PUBLIC BODY CONSENT MEMORANDUM

DRAFT ADVISORY COMMITTEE ON HAZARDOUS SUBSTANCES (ABOLITION) ORDER 2012

Draft Public Body Consent Motion

1. The draft motion, which will be lodged by the Minister for Environment and Climate Change, is:

2. "That the Parliament consents to the making of the Advisory Committee on Hazardous Substances (Abolition) Order 2012, a draft of which was laid before the United Kingdom Parliament on 27 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament."

3. This memorandum has been lodged by Stewart Stevenson, Minister for Environment and Climate Change, in accordance with interim arrangements agreed by the Parliamentary Bureau at its meeting on 20 December 2011.

Background

UK Public Bodies Act 2011

4. The UK Public Bodies Act 2011 ("the 2011 Act") gives UK Ministers the authority (via order making powers) to abolish, merge or transfer the functions of public bodies listed in its schedules, and some of those bodies operate in both the reserved and devolved areas. Section 9 of the 2011 Act acknowledges the scope for incursion into devolved interests by requiring orders that include provision falling within devolved competence to be consented to by Holyrood.

5. On 20 December 2011 the Parliamentary Bureau approved interim arrangements for handling requests for consent to orders triggering section 9 of the 2011 Act.

Advisory Committee on Hazardous Substances

6. The ACHS was established in 1991 under Sections 140(5) and 142 of the Environmental Protection Act (EPA)1990 which seeks to prohibit or restrict the supply, use and storage of substances hazardous to the environment, human health or plants and animals.

7. As a NDPB, ACHS operates at arms length from Government. Whilst the sponsor department, Defra, has a role to support and challenge ACHS, it does not direct ACHS or its work programmes and its strategy is determined by its members.

UK Government reform proposal

8. ACHS has a scientific remit but was established to deliver a specific statutory function. That function is no longer required but there is still a need for officials and
Ministers to have access to independent scientific advice on issues relating to hazardous substances. This is the reason why it is intended to establish a scientific committee. This committee will not be a statutory body but will allow a more flexible and integrated approach to the use of scientific evidence to support policy.

9. The regulatory landscape for chemicals has changed since the ACHS was established twenty years ago, principally with the adoption of REACH, which, as an EU regulation, applies directly in all EU Member States without the need for transposition into national legislation. There will be no future need for separate UK chemicals control legislation while REACH remains in force, except where an emergency control is needed under the REACH Article 129 ‘safeguard clause’.

10. At the same time the REACH regime has opened up new areas where the Committee’s scientific expertise can be brought to bear to support UK policy in this wider context.

11. To address these changes, Defra held a public consultation on proposals to abolish the ACHS and reconstitute it as a scientific advisory committee. The main reasons behind the proposals are:

- Defra is putting its scientific advisory committees on a new footing to strengthen its science and evidence base to support policy.
- Statutory bodies could be overtaken by legislative developments – particularly where these stem from Europe. For example it was the case that for the regulation of hazardous substances the field is now largely occupied by the EU REACH regime, (obviating the need for domestic regulations). This reform reflected the position that we no longer required the ACHS to discharge statutory obligations with regard to domestic regulations.
- The committee retained an independent and technical advisory function in a sensitive area which Government required, which society valued, and which was best delivered through other arrangements, and for which the status of expert scientific committee best described its role and function.
- The reconstitution of advisory NDPBs as expert scientific committees was about improving transparency and accountability, and enabling Defra to have continued access to independent, authoritative and cost effective advice to support Government policies.

12. There are no anticipated risks for ACHS or its activities as a result of the proposed changes, and there will be no negative effect on ACHS’s work as a consequence of its transition to a scientific committee.

Implications for Scotland

13. The reconstituted expert scientific committee will continue to provide advice as necessary to Scottish Ministers.
Scottish Government position

14. The Scottish Government is supportive of the proposal to reconstitute ACHS an expert scientific committee. The order-making powers in the Public Bodies Act are designed to enable UK Ministers to take forward the reform of a substantial number of public bodies for which the UK Government is responsible. This is consistent with the Scottish Government’s continuing commitment to simplify and streamline the public bodies landscape in Scotland.

15. The responses to the consultation provided no evidence of opposition within Scotland to the proposals, nor any evidence that the reconstitution of ACHS would give rise to any detriment to the existing relationship between ACHS and any Scottish organisations.

The ACHS Order

16. A draft Order to abolish the Advisory Committee on Hazardous Substances (ACHS) using powers contained in the Public Bodies Act 2011 was laid before the UK Parliament on 27 February 2012. Copies of the draft ACHS Order and the accompanying draft explanatory memorandum, as laid at Westminster, are provided in Annexes A & B.

17. Although the Scottish Parliament does not have the competence to abolish ACHS across the whole of the UK (which is the effect of article 2 of the Order), it is the effect of the abolition itself, in particular in relation to the removal of ACHS’s functions in Scotland, which falls within the competence of the Scottish Parliament. This is because the functions which ACHS exercises in Scotland relate broadly to devolved matters and accordingly, it would be open to the Scottish Parliament to legislate to provide that some or all of ACHS’s devolved functions are no longer to be exercisable in Scotland.

18. The Order abolishes the Advisory Committee on Hazardous Substances (ACHS), established under section 140(5) of the Environmental Protection Act 1990, and makes repeals and revocations (including the repeal of the power to appoint a committee) associated with the abolition. The ACHS is one of the bodies listed in Schedule 1 of the Public Bodies Act 2011 which can be abolished by secondary legislation, under powers in that Act.

19. The abolition of the ACHS as a statutory Non Departmental Public Body, and its reconstitution as an expert scientific committee, is an outcome of the Government’s 2010 review of public bodies. The ACHS must be abolished before its replacement can be put in place.

20. The successor body will operate within an enhanced framework for scientific bodies in Defra, and with new terms of reference which reflect changes in the regulatory landscape for hazardous substances since the ACHS was established twenty years ago. The successor body will continue to provide expert, impartial and independent advice to Ministers and others.
Consultation

21. The consultation closed on 14 October 2011 and the results indicated strong support for the proposed policy of abolition as a NDPB and reconstitution as an expert scientific committee.

Financial Implications

22. We do not anticipate that any new costs will fall on the Scottish Government or public bodies in Scotland as a direct result of the provisions in the Order.

Conclusion

23. Accordingly the Government invites the Parliament to consent to the making of the Advisory Committee on Hazardous Substances (Abolition) Order 2012, a draft of which was laid before the UK Parliament on 27 February 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained in an Act of that Parliament.

Scottish Government
March 2012
Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

ANNEX A

DRAFT STATUTORY INSTRUMENTS

2012 No. [XXXX]

ENVIRONMENTAL PROTECTION

HEALTH AND SAFETY

PUBLIC BODIES

The Advisory Committee on Hazardous Substances (Abolition) Order 2012

Made - - - - ***

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred by sections 1(1), 6(1) and (5) and 35(2) of the Public Bodies Act 2011(1) (“the Act”), makes this Order.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

(a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and

(b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The consent of the Scottish Parliament and the consent of the National Assembly for Wales have been obtained in accordance with section 9(1) and (6) of the Act.

The Secretary of State makes this Order after consultation in accordance with section 10 of the Act.

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998(2) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(3).

(1) 2011 c. 24.
(2) 1998 c. 46.
A draft of this Order, and an explanatory document containing the information required in section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) of the Act after the end of the period of twelve weeks mentioned in section 11(3) of the Act. In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

2. Citation and commencement

1.—(1) This Order may be cited as the Advisory Committee on Hazardous Substances (Abolition) Order 2012.

(2) The Order comes into force on the day after the day on which it is made, except as provided by paragraph (3).

(3) In respect of the final entry (Public Bodies Act 2011) in the table of repeals in the Schedule, article 5 comes into force on the second day after the day on which the Order is made.

2. Abolition of the Advisory Committee on Hazardous Substances

3. The committee established under section 140(5) of the Environmental Protection Act 1990(*) is abolished.

4. Repeals and revocations

5. The provisions mentioned in the Schedule are repealed or revoked to the extent specified.

Name
Parliamentary Under Secretary of State

Date
Department for Environment, Food and Rural Affairs

(*) 2006 c. 32.

(*) 1990 c. 43. The Advisory Committee on Hazardous Substances was established by the Advisory Committee on Hazardous Substances Order 1991 (S.I. 1991/1487).
## Repeals and revocations

### Table of repeals

<table>
<thead>
<tr>
<th>Short title</th>
<th>Extent of repeal</th>
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| Environmental Protection Act 1990 | Section 140(5) (power to establish committee). In section 140(6)—  
(a) paragraph (a) (duty to consult committee), and  
(b) in paragraph (b), the words “having consulted the committee.”. | Section 142(3) (duty to consult committee). Schedule 12 (injurious or hazardous substances: advisory committee). |
| Parliamentary Commissioner Act 1967(5) | In Schedule 2 (departments etc subject to investigation), the entry relating to the Advisory Committee on Hazardous Substances. | |
| House of Commons Disqualification Act 1975(6) | In Part 2 of Schedule 1 (bodies of which all members are disqualified), the entry relating to the Advisory Committee on Hazardous Substances. | |
| Freedom of Information Act 2000(7) | In Part 6 of Schedule 1 (bodies that are public authorities for the purposes of the Act), the entry relating to the Advisory Committee on Hazardous Substances. | |
| Public Bodies Act 2011 | In Schedule 1 (power to abolish: bodies and offices), the entry relating to the Advisory Committee on Hazardous Substances. | |

### Table of revocations

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<thead>
<tr>
<th>Title</th>
<th>Extent of revocation</th>
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<tbody>
<tr>
<td>1967 c. 13. Schedule 2 was substituted by S.I. 2011/751.</td>
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<tr>
<td>1975 c. 24. The reference to the Advisory Committee on Hazardous Substances was inserted by S.I. 1993/1572.</td>
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<td>2000 c. 36.</td>
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## EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes the Advisory Committee on Hazardous Substances, established under section 140(5) of the Environmental Protection Act 1990 (c. 43), and makes repeals and revocations (including the repeal of the power to appoint a committee) associated with the abolition.

No impact assessment has been prepared in respect of this instrument as no costs to the business or voluntary sectors is foreseen.

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<tr>
<th>Title</th>
<th>Extent of revocation</th>
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<tr>
<td>The Advisory Committee on Hazardous Substances Order 1991(^8)</td>
<td>The whole Order.</td>
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<tr>
<td>The Advisory Committee on Hazardous Substances (Terms of Office) Regulations 1991(^9)</td>
<td>The whole Regulations.</td>
</tr>
<tr>
<td>The House of Commons Disqualification Order 1993(^10)</td>
<td>In Schedule 1 (amendments of schedule 1 to the House of Commons Disqualification Act 1975), the entry relating to the Advisory Committee on Hazardous Substances.</td>
</tr>
<tr>
<td>The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(^11)</td>
<td>In the Schedule, the entry relating to the Advisory Committee on Hazardous Substances.</td>
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\(^8\) S.I. 1991/1487.  
\(^10\) S.I. 1993/1572.  
\(^11\) S.I. 1999/1319, to which there are amendments not relevant to this Order.
1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

The draft Order abolishes the Advisory Committee on Hazardous Substances (ACHS), established under section 140(5) of the Environmental Protection Act 1990, and makes repeals and revocations (including the repeal of the power to appoint a committee) associated with the abolition. The ACHS is one of the bodies listed in Schedule 1 to the Public Bodies Act 2011 which can be abolished by secondary legislation, using powers in that Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

The draft Order is one of the first to make use of the power in section 1 of the Public Bodies Act 2011 to abolish a body listed in Schedule 1 to that Act. The draft Order also amends other legislation to remove references to the ACHS.

Amendments were tabled in debates in both Houses to prevent the ACHS from being listed in Schedule 1 of the Act but these were subsequently withdrawn, once the Government explained the rationale for their position and gave assurances about the successor body, in particular its independence from Ministers.

5. Territorial Extent and Application

This instrument extends to the United Kingdom.


The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, Lord Taylor of Holbeach, has made the following statement regarding Human Rights:

In my view the provisions of the Advisory Committee on Hazardous Substances (Abolition) Order 2012 are compatible with the Convention Rights.
7. Policy background

The abolition of the ACHS as a statutory Non Departmental Public Body, and its reconstitution as an expert scientific committee, is an outcome of the Government’s 2010 review of public bodies. The ACHS must be abolished before its successor is put in place. The successor body will operate within an enhanced framework for scientific bodies in Defra, and with new terms of reference which reflect changes in the regulatory landscape for hazardous substances since the ACHS was established twenty years ago. The successor body will continue to provide expert, impartial and independent advice to Ministers and others.

Compliance with the purpose test in section 8 (1) of the Public Bodies Act 2011

The reform of the ACHS is also part of measures led by the Government Chief Scientific Adviser to increase the transparency, accountability, efficiency and effectiveness of scientific advisory bodies, for the delivery of independent and high quality scientific advice. By adhering to the Government Code of Practice for Scientific Advisory Committees, the successor body will remain independent, and where appropriate, retain the capacity to submit advice directly to Ministers.

The work of the successor body will fall under new arrangements to strengthen the science and evidence base to support policy across Defra. The new body will operate within a closer network of expert bodies overseen by Defra’s Chief Scientific Adviser, supported by his Science Advisory Council. This will provide greater scrutiny and co-ordination of scientific advice in the Department.

There is now less need for advice on domestic regulations given the advent of a directly applicable EU regime for regulating chemicals since the ACHS was established. However, there remains a need for general independent advice on hazardous substances, including on the aspects of this wider regime. This reform will give the successor body new, broader and more strategic and flexible terms of reference.

Taken together these changes will improve the continued exercise of the public functions of this body.

Compliance with the conditions in section 8 (2) of the Public Bodies Act 2011

Although the draft Order does not go beyond the abolition of the ACHS – the Minister considers that these conditions are met by virtue of the fact that the Government intends to reconstitute the committee as an expert scientific committee to continue its work, after the draft Order comes into force. This will maintain the flow, openness and independence of advice on the hazards and risks of chemicals in the environment. The governance arrangements that will support the Department’s new expert scientific committees will ensure that they provide advice that is clearly independent from Government.

8. Consultation outcome

8.1 Defra started a consultation on 7 July 2011 on the future of the ACHS (www.defra.gov.uk/consult/2011/07/07/achs/), and asked for views to be expressed by 14 October 2011. The primary purpose of the consultation was to invite views on -
(i) the proposed abolition of the ACHS as a statutory Non Departmental Public Body, using the powers contained in the Public Bodies Bill which was before Parliament at the time, following the Government’s Arms Length Body Review; and (ii) the Government’s preferred option to simultaneously reconstitute this body as a new expert scientific committee.

8.2 The three options in the consultation were:

Option A Do not abolish the ACHS as an advisory statutory NDPB
Option B Abolish the ACHS and put nothing in its place
Option C Abolish the ACHS and reconstitute it as an expert scientific committee
The consultation also sought views on proposed new Terms of Reference, and a name, for the successor body.

8.3 Around 120 interests were invited to comment (in addition to publicising the consultation on the Defra and ACHS websites). There was limited public interest in the consultation as only 16 responses were received. 13 of the 16 respondents gave a view on the options in the consultation, and 11 of them favoured option C, which was the Government’s preferred option. One of the 11 respondents could also support option A. Of the two other respondents (out of the 13), one favoured Option B and one favoured option A, but with clearer and extended responsibilities for the committee. Three respondents did not offer a view on the options, though one of them wished scientific advice to continue to be available.

In view of the strong support expressed during this consultation for the Government’s preferred option, Defra is proceeding as planned to lay a draft Order to abolish the ACHS. No further consultation is necessary.

9. Guidance

9.1 The consultation document issued on 7 July also invited views on draft terms of reference and a name for the successor body. These aspects will be finalised after further discussion, in time for the first meeting of the successor expert scientific committee.

10. Impact

10.1 This Order has no impact on business, charities or voluntary bodies. It does not impose any new costs, administrative burdens or information obligations.

10.2 The impact on the public sector is neutral as a successor body will be established with the same level of Secretariat support from Defra.

10.3 An Impact Assessment has not been prepared for this instrument for the reasons mentioned above (and was not required for the consultation).

11. Regulating small business

The legislation does not apply to small business.
12. Monitoring & review

The body which replaces the ACHS will continue to work openly, and papers for meetings will continue to be available, and members of the public and specialist chemical press and other stakeholders will be able to attend meetings. The terms of reference for the new committee will be kept under review, in line with Cabinet Office guidelines for such bodies. The oversight of the successor committee by the Defra Chief Scientific Adviser, supported by the Defra Science Advisory Council, will provide an additional level of peer review and scrutiny.

13. Contact
Patrice Mongelard at the Department for Environment, Food and Rural Affairs – Tel 0207 238 5719 or email patrice.mongelard@defra.gsi.gov.uk
ANNEX C

Proposed Terms of Reference for the Expert Scientific Committee on Hazards and Risks of Chemicals in the Environment

- To advise officials, UK\textsuperscript{12} Ministers, and other relevant bodies, on request or otherwise:
  - on matters of relevance at a domestic, European and global level, relating to the protection of the environment, and human health via the environment, from potentially hazardous substances and articles, including nanomaterials; including on future issues of concern, on impacts and on wider strategic linkages;
  - on the assessment of risks associated with potentially hazardous substances and articles, including nanomaterials;
  - on research needs and other evidence gaps relating to potentially hazardous substances and articles, including nanomaterials; including analysing, interpreting, and assessing the quality and relevance of, evidence.

- To advise officials and UK Ministers, on request or otherwise, on policy development and evaluation, including the impact of different policy options; the assessment of new regulations and deregulation, and the development of voluntary initiatives, best practice advice and formal guidance, which are relevant to their remit.

- To report to, and engage with, the DEFRA Chief Scientific Adviser, and through them, the DEFRA Science Advisory Council.

- To support the DEFRA Chief Scientific Adviser, as necessary (and if willing) during emergencies.

- To operate in line with the Government’s Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees.

The lead DEFRA Minister for this committee will:

- Set Terms of Reference for the committee;
- Agree strategic work plans, receive reports and advice; and
- Receive periodic reviews of the committee’s functions and value for money;
- Consult the Devolved Administrations and other Departments as appropriate, about the committee and its work.

\textsuperscript{12} Includes Ministers in the Devolved Administrations