of 35 Orders will be laid, or 60% of the number originally planned.
5. The other 40% of the reforms under the 2011 Act (23 items) have been, or will be, made using an alternative legislative vehicle (ALV) or a voluntary agreement. Columns 3–6 in Table 1 above show the current status of these items, the particular bodies concerned are listed in Table 5.
6. In relation to the reforms already completed by ALV, we note that the Enterprise and Regulatory Reform Act 2013 was used to abolish the Agricultural Dwelling House Advisory Committees and Agricultural Wages Board for England and Wales and to modify the funding and functions for the Commission for Equality and Human Rights. Any post-implementation review of the Act will wish to reflect on this duplication of parliamentary consideration of these proposals. **It appears to us to be a significant waste of Parliamentary time which better consultation prior to legislating might have avoided.**

### **An Order withdrawn**

7. Remarkably, during 2014, a draft Order was withdrawn. The draft Public Bodies (Modification of Functions of Ofcom) Order, laid in July 2013, was withdrawn in February 2014. Although the Committee was satisfied that several elements of the proposal met the criteria in the 2011 Act, respondents to the consultation expressed significant concerns about a proposal to remove the requirement for five-yearly reviews of Public Sector Broadcasting and, instead, leaving the timing to the discretion of Ministers.<sup>3</sup> These concerns were due, in part, to the rapid pace of technological development and, in part, to concerns expressed by the Scottish and Welsh administrations. We do not know whether the Department for Culture, Media and Sport plans to reintroduce these changes by other means.

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<sup>3</sup> The issues are explained in more detail in our [12th Report, Session 2013–14](#), HL Paper 54.

**Orders in the third year**

8. Of the other five Orders considered in 2014, four have been cleared within the 40-day limit:
- 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
  - Draft Public Bodies (Abolition of the Committee on Agricultural Valuation) Order 2014
  - Draft Public Bodies (Abolition of Food from Britain) Order 2014
  - Draft Public Bodies (Marine Management Organisation) (Fees) Order 2014

The explanatory material provided with these Orders was generally good but supplementary information was required from the Department for Business, Innovation and Skills to make clear the justification for pursuing the National Consumer Council Order. The Committee also questioned the adequacy of the consultation in relation to the Order to Abolish the Committee on Agricultural Valuation, which lasted only three weeks.

9. The draft Public Bodies (Abolition of the Library Advisory Council for England) Order 2014 was laid on 4 November 2014. Following initial consideration by the Committee, it was decided that the enhanced affirmative procedure should apply and that, therefore, the scrutiny period should be extended to 60 days. That decision was based on a concern over whether it would be appropriate to abolish the Council before the outcome of a major review of the public library service was known.<sup>4</sup> Further correspondence from the Department for Culture, Media and Sport is awaited.

**Box 1: The Statutory Tests**

A Public Bodies Order can only be made if the Minister 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.
- The order does not remove any necessary protection.
- The order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.<sup>5</sup>

<sup>4</sup> 15th Report, Session 2014–15, HL Paper 68.

<sup>5</sup> Public Bodies Act 2011, section 8.

## **Effectiveness of the Public Bodies Order format**

### *Savings*

10. During the passage through Parliament of the bill which was to become the 2011 Act, the Government emphasised the financial savings to be made from public bodies reform. We have, therefore, sought to ensure that the explanatory material accompanying a PBO states clearly the expected savings to be achieved from the Order, offset by any likely costs, such as those arising from redundancies. An estimate for each Order is set out in Table 2 below.
11. We have also requested the Government to provide a statement of the net savings arising from PBOs, quite separate from the savings claimed under the broader programme. At the end of the first year, we were told that there had been net savings of £29.6 million; and at the end of the second year, the updated aggregated figure was £108.5 million. For 2014, the aggregate figure provided by the Cabinet Office for administrative cost reductions relative to the 2010 baseline for bodies reformed, merged or abolished under the 2011 Act is £126.5 million. How that total was calculated is far from clear since the figures quoted in Table 2 vary between a per annum figure, a gross figure for the Spending Review period and savings over specified number of years.

### *Presentation*

12. With the exception of those PBOs mentioned above, the explanatory material for Orders laid in 2014 has been of a generally acceptable standard. For the Orders yet to come we would simply repeat our earlier recommendations:
  - The 2011 Act sets out the statutory tests the Minister must meet before making an Order (see Box 1 above). They must all be addressed. The responsibility lies with the Minister to put a convincing case to Parliament (where possible with evidence) on how the proposal complies with the 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 thorough consultation both with the body itself and its constituency, with effective solutions proposed to any concerns raised by the consultation.
  - Where the Order merges existing functions into another organisation, to satisfy the tests in the 2011 Act the Government need to explain how they will operate in the new regime and how Parliament will be able to monitor future performance of those functions.

### *Use of the 2011 Act*

13. The figures we have been given suggest that only about 55% of the PBOs originally envisaged under the 2011 Act will eventually be made. The Cabinet Office states that the PBOs to date have, so far, saved an estimated £126.5 million in administrative costs. There has, however, also been some offsetting wastage of administrative and Parliamentary time in pursuing the same policy through two different Bills or in deciding to retain a body after all. There was heated debate in Parliament over the inclusion of several of

the bodies cited in the Schedules to the 2011 Act, some of which, it now appears, will be retained or dealt with another way.

14. While the PBO mechanism itself seems to have been reasonably effective in presenting the House with a clear case for abolition or merger of certain bodies, some cases have been weaker than others. The mandatory consultation required by section 10 of the 2011 Act and the requirement in section 11(2)(b) for the Minister to explain why he or she considers the tests to have been met impose a structure on the accompanying explanatory material which has greatly assisted our scrutiny. **However, the number of bodies in the Schedules to the 2011 Act which are now being retained suggests that their original selection was based on inadequate evidence. This is another matter which any post-implementation review will wish to consider.**

**Table 2: Savings from each of the Orders laid** (Source: Cabinet Office)

<b>Department</b>	<b>Public Body</b>	<b>Proposed Reform</b>	<b>Progress Update as at 21 November 2014</b>	<b>Forecast savings as reported in Depts in Explanatory Document (£)</b>	<b>Latest Admin reductions reported in Depts in line with CO Methodology (£ million)</b>	<b>Notes</b>
<b>Business, Innovation and Skills (BIS)</b>	Aircraft and Shipbuilding Industries Arbitration Tribunal	No longer a NDPB	Already laid	£0.00	£0.00	
<b>BIS</b>	British Shipbuilders	No longer a Public Corporation	Already laid	£15,000 per annum	£0.00	
<b>BIS</b>	National Consumer Council (Consumer Focus)	No longer a NDPB	Already laid	£8m (see Annex to SLSC 26th Report of Session 2013–14)	£2.5m	
<b>BIS</b>	National Endowment for Science, Technology and the Arts (NESTA)	No longer a NDPB	Already laid	£1.84m over 10 years	£0.00	

<b>BIS</b>	Office of Fair Trading	Transfer of Consumer Advice Scheme, transfer of functions in relation to estate agents and modification of enforcement functions (followed by a merger of competition functions with the Competition Commission)	Already laid (two Orders) (Office of Fair Trading and Competition Commission replaced by Competition and Markets Authority in April 2014. Changes made under Enterprise and Regulatory Reform Act 2013)	£55,000 per annum (transfer of estate agency functions)	£15.5m	
<b>Culture, Media and Sport (DCMS)</b>	Gambling Commission, National Lottery Commission	Merge	Already laid	£1.033m per annum	£0.00	
<b>DCMS</b>	Library Advisory Council for England	No longer a NDPB	Already laid	£2,500 per annum	£0.00	

<b>DCMS</b>	Ofcom	Several Ofcom duties remain to be removed or modified (Merger with Postcomm completed in October 2011)	Already laid	£165,000–240,000 per annum	£0.00	Draft Order laid and subsequently withdrawn. Other ways of reforming the regulator are being looked into.
<b>DCMS</b>	Registrar of Public Lending Right	No longer a NDPB	Already laid	£1.36m over 10 years	£1.4m	
<b>Environment, Food and Rural Affairs (DEFRA)</b>	Advisory Committee on Hazardous Substances	No longer a NDPB	Already laid	£0.00	£0.00	
<b>DEFRA</b>	British Waterways Board	No longer a Public Corporation	Already laid	£0.00	£0.00	
<b>DEFRA</b>	Commission for Rural Communities	No longer a NDPB	Already laid	£17m over Spending Review	£19.9m	
<b>DEFRA</b>	Committee on Agricultural Valuation	No longer a statutory body	Already laid	£0.00	£0.00	
<b>DEFRA</b>	Drinking Water Inspectorate	Retain and reform	Already laid	£0.00	£0.00	

<b>DEFRA</b>	Environment Protection Advisory Committee	No longer a NDPB	Already laid	£192,000 per annum	£0.00	The £0.2m per year savings reported in the Explanatory Document have been reinvested in new ways of working so this is cost neutral.
<b>DEFRA</b>	Food From Britain	No longer a statutory body	Already laid	£5,000 per annum	£0.00	
<b>DEFRA</b>	Inland Waterways Advisory Council	No longer a NDPB	Already laid	£0.00	£0.00	
<b>DEFRA</b>	Marine Management Organisation	Retain	Already laid	£0.00	£12m	The £0.6m per year mentioned in the Explanatory Document reflects costs to be recovered to offset MMO expenditure.
<b>DEFRA</b>	Regional and Local Fisheries Advisory Committees	No longer a NDPB	Already laid	£225,000 per annum	£0.00	The £0.2m per year savings reported in the Explanatory Document have been reinvested in new ways of working so this is cost neutral.
<b>Dept for Transport (DFT)</b>	BRB (Residuary) Ltd	No longer a statutory body	Already laid	£3m over 2 years	£4.7m	
<b>DFT</b>	Railway Heritage Committee	No longer a NDPB	Already laid	£100,000 per annum	£0.2m	

<b>Dept for Work and Pensions (DWP)</b>	Child Maintenance and Enforcement Commission	No longer a NDPB	Already laid	£0.5m per annum	£59.6m	The Explanatory Document stated that the rationale behind the abolition was to increase Ministerial responsibility and accountability for child maintenance, not to save money. Also that once transferred as the new Child Maintenance Group was integrated, administrative savings could be identified and estimated. The process used to produce the savings estimate was agreed by the NAO and covers the entirety of the child maintenance budget, not just admin costs.
<b>DWP</b>	Disability Living Allowance Advisory Board	No longer a NDPB	Already laid	£5,000 per annum	£0.00	
<b>Ministry of Justice (MoJ)</b>	Administrative Justice and Tribunal Council	No longer a statutory body	Already laid	£1.4m (2012–2015)	£3m	
<b>MoJ</b>	Courts Boards (x19)	No longer a NDPB	Already laid	£0.45m per annum	£1.4m	

<b>MoJ</b>	Crown Court Rule Committee	No longer a statutory body	Already laid	£0.00	£0.00	Omnibus Order with Magistrates' Courts Rule Committee.
<b>MoJ</b>	Director of Public Prosecutions Director of Revenue and Customs Prosecutions	Merge	Already laid	Estimated savings of over £6m annually by 2012/13, rising to almost £10 m by 2014/15.	£0.00 £0.00	Explanatory document explained that the savings resulting from the merger were all Programme savings.
<b>MoJ</b>	HM Inspectorate of Court Administration	No longer a statutory body	Already laid	£6.4m over Spending Review	£6m	Omnibus Order with Public Guardian Board.
<b>MoJ</b>	Magistrates' Courts Rule Committee	No longer a statutory body	Already laid	£0.00	£0.00	Omnibus Order with Crown Court Rule Committee.
<b>MoJ</b>	Public Guardian Board	No longer a statutory body	Already laid	£400,000 over Spending Review	£0.3m	Omnibus Order with Her Majesty's Inspectorate of Courts Administration.
<b>MoJ</b>	Victims' Advisory Panel	No longer a statutory body	Already laid	£50,000 per annum	£0.00	

**Table 3: Orders to be laid by December 2014 recess** (Source: Cabinet Office)

Department	Public Body	Proposed Reform	Progress update as at 21 November 2014
DEFRA	Home Grown Timber Advisory Committee	No longer an NDPB	To be laid by recess
DEFRA	Advisory Committee on Pesticides	No longer an NDPB	To be laid by recess

**Table 4: Orders to be laid in 2015** (Source: Cabinet Office)

Department	Public Body	Proposed Reform	Progress update as at 21 November 2014
DEFRA	Plant Varieties and Seeds Tribunal	No longer an NDPB	To be laid by 2015
MoJ	Advisory Council on Public Records, Her Majesty's Stationary Office, Keeper of Public Records and Public Record Office	Merge	To be laid by 2015

**Table 5: Bodies listed under the Public Bodies Act but reform to be achieved by alternative means** (Source: Cabinet Office)

Department	Public Body	Proposed Reform	Progress as at 21 November 2014	Notes
BIS	British Hallmarking Council	Retain	Retain	Under consideration
BIS	Central Arbitration Committee, Certification Officer	Merge	Retain	Bodies to be retained

<b>BIS</b>	Competition Commission, Office of Fair Trading	Merge	Policy by other Means	Completed under the Enterprise and Regulatory Reform Act 2013
<b>BIS</b>	Competition Service	No longer a statutory body	Policy by other Means	Triennial review recently completed and recommended the Competition Service be merged with the Competition Appeal Tribunal. The merger will be taken forward as soon as Parliamentary time allows
<b>Communities and Local Government (DCLG)</b>	Valuation Tribunal Service	No longer an NDPB	Retain body	Body to be retained and subject to triennial review
<b>Culture, Media and Sport (DCMS)</b>	English Tourist Board (Visit England)	Retain	Policy by other Means	Body to be subject to triennial review
<b>DCMS</b>	Horseshoe betting Levy Board	Retain	Policy by other Means (under consideration)	Government has recently consulted on the options of reforming the existing Levy or replacing the Levy with a bespoke statutory framework
<b>DCMS</b>	S4C	Retain	Policy by other Means	Modification of constitutional arrangements completed by Voluntary Agreement
<b>DCMS</b>	Sports Grounds Safety Authority (previously FLA)	No longer an NDPB	Retain body	Body to be retained and subject to triennial review
<b>DCMS</b>	Theatres Trust	Retain and substantially reform	Policy by other Means	Scope of reform widened to abolish body and transfer statutory functions to an independent charity. Suitable primary legislation under consideration
<b>DEFRA</b>	Agricultural Dwelling House Advisory Committees (x16)	No longer a statutory body	Policy by other Means	Abolition of body by Enterprise and Regulatory Reform Act 2013

<b>DEFRA</b>	Agricultural Wages Board for England and Wales	No longer a statutory body	Policy by other Means	Abolition of body by Enterprise and Regulatory Reform Act 2013
<b>DEFRA</b>	Agricultural Wages Committees (x15)	No longer a statutory body	Policy by other Means	Abolition of body by Enterprise and Regulatory Reform Act 2013
<b>DEFRA</b>	Broads Authority	Modify constitutional arrangements	Policy by other Means	Work underway on a draft Bill for pre-legislative scrutiny
<b>DEFRA</b>	Environment Agency	Retain and substantially reform	Policy by other Means	Further reform options (not requiring Public Bodies Order) under consideration as part of ongoing implementation of Triennial Review Action plan
<b>DEFRA</b>	Internal Drainage Boards (x164)	Modify constitutional arrangements	Policy by other Means	Legislation on streamlining of structural reform processes now implemented through Water Act 2014. Work has been taken forward with Association of Drainage Authorities to deliver IDB reforms on promoting efficiency, accountability and on membership through a local voluntary approach
<b>DEFRA</b>	Joint Nature Conservation Committee	Retain	Policy by other Means	Reform and efficiencies considered and reported in 2013 Triennial Review report. Conclusions reflect need to maintain status quo with efficiencies and better engagement.
<b>DEFRA</b>	(x9) National Park Authorities	Modify constitutional arrangements	Policy by other Means	Work underway on a draft Bill for pre-legislative scrutiny
<b>DEFRA</b>	Natural England	Modify funding arrangements	Policy by other Means	Further reform options (not requiring Public Bodies Order) under consideration as part of ongoing implementation of Triennial Review Action Plan

<b>DWP</b>	Pensions Ombudsman, Pensions Protection Fund Ombudsman	Merge	Policy by other Means	Both bodies to be retained
<b>DfT</b>	Disabled Persons' Transport Advisory Committee	No longer an NDPB	Policy by other Means	Body to be retained
<b>DfT</b>	Passengers' Council (Passenger Focus)	Retain and substantially reform	Policy by other Means	Modification of constitutional arrangements completed by Voluntary Agreement
<b>Department of Health (DoH)</b>	Human Fertilisation and Embryology Authority	Modify or transfer functions	Policy by other Means	Body to be retained following the McCracken Review and body subject to triennial review.
<b>DoH</b>	Human Tissue Authority	Modify or transfer functions	Policy by other Means	Body to be retained following the McCracken Review and body subject to triennial review.
<b>Home Office (HO/GEO)</b>	Commission for Equality and Human Rights	Retain and substantially reform	Policy by other Means	Modification of Constitutional Arrangements; funding and transfer of functions by the Enterprise and Regulatory Reform Act 2013

## APPENDIX 1: INTERESTS AND ATTENDANCE

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://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 2 December 2014 Members declared the following interests:

Baroness Stern

*Married to a former member of the Administrative Justice and Tribunals Council*

### Attendance:

The meeting was attended by Lord Eames, Lord Goodlad, Baroness Hamwee, Baroness Humphreys, Baroness Stern and Lord Woolmer of Leeds.