PUBLIC BODY ACT CONSENT MEMORANDUM

The Public Bodies (Abolition of British Shipbuilders) Order [2013]

Draft Public Body Act Consent Motion

1. The draft motion, which will be lodged by the Cabinet Secretary for Finance, Employment and Sustainable Growth is:

   “That the Parliament consents to the making of the Public Bodies (Abolition of British Shipbuilders) Order [2013], a draft of which was laid before the United Kingdom Parliament on 1 November 2012 and which makes provision which would be within the legislative competence of the Parliament if it were contained within an Act of that Parliament.”

2. This memorandum has been lodged by Cabinet Secretary for Finance, Employment and Sustainable Growth in accordance with interim arrangements agreed by the Parliamentary Bureau at its meeting on 20 December 2011.

Background

Public Bodies Act 2011

3. 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.

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

Abolition of British Shipbuilders Corporation

5. British Shipbuilders Corporation (BSC) was a public corporation that owned and managed the UK shipbuilding industry from 1977, being established by the Aircraft and Shipbuilding Industries Act 1977. That Act nationalised most of the major British shipbuilding companies.

6. BSC has now privatised all of its active shipbuilding subsidiaries, initially through the privatisation of the war shipbuilding yards in 1985/86 and, subsequently, through the sale of the merchant yards and the one remaining engine building company. BSC is, therefore, no longer a trading enterprise but exists as a “shell” company.
7. BSC’s main function is to act as the vehicle through which long term industrial disease liabilities of former employees are managed. BSC does not have any funds of its own and is dependent on the financial backing of the Secretary of State for Business, Innovation and Skills. It contracts a company to provide residual pension services, which involves investigating and handling for such claims. BSC now exists solely to meet its residual liabilities (litigation, insurance claims and other contractual matters) relating to its former employees.

8. When the British shipbuilding industry was nationalised in 1977, it was assumed that BSC would have more than sufficient assets to meet those liabilities. However, in recent years, the Corporation’s reserves were placed under increasing pressure. First, BSC’s insurer, Chester Street Holdings Limited, entered into liquidation, and in April 2004, BSC was obliged to take back its insured liabilities. Secondly, the House of Lords ruling in *Fairchild*1 led to an increase in the number of mesothelioma personal injury claims against BSC.

9. These unforeseen pressures resulted in the near insolvency of BSC in July 2006. In order to prevent this, interim arrangements to fund BSC using Public Dividend Capital was agreed by the then Department of Trade & Industry’s Permanent Secretary as a temporary measure, on the basis that future legislation would enable a long-term solution for managing and funding the liabilities to be implemented, involving them being transferred to the direct responsibility of Government. HM Treasury agreed this as a temporary measure in 2006 on the basis that a Bill to transfer liabilities to Department for Business, Innovation and Skills (DBIS) would provide a long-term solution for managing BSC’s liabilities.

10. Day-to-day oversight of BSC’s activities is currently undertaken by officials in the Coal Liabilities Unit in the Department of Energy and Climate Change under arrangements agreed with the DBIS. This relates to providing day-to-day operational handling advice for BSC and compensation claims against it. Those officials also lead on BSC’s governance responsibilities, including the role of Chair and Directors. This arrangement draws on the extensive experience of the Coal Liabilities Unit in managing health related compensation claims arising from the liabilities of the former British Coal Corporation.

*UK Government reform proposal*

11. The UK Government deem it unsatisfactory that a corporation established by Parliament should be kept indefinitely in a state of suspended animation. In addition, winding up BSC is consistent with the coalition Government’s policy to reduce the number of arm’s length bodies. The Aircraft and Shipbuilding Industries Act 1977 does not give the Secretary of State for Business, Innovation and Skills the power to cease all operations of BSC or to wind up the corporation, and as a result BSC must be abolished by legislation.

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1 *Fairchild*–*v*- *Glenhaven Funeral Services Ltd* [2002] UK HL 22 – the House of Lords held that a worker who contracted mesothelioma after wrongful exposure to asbestos at different times by more than one employer or occupier of premises could sue any of them, notwithstanding that he could not prove which exposure actually caused the disease. A defendant would be 100% liable for the whole injury.
Scottish Government position

12. There are no adverse implications for Scotland that arise in consequence of the UK Government’s proposal to abolish BSC. British Shipbuilders Corporation is no longer a trading enterprise but exists as a “shell” company. It is unsatisfactory that a redundant statutory corporation is kept indefinitely for a purpose it was not intended. Transferring the liabilities to the Secretary of State for Business, Innovation and Skills will provide a long term solution for managing the liabilities and provide continuity of funding responsibility for the period that claims can continue to be presented. The Scottish Government is therefore supportive of this proposal.

The Public Bodies (Abolition of British Shipbuilders) Order

13. DBIS is promoting the Public Bodies (Abolition of British Shipbuilders) Order [2013] ("the draft Order") under the 2011 Act as the vehicle for BSC’s abolition. A copy of the draft Order, together with its accompanying documents as laid at Westminster, are provided as Annexes to this memorandum.

14. The draft Order will simplify the funding and handling of BSC’s residual liabilities but will not impact on meeting those liabilities. The UK Government has made clear its commitment to continue making relevant compensation payments to former employees of BSC who have suffered personal injury (such as mesothelioma) as a result of their employment, fully in line with its legal obligations. Under the proposed arrangements such liabilities will become the direct responsibility of DBIS. In practical terms, BSC’s solicitors, Simpson & Marwick, manage the ongoing claims.

15. Transferring the liabilities from BSC directly to DBIS will provide a long-term solution for managing them and provide continuity of funding responsibility for the period that claims continue to be presented. It is envisaged that the officials of the Coal Liabilities Unit will continue to play a role in oversight of claims post the winding up of BSC. In addition to the role of Simpson & Marwick, Capita Hartshead is contracted to BSC to provide residual pension services. This involves investigating and handling of unrecorded pension claims from former BSC employees.

16. The draft Order would abolish British Shipbuilders (and thereby its functions), and transfer residual property, rights and liabilities to UK Ministers.

17. British Shipbuilders is a body constituted by section 1(b) of the Aircraft and Shipbuilding Industries Act 1977 ("the Act"). Among other things, it is empowered by section 3(1) of the Act to carry out the following functions:
   - the design, development, production, sale, repair and maintenance of ships and slow speed diesel marine engines, and
   - research into matters relating thereto.

18. Since these functions do not relate to reserved matters, it is within the legislative competence of the Scottish Parliament to abolish them in or as regards Scotland. The draft Order therefore requires the consent of the Scottish Parliament (under section 9(1)(a) of the 2011 Act) to make provision which has the effect of abolishing these (and any other such functions) in or as regards Scotland.
19. As the Order is a deregulatory measure and will not impact on business, an impact assessment has not been produced.

20. The draft Order was laid in the UK Parliament on 1 November 2012. DBIS estimate 29 March 2013 as the proposed date for BSC’s abolition, subject to the completion of the Parliamentary process.

Consultation

21. Section 10 of the 2011 Act requires the UK Minister proposing an order to consult about the proposed changes. In accordance with this provision DBIS ran a consultation earlier this year. The key stakeholders were unions representing former BSC shipyard workers and their families, Asbestos support groups in the former British Shipbuilders operational areas, claimant solicitors and the BSC itself.

22. The consultation asked one question; *Do you agree the Government proposal to wind up British Shipbuilders Corporation and transfer legal responsibility of British Shipbuilders Corporation to the Department for Business, Innovation and Skills to be the most suitable option to ensure claimants continue to receive compensation awarded by the courts against British Shipbuilders Corporation where liability is agreed or established?*

23. The consultation was posted on the DBIS website and was sent to 23 organisations and to the devolved administrations. Four responses were received, two of which expressed no concern about the proposed abolition, the other two seeking reassurance that all current responsibilities and liabilities would pass to the Secretary of State for Business, Innovation and Skills, which DBIS was able to confirm. Given this response, DBIS were content to proceed with abolition.

Financial / Resource Implications

24. The draft Order will generate annual savings of £15,000 in respect of the employment of a company secretary. BSC’s liabilities are currently running at about £7 million a year in terms of compensation payments. This is mainly spent on dealing with health compensation claims from former shipyard workers, suffering primarily from asbestos related diseases. It is estimated that there will be liabilities to be met until at least the late 2040s.

Conclusion

25. The Scottish Government invites the Parliament to consent to the making of the Public Bodies (Abolition of British Shipbuilders) Order [2013], a draft of which was laid before the UK Parliament on 1 November 2012.

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

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

PUBLIC BODIES

The Public Bodies (Abolition of British Shipbuilders) Order 2013

Made - - - - [2013]

Coming into force in accordance with article 1(2) and (3)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 1(1), 6(1) and (5), 23(1), (2), (5) and (6), 24(1) and 35(2) of the Public Bodies Act 2011(a) (“the Act”).

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, Northern Ireland Assembly and Welsh Ministers has, so far as required, been obtained in accordance with section 9(1), 9(3) and 9(7) of the Act. The Secretary of State has consulted in accordance with section 10 of the Act.

A draft of this Order, and an explanatory document containing the information required by section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3). 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.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Bodies (Abolition of British Shipbuilders) Order 2013.

(a) 2011 c.24.

2

(2) Subject to paragraph (3), this Order comes into force on the day after the day on which it is
made.

(3) Paragraph 15 of Schedule 1 comes into force on the day after that on which the other provisions of this Order come into force.

(4) In this Order—

“Secretary of State” means the Secretary of State for Business, Innovation and Skills; “subsidiary” has the meaning given by section 1159 of the Companies Act 2006(a).

Transfer of certain property, rights and liabilities to the Secretary of State

2.—(1) The property, rights and liabilities of British Shipbuilders are transferred to the Secretary of State.

(2) The property and rights of the subsidiaries of British Shipbuilders are transferred to the Secretary of State.

(3) The liabilities of the subsidiaries of British Shipbuilders are transferred to the Secretary of State.

(4) For the purposes of paragraph (3) any subsidiary of British Shipbuilders that was dissolved before this article comes into force is to be treated as if it had not been so dissolved.

Transfer of property, rights and liabilities: supplemental

3.—(1) Paragraph (2) applies to anything (including legal proceedings) that—

(a) relates to property, rights or liabilities vested in the Secretary of State by virtue of article 2, and

(b) on the coming into force of this article, is in the process of being done by or in relation to British Shipbuilders or a subsidiary of British Shipbuilders.

(2) The thing may continue to be done by, or in relation to, the Secretary of State.

(3) Paragraph (4) applies to anything done by, or in relation to, British Shipbuilders or a subsidiary of British Shipbuilders that relates to property, rights or liabilities vested in the Secretary of State by virtue of article 2.

(4) The thing is to be treated as having been done by, or in relation to, the Secretary of State (so far as is necessary for continuing its effect after this article comes into force).

(5) Paragraph (6) applies to any document that—

(a) relates to property, rights or liabilities vested in the Secretary of State by virtue of article 2, and

(b) has effect immediately before this article comes into force.

(6) Any reference in the document to British Shipbuilders or to a subsidiary of British Shipbuilders is to be read as a reference to the Secretary of State.

(7) In this article any reference to a subsidiary of British Shipbuilders includes a reference to a subsidiary that was dissolved before this article comes into force.
Abolition of British Shipbuilders

4.—(1) British Shipbuilders is abolished immediately after the transfer of its property, rights and liabilities to the Secretary of State under article 2(1).

(2) The subsidiaries of British Shipbuilders are abolished immediately after the transfer of their property, rights and liabilities to the Secretary of State under article 2(2) and (3).

(a) 2006 c.46.

3

(3) The reporting duties of British Shipbuilders in respect of its final accounting year must, after its abolition, be discharged by the Secretary of State.

(4) The reporting duties of British Shipbuilders are—

(a) its duties under section 17(1)(b) and (c) of the Aircraft and Shipbuilding Industries Act 1977(a) (statements of accounts), and

(b) its duties under section 18 of that Act (annual report).

(5) The final accounting year of British Shipbuilders is the period which begins on 1st April 2012 and ends on the abolition of British Shipbuilders.

Amendments consequential etc

5. Schedules 1 and 2 (which make consequential etc provision on the abolition of British Shipbuilders and the associated transfer scheme) shall have effect.

Name
Minister of State for Business and Enterprise
Date Department for Business, Innovation and Skills

SCHEDULE 1
CONSEQUENTIAL ETC AMENDMENTS TO PRIMARY LEGISLATION

House of Commons Disqualification Act 1975 (c.24)

1. In Schedule 1 to the House of Commons Disqualification Act 1975, in Part II (bodies of which all members are disqualified), omit the entry for British Shipbuilders.

Northern Ireland Assembly Disqualification Act 1975 (c.25)

2. In Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, in Part II (bodies of which all members are disqualified), omit the entry for British Shipbuilders.

Aircraft and Shipbuilding Industries Act 1977 (c.3)

3.—(1) The Aircraft and Shipbuilding Industries Act 1977 is amended as follows.

(2) Part I is repealed.

(3) In Part II—

(a) sections 19(2), 20(4) and 40(4) and Schedule 2 are omitted; and
(b) sections 19(3) to (5), 20(1) to (3) and (5) to (7) and 40(1) to (3), (5) and (6) and Schedule 3 cease to have effect in relation to British Shipbuilders.

(4) In Part III—
(a) sections 47, 48, 49 and 53 are omitted; and
(b) in section 56(1) (interpretation)—
(a) 1977 c.3.

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(i) the definitions of “accounting year”, “associated person”, “equity share capital”, “group of companies”, “pension”, “pension rights”, “pension scheme”, “public dividend capital” and “public dividends”, “the relevant days”, “relevant trade union”, “shipbuilding industry vesting date” and “voting power” are omitted; and
(ii) in the definition of “the relevant vesting date”, paragraph (b) and the word “and” immediately preceding it are omitted.

(5) The repeal of sections 17 and 18 is subject to the transitional provision made by article 4(3) to (5).

British Aerospace Act 1980 (c.26)

4. In the British Aerospace Act 1980, omit section 10 (which makes provision for certain provisions of the Aircraft and Shipbuilding Industries Act 1977 to cease to have effect in relation to British Aerospace etc.).

Local Government, Planning and Land Act 1980 (c.65)

5.—(1) The Local Government, Planning and Land Act 1980 is amended as follows.
(2) In section 170 (interpretation: meaning of statutory undertakers), omit subsection (2).
(3) In Schedule 16 (bodies to whom Part 10 applies), omit paragraph 12.

British Shipbuilders Act 1983 (c.15)

6. The British Shipbuilders Act 1983 is repealed.

Miscellaneous Financial Provisions Act 1983 (c.29)


National Audit Act 1983 (c.44)

8. In Schedule 4 to the National Audit Act 1983 (nationalised industries and other public authorities), in Part 1, omit the entry for British Shipbuilders.

British Shipbuilders (Borrowing Powers) Act 1983 (c.58)

British Shipbuilders (Borrowing Powers) Act 1987 (c.52)

10. The British Shipbuilders (Borrowing Powers) Act 1987 is repealed.

Housing Act 1988 (c.50)

11. In Schedule 9 to the Housing Act 1988, in paragraph 4(b) of Part 1 (meaning of statutory undertakers for certain purposes), omit the words “British Shipbuilders,”.

Companies Act 1989 (c.40)


Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)


Freedom of Information Act 2000 (c.36)

14. In Schedule 1 to the Freedom of Information Act 2000, in the list in Part 6 (other bodies which are public authorities for the purposes of that Act) omit the entry for British Shipbuilders.

Public Bodies Act 2011 (c.24)

15.—(1) The Public Bodies Act 2011 is amended as follows.

(2) In Schedule 1 (power to abolish: bodies and offices)—

(a) omit the entry for British Shipbuilders and any subsidiary of British Shipbuilders; and

(b) omit the note relating to the abolition of British Shipbuilders.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order transfers the property, rights and liabilities of British Shipbuilders and its subsidiaries to the Secretary of State for Business, Innovation and Skills.

Article 3 makes provision supplemental to those transfers.

Article 4 abolishes British Shipbuilders, established under section 1(1)(b) of the Aircraft and Shipbuilding Industries Act 1977 (c.3), and abolishes its subsidiaries.

Article 5 makes consequential repeals, revocations and amendments of Acts and other instruments specified in Schedules 1 and 2. Article 5 also removes the reference to British Shipbuilders in Schedule 1 to the Public Bodies Act 2011 (c.24).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The explanatory document is published with this Order on www.legislation.gov.uk.
Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by a resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX
PUBLIC BODIES
The Public Bodies (Abolition of British Shipbuilders) Order 2013
1. This explanatory document has been prepared by the Department for Business, Innovation and Skills (‘the Department’) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011 (‘the PBA 2011’).

2. Purpose of the Instrument

2.1 This instrument abolishes British Shipbuilders (‘BS’) and its subsidiaries. This instrument also transfers the property, rights and liabilities of BS and its subsidiaries to the Secretary of State.

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

3.1 None.

4. Legislative Context

4.1 The Government is proposing to use the powers in the PBA 2011 to abolish BS and its subsidiaries and to transfer the property, rights and liabilities of BS and its subsidiaries to the Secretary of State.

4.2 Section 1 of the PBA 2011 permits a Minister to abolish by order a body or office specified in Schedule 1. BS is specified in Schedule 1. Section 23 of the PBA 2011 permits a Minister, in connection with an order under section 1, to make a scheme for the transfer of property, rights and liabilities.

4.3 BS was established by section 1 of the Aircraft and Shipbuilding Industries Act 1977 (‘the ASIA 1977’). Legislation is required to abolish BS.

4.4 As required by sections 9 and 10 of the PBA 2011, the UK Government is seeking consent to this order from each devolved administration.

4.5 This order will not be made until consent is obtained from the Northern Ireland Assembly (in accordance with section 9(3) of the PBA 2011), the Scottish Parliament (in accordance with section 9(1) of the PBA 2011) and the Welsh Ministers (in accordance with section 9(7) of the PBA 2011).

4.6 The Northern Ireland consent requirement in section 9(3)(a) applies because this order makes provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of the Assembly.
4.7 BS is not an excepted or reserved matter within the Northern Ireland Act 1998. The abolition of BS by this order, insofar as BS is able to exercise powers in Northern Ireland (including under section 3 of the ASIA 1977), falls within the legislative competence of the Northern Ireland Assembly.

4.8 The Scotland consent requirement in section 9(1)(a) applies because this order makes provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Parliament.

4.9 BS is not a reserved matter within the Scotland Act 1998. The abolition of BS by this order, insofar as BS is able to exercise powers in Scotland (including under section 3 of the ASIA 1977), falls within the legislative competence of the Scottish Parliament.

4.10 The Welsh Ministers consent requirement in section 9(7)(b) applies because this Order makes provision which could be made by the Welsh Ministers.

4.11 This order makes a consequential amendment to the Local Government, Planning and Land Act 1980 to remove BS from Schedule 16 to that Act. The Welsh Ministers, in relation to Wales, have power to remove entries from Schedule 16 to that Act. On this basis, in relation to Wales, the Welsh Ministers could make the consequential amendment to the Local Government, Planning and Land Act 1980 contained in this order.

4.12 This order abolishes BS from the day after the day on which this order is made. This order makes consequential amendments and an amendment to Schedule 1 to the PBA 2011.

4.13 Section 42 of the ASIA 1977 established the Aircraft and Shipbuilding Industries Arbitration Tribunal (‘the Tribunal’). The Tribunal is also being abolished by an order to be made under the PBA 2011. Both the Tribunal order and this order are being laid in Parliament at the same time. However the orders are not dependent on each other so have not been combined in an omnibus order.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.


6.1 Michael Fallon MP, Minister of State for Business and Enterprise has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Abolition of British Shipbuilders) Order 2013 are compatible with the Convention rights.”

7. Policy background

7.1 The proposal to abolish BS was announced as part of the Cabinet Office’s
Public Bodies Review on 14 October 2010. Legislation is required to abolish BS. The PBA 2011 is seen as an appropriate and effective vehicle for abolishing BS and for transferring its property, rights and liabilities to the Secretary of State.

7.2 BS is a public corporation that owned and managed large parts of the British (but not Northern Irish) shipbuilding industry. BS was established by section 1 of the ASIA 1977.

7.3 BS subsequently privatised all of its active shipbuilding subsidiaries and the one remaining engine manufacturer. BS is no longer a trading enterprise and effectively operates as a ‘shell’ company. Its main remaining function is to act as the vehicle through which long term industrial disease liabilities of former employees are managed. BS does not have funds of its own for this purpose, and is dependent on the financial backing of the Secretary of State.

7.4 BS contracts a company to provide residual pension services, which involves investigating and handling unrecorded pension claims from former employees. It is envisaged the arrangements for handling such claims will continue after abolition of BS.

7.5 It is unsatisfactory that a statutory corporation established for a specific purpose, namely the nationalisation, rationalisation, and subsequent reprivatisation of the shipbuilding industry, should be kept indefinitely to carry out a function for which it was not designed. BS is not itself directly liable to claimants who have, or are relatives of those who have had, industrial diseases. BS is liable rather as statutory surety for the judgment debts of subsidiaries it sold to third parties while retaining liabilities attributable to their pre-sale acts or omissions.

7.6 When the British shipbuilding industry was nationalised in 1977, it was assumed that BS would have more than sufficient assets to meet its liabilities. However, in recent years, the reserves of BS were placed under increasing pressure. First, BS insurer, Chester Street Holdings Limited, entered into liquidation, and in April 2004 BS was obliged to take back its insured liabilities. Secondly, the House of Lords ruling in *Fairchild*[I] led to an increase in the number of mesothelioma personal injury claims against BS. These unforeseen pressures resulted in the near insolvency of BS in July 2006. In order to prevent this, interim arrangements to fund BS using Public Dividend Capital were agreed by the then Department of Trade and Industry’s Permanent Secretary as a temporary measure, on the basis that a proposed Bill would enable a long-term solution for managing and funding the liabilities to be implemented involving them being transferred to the direct responsibility of Government. HM Treasury agreed this as a temporary measure in 2006 on the basis that a Bill to transfer liabilities to the Secretary of State would provide a long term solution for managing the liabilities of BS.

7.7 The Secretary of State continues to fund this arrangement using Public Dividend Capital. BS’ liabilities currently cost about £7 million a year in compensation payments. This is mainly spent on dealing with health
compensation claims from former shipyard workers suffering primarily from asbestos related diseases. It is estimated that there will be liabilities to be met at least into the late 2040s.

7.8 A firm of solicitors manage the ongoing claims, and day-to-day oversight of BS is undertaken by the Coal Liabilities Unit in the Department of Energy and Climate Change (‘DECC’). DECC leads on the governance responsibilities of BS.

7.9 Transferring the liabilities of BS to the Secretary of State will provide a long term solution for managing such liabilities and will provide continuity of funding responsibility for the period that claims continue to be presented. It is envisaged that the Coal Liabilities Unit in DECC will continue to play a role in oversight of claims post abolishing BS.

Section 8 of the PBA 2011

7.10 Section 8 of the PBA 2011 states that a Minister may make an order under the PBA 2011 only where they consider the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. As a result of this order, the Government expects to see improvements in the following areas:

a) **Efficiency:** The decision to abolish BS and the transfer of liabilities to the Secretary of State is consistent with reducing unnecessary bureaucracy and overheads. BS only exists as a corporation to manage industrial disease and pension claims in respect of former employees. The transfer of liabilities will not have any effect or change claimants’ legal rights to seek compensation. Moreover, claimants will not see any change in process; it will just be a case that compensation will be paid by the Secretary of State rather than BS. There will therefore be greater flexibility to create more efficiencies. Finally, the back office functions will be more streamlined as they will be absorbed within the existing structure of the Department.

b) **Effectiveness:** The Department has met the costs and liabilities of BS for a number of years. The abolition of BS will provide a long term solution by transferring the responsibilities of BS to the Secretary of State. Claimants will then make claims direct to the Secretary of State rather than via a third party.

c) **Economy:** This reform will deliver a better deal for taxpayers as the current costs of running BS will be largely absorbed within the existing budget of the Department. Abolition of BS will provide annual savings of £15,000 in respect of the employment of a company secretary, and it will no longer be necessary to complete separate accounts for BS and lay them before Parliament. The cost of the liabilities, post abolition, will be included in the Department’s annual accounts.

d) **Securing appropriate accountability to Ministers:** The abolition of BS will not result in any lack of accountability to Ministers as accountability will be
transferred to the Secretary of State.

7.11 Section 8(2) of the PBA 2011 provides that a Minister may make an order under sections 1 to 5 only if the Minister considers that—

(a) the order does not remove any necessary protection, and

(b) 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.

7.12 The Minister considers that the conditions in section 8(2) of the Act are satisfied in respect this order. All property, rights and liabilities of BS are being transferred to the Secretary of State. Any rights a person may have had to bring a claim against BS will transfer such that any claim will be exercisable against the Secretary of State.

Interest in the Houses of Parliament

7.13 On 19 July 2010, the Secretary of State for Business, Innovation and Skills stated in the House of Commons: “The British Shipbuilders Corporation will be abolished next summer.”

7.14 Lord Taylor of Holbeach also referred, on 1 December 2010 during the Lord’s Committee Session on the Public Bodies Bill, to the purpose behind abolishing BS as a corporation and the transfer of the handling of BS’ residual liabilities.

8. Consultation outcome

8.1 A 12 week consultation on the proposal to abolish BS was launched on 2 February 2012 and closed on 26 April 2012. The consultation was a single consultation covering the proposed abolition of BS and transfer of residual liabilities to the Secretary of State. The consultation was carried out in accordance with sections 10 and 11 of the PBA 2011.

8.2 The consultation document was made widely available to all interested stakeholders and the wider public on the Department website. The Department also sent the consultation document directly to 23 organisations and to the devolved administrations.

8.3 The Department received four responses. Two expressed no concerns arising from the proposed abolition. The other two responses were from the London and Glasgow offices of the same firm of solicitors. Both sought reassurance on clarity of the responsibilities which would pass to the Secretary of State. The Government’s formal response to the consultation has been published on the Department website at: [www.bis.gov.uk/consultations/](http://www.bis.gov.uk/consultations/).

8.4 The responders expressed concern that information and statistics about the impact of asbestos exposure in the industry would no longer be published. The
Department confirmed that details of the Department’s annual spend on the liabilities would appear within its Annual Report and Accounts.

8.5 The responders highlighted that BS has dealt with claims against some other shipbuilding companies who were the parent companies of nationalised shipbuilding companies, including Cartsburn Investments Limited (formerly Scott’s Shipbuilding & Engineering Company Limited) and Lithgows Limited. BS has also dealt with claims against certain companies that were sold out of nationalisation, such as Barclay Curle Limited.

8.6 The responders wanted assurance that the arrangements for transferring responsibility for future claims would continue. It was confirmed that the transfer of liabilities will encompass all current and future claims relating to those liabilities. The Department confirmed that where a company, in accordance with the contract under which it was sold, is entitled to an indemnity, the liability to indemnify will pass to the Secretary of State. Neither of Cartsburn and Lithgows were ever nationalised but BS agreed to extend a contractual right to indemnify their liabilities as employers or as occupiers of shipyards. However, it should be noted that Cartsburn and Lithgows are indemnified for their own acts and omissions, but not as parent companies.

8.7 Responders also sought clarification on the arrangements for on-going Court action after the transfer date. The Department confirmed that this order will transfer all responsibility for any claims which are on-going at the time this order is made.

8.8 Responders requested that the order should list all of BS’ subsidiary companies. The Department confirmed that this was not necessary as the transfer of liabilities will include all subsidiaries within the meaning of the Companies Act 2006. It will also cover any subsidiary which was dissolved before this order is made. But for clarification the Government response to the consultation included a list of companies whose liabilities will transfer to the Secretary of State or that the Government has agreed a contractual indemnity with.

8.9 Responders said that protection must be maintained for claimants who develop industrial disease where exposure occurred during their employment with a ‘sold subsidiary’ company during the period of nationalised ownership, which has given rise to a ‘gap in coverage’ problem in the past. The Department confirmed that the abolition of BS will not have any impact on the status of the claims cohort identified as having a gap in coverage. The claims involved are those made against former BS companies that were sold with their liabilities during the privatisation, and which then subsequently became insolvent (as did their insurer Chester Street Insurance Holdings Ltd). The Financial Services Compensation Scheme does not compensate former employees in respect of periods of employment with nationalised industries (such as BS) and the Department assumed liability for this compensation by way of the Minute to Parliament in 2003. PwC administer the Chester Street Estate and they in turn contract Capita to undertake the claims handling for the
claims involved.

9. Guidance

9.1 Not applicable

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 Abolition of BS will provide annual savings of approximately £15,000 for the public sector as BS will not require company secretarial services after it is abolished. There will also be administrative savings as separate accounts for BS will no longer be required to be prepared and laid before Parliament.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & Review

12.1 Monitoring and review of this order is not necessary as no further action is required once this order comes into force and transfers the property, rights and liabilities of BS to the Secretary of State.

13. Contact

Peter Joyce at the Department for Business, Innovation and Skills Tel: 020 7215 1165 or email: peter.joyce@bis.gsi.gov.uk can answer any queries regarding the instrument.