Rural Affairs, Climate Change and Environment Committee

5th Report, 2012 (Session 4)

Report on Public Bodies Consent Memorandum on the Advisory Committee on Hazardous Substances (Abolition) Order 2012 [draft]

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Rural Affairs, Climate Change and Environment Committee

Remit and membership

Remit:

To consider and report on agriculture, fisheries, rural development, climate change, the environment and other matters falling within the responsibility of the Cabinet Secretary for Rural Affairs & the Environment.

Membership:

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Rural Affairs, Climate Change and Environment Committee

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Report on Public Bodies Consent Memorandum on the Advisory Committee on Hazardous Substances (Abolition) Order 2012 [draft]

The Committee reports to the Parliament as follows—

Background

1. The Order is a United Kingdom Government instrument that the Scottish Parliament has been asked to consent to under section 9 of the Public Bodies Act 2011 (“the 2011 Act”).

2. 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.

3. On 20 December 2011, the Parliamentary Bureau approved interim arrangements for parliamentary scrutiny of Orders such as this, with a view to the Standards, Procedures and Public Appointments Committee considering the procedure in the longer term. The interim procedure for consideration of this instrument varies slightly from that used when considering a Legislative Consent Memorandum (LCM).

4. The Scottish Government provided the Scottish Parliament with a public bodies consent memorandum (PBCM) which contains the draft Order.¹

5. At its meeting on 13 March 2012, the Parliamentary Bureau agreed to designate the Rural Affairs, Climate Change and Environment Committee as a lead committee for consideration of the memorandum and to ask that Committee to take into account the views of the Subordinate Legislation Committee in its report to the Parliament. The Bureau also agreed that a motion (to be lodged by the Scottish Government) would be taken in the Chamber week beginning 30 April 2012.

¹ Public Bodies Consent Memorandum
Purpose of the instrument

6. The draft Order abolishes the Advisory Committee on Hazardous Substances (ACHS), a non-departmental public body established under the Environmental Protection Act 1990. The UK Government considers that the specific statutory function for which it was established is no longer required, but that there remains a need for Ministers and officials to have access to scientific advice on issues relating to hazardous substances. It is therefore intended to establish a scientific committee to provide such advice, including as necessary to the Scottish Ministers.

7. The functions exercised by the ACHS in Scotland relate broadly to devolved matters. It would accordingly be open to the Scottish Parliament to legislate in respect of those devolved functions, and for this reason the consent of the Scottish Parliament is required prior to the order being made.

Subordinate Legislation Committee

8. The Subordinate Legislation Committee (SLC) considered the instrument at its meeting on 20 March 2012 and recommended that the instrument should be drawn to the Parliament’s attention as the Order contained a minor drafting error.

9. Specifically, the SLC noted that the list of revocations in the Schedule to the draft Order does not include the reference to the Advisory Committee on Hazardous Substances contained in the Schedule to the Scottish Parliament (Disqualification) Order 2010 (SI 2010/2476).

10. The SLC considered that this reference should be revoked by the draft Order however it recognised that the omission would not adversely affect the operation of the instrument and that there may be a suitable opportunity to remove the reference using existing powers at a future date.

11. Scottish Government Officials subsequently advised that all amendments to the SP Disqualification Order should be formally approved by the Parliament (that order is made under section 15 of the Scotland Act 1998 which is subject to formal scrutiny at Holyrood only, before being made at the Privy Council). Therefore there is a general presumption in place of avoiding amending the order via consequential contained in other UK Legislation, which is normally subject to formal scrutiny at Westminster only.

12. They stated the Scottish Government promotes a revised SP Disqualification Order suitably in advance of each Scottish election. Therefore the next update will take place in late 2015 (in advance of the next election in May 2016).

Rural Affairs, Climate Change and Environment consideration

13. At its meeting on 18 April, the Committee considered the Public Bodies Consent Memorandum and the report from the Subordinate Legislation Committee. Members raised an issue in relation to the role of the Scottish
Government in setting up the new Advisory Committee and its make up. The Scottish Government confirmed that the new Committee is essentially a continuation of the previous one and in that sense its make up would remain unchanged. In addition, the Scottish Government would not have a role in the setting up of the Committee but, as set out in the Memorandum, these moves in no way erode the position in Scotland.

14. The Committee agreed to recommend to the Parliament that the draft motion as set out in the Public Body Consent Memorandum be approved.
Draft Public Body Consent Motion

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

"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."

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

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.

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

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.

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
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.

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’.

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.

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.

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**

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

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.

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

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.

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.

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.

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.

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

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

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

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
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