



## Constitutional and Legislative Affairs Committee

### Report on the Advisory Committee on Hazardous Substances (Abolition) Order 2012

#### Background

1. On the 28<sup>th</sup> February 2012, the Minister for Environment and Sustainable Development gave notice of a motion in the following terms -

*“To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the Advisory Committee on Hazardous Substances (Abolition) Order 2012, in accordance with the draft laid in Table Office on 28 February 2012.”*

Pursuant to the procedure agreed by the Business Committee, the Memorandum was referred to the Constitutional and Legislative Affairs Committee for scrutiny prior to it being debated in Plenary.

#### The Public Bodies Act 2011

2. The Public Bodies Act 2011 received Royal Assent on the 14<sup>th</sup> December 2011. Provisions relating to consultation and general matters such as interpretation came into force on Royal Assent, whilst almost all the remaining provisions (including all those relevant to this Order) came into force at the end of two months from that date.

3. The Act contains powers for the abolition and merger of public bodies by order, together with the transfer of their functions. Those functions are generally given to the Secretary of State, but sections 13-19 give similar powers to Welsh Ministers, primarily in relation to environmental bodies. The powers are also similar to those contained in section 28 of the Government of Wales Act 1998 in relation to the bodies set out in Schedule 12 of that Act.

Those were the powers used, for example, to transfer functions of the WDA to the Welsh Government by order.

4. Many of the bodies that may be the subject of orders made under the Act carry out cross-border functions, whether they be England and Wales, Great Britain or United Kingdom bodies. Section 9 of the Act contains specific provisions in relation to the consent of devolved legislatures and administrations. The provisions that relate to Wales only are contained in sub-sections (6) and (7) –

*“(6) An order under sections 1 to 5 requires the consent of the National Assembly for Wales to make provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly.*

*(7) An order under sections 1 to 5 requires the consent of the Welsh Ministers to make provision not falling within subsection (6)—*

*(a) which modifies the functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or*

*(b) which could be made by any of those persons.”*

### The Order

5. As part of its review of public bodies, the UK Government decided to abolish the Advisory Committee on Hazardous Substances. The Explanatory Document laid in support of the Order at Westminster states:

*“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.”*

The work will therefore continue to be carried out, but by an expert scientific committee rather than by a non-departmental public body.

6. The work of the Committee is described on its web pages (within the Defra website) as:

*1. To advise the Secretary of State for the Environment, Transport and Regions, the Minister of the Environment, Northern Ireland, the Scottish Ministers, and the First Minister, National Assembly for Wales and other Ministers (hereafter collectively known as “the Ministers”) as appropriate on the exercise of the power to make Regulations under Section 140 of the Environmental Protection Act 1990 to prohibit or restrict the importation, use, supply or storage of specified substances or articles including nanomaterials*

*2. To advise the Ministers on the exercise of the power to make Regulations under Section 142 to obtain information about potentially hazardous substances including nanomaterials*

*3. To advise the UK Chemicals Stakeholder Forum and other bodies as appropriate on criteria, prioritisation and risk assessment of potentially harmful substances including nanomaterials*

*4. To advise the Ministers, the UK Chemicals Stakeholder Forum and other bodies as appropriate on research needs and the development of relevant indicators.*

The new Committee will continue to provide expert scientific advice to Ministers throughout the United Kingdom

#### The Consent Memorandum

7. This is not a Legislative Consent Memorandum within the meaning of Standing Order 30, as it does not relate to provisions contained in a Bill before the UK Parliament. Nevertheless, it is similar in that it contains provisions amending primary legislation applicable to Wales in relation to matters within the legislative competence of the National Assembly.

8. As is explained in paragraph 4 above, the role of the Assembly under the Act is to consent (or not) to “provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly”. It is therefore important to identify the relevant scope of that competence.

9. As the Welsh Government’s Legislative Consent Memorandum explains at paragraph 12, the Assembly has relevant legislative competence under subject 6 (Environment) in Schedule 7 to the Government of Wales Act 2006 for “Environmental protection, including ... hazardous substances.” The consent of the Assembly is therefore required under section 9(6) of the Public Bodies Act.

10. The consent Memorandum is concise, but clear. Paragraph 14 explains that Welsh Ministers are content with the new arrangements that give rise to the Order. No matters have been identified as requiring further explanation.

Conclusion

11. The Committee is content with the information available and reports to the Assembly that it has identified no objection to the making of the Order.

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