Subordinate Legislation Committee

18th Report, 2012 (Session 4)

Public Bodies Consent Memorandums on the British Waterways Board (Transfer of Functions) Order 2012 and the Inland Waterways Advisory Council (Abolition) Order 2012

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Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)
Membership:

Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt
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Inland Waterways Advisory Council (Abolition) Order 2012

The Committee reports to the Parliament as follows—

1. At its meeting on 27 March 2012, the Committee considered the British Waterways Board (Transfer of Functions) Order 2012 [draft] and the Inland Waterways Advisory Council (Abolition) Order 2012 [draft].

2. The Orders are United Kingdom Government instruments that the Scottish Parliament has been asked to consent to under section 9 of the Public Bodies Act 2011 (“the 2011 Act”). The Committee submits this report to the Infrastructure and Capital Investment Committee as part of its consideration of the Orders.

3. The Scottish Government provided the Scottish Parliament with a public bodies consent memorandum (“PBCM”) for each instrument¹. The PBCM contains the draft Order and accompanying documents.

Background

4. The 2011 Act provides UK Ministers with the power to make orders to improve the exercise of public functions, having regard to efficiency, effectiveness, economy and securing accountability to Ministers. Section 9(1) of the Act requires the consent of the Scottish Parliament to any order that would be within the legislative competence of the Parliament.

5. At its meeting on 20 December 2011, the Parliamentary Bureau agreed an interim arrangement for the parliamentary scrutiny of such orders, with a view to the Standards, Procedures and Public Appointments Committee considering the procedure in the longer term.

¹ PBCM on the British Waterways Board (Transfer of Functions) Order 2012 [draft]: http://www.scottish.parliament.uk/parliamentarybusiness/Bills/48498.aspx
6. In doing so, the Parliamentary Bureau recommended a variation to the Subordinate Legislation Committee’s remit to allow it to consider any instruments brought forward under the 2011 Act. This variation was agreed to by the Parliament at its meeting on 2 February 2012.

**British Waterways Board (Transfer of Functions) Order 2012 [draft]**

7. The British Waterways Board was established by the Transport Act 1962. It holds a wide variety of statutory functions relating to the operation and maintenance of certain inland waterways within the UK. The operation of the Board’s statutory functions in Scotland is now largely a matter for the Scottish Ministers, while UK Ministers exercise similar functions in respect of the Board’s activities in England and Wales.

8. The UK Government considers that the functions of the British Waterways Board in England and Wales would be better exercised by a third sector body. The Scottish Ministers considered a similar transfer as regards the Board’s Scottish functions, but concluded that the management of the inland waterways in Scotland should remain the responsibility of a public body.

9. Accordingly, the draft Order seeks both to transfer the functions of the British Waterways Board in relation to England and Wales, and to ensure that the Board continues in existence as a Scottish public body.

**Inland Waterways Advisory Council (Abolition) Order 2012 [draft]**

10. The Inland Waterways Advisory Council is an independent, non-departmental public body, established by the Transport Act 1968. The main function of the Council is to provide advice to the UK and Scottish Governments on the framing and implementation of policies and decisions affecting inland waterways.

11. The UK Government considers that, given the transfer of the functions of the British Waterways Board in England and Wales by virtue of the British Waterways Board (Transfer of Functions) Order 2012 [draft], there is no need to retain the Inland Waterways Advisory Council.

12. The Scottish Government considers that the functions of the Council should also be abolished so far as they relate to Scotland. The Scottish Ministers are of the view that there is a strong network of advisory groups well placed to provide advice on inland waterways and that there is consequently no need to retain the Inland Waterways Advisory Council.

13. Accordingly, the draft Order seeks to abolish the Council across the UK, and to make a number of associated consequential amendments, repeals and revocations.

**Subordinate Legislation Committee consideration**

14. At its meeting on 27 March 2012, the Committee considered the instruments under the same grounds as instruments laid before the Parliament. In doing so, it determined that it did not need to draw the attention of the Parliament to either instrument on any of those grounds.
Recommendation

15. The Committee determines that it does not need to draw either instrument to the attention of the Parliament on any ground within its remit.
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