

CONSENT MEMORANDUM

The Advisory Committee on Hazardous Substances (Abolition) Order 2012

Consent Motion

1. “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”.

Background

2. This memorandum has been laid by John Griffiths AM, Minister for Environment and Sustainable Development, in accordance with the arrangements agreed by Business Committee on 7 February 2012.
3. The above Motion is tabled to seek the agreement of the National Assembly for Wales (the “National Assembly”), 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 (the “Order”). Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly for an order under sections 1 to 5 of that Act that makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly.
4. A copy of the Order was laid in Table Office on 28 February 2012.

Summary of the Order and its Policy Objectives

5. The Order abolishes the Advisory Committee on Hazardous Substances (the “ACHS”), established under section 140 of the Environmental Protection Act 1990, and makes repeals and revocations (including the repeal of the power to appoint that committee) associated with the abolition.
6. The ACHS was established to advise the Welsh Ministers, the Secretary of State and others in relation to the exercise of powers to make regulations under section 140 of the Environmental Protection Act 1990 (“EPA 1990”) to control the import, supply and storage of certain hazardous substances and articles. Regulations may only be made where relevant Ministers consider it is appropriate to do so for the purposes of preventing environmental

pollution or harm to human, animal or plant health. The Committee also advises the Welsh Ministers and others on the exercise of their powers to make regulations under section 142 of the EPA 1990 to obtain information about substances that have the potential to harm the environment or cause harm to human health.

7. The abolition of the ACHS as a statutory Non Departmental Public Body is an outcome of the UK Government's 2010 review of public bodies. Since the ACHS was established some twenty years ago the regulatory landscape has changed significantly and the scope for domestic legislation in the sphere of hazardous substances has diminished following the adoption of a directly applicable EU regime for regulating chemicals ("REACH"). There have also been changes to the wider landscape for Government scientific advisory committees.
8. The intention following abolition of the ACHS is to establish a non-statutory scientific committee as a successor body which will provide expert, independent and impartial advice to Ministers, including those in the devolved administrations, and others in accordance with new, more flexible terms of reference, which can more easily accommodate a changing regulatory landscape.
9. Reconstitution of the ACHS as an expert scientific committee will improve transparency and accountability, ensuring Ministers in UK Government and the devolved administrations have continued access to authoritative and cost effective advice to support Government policies.

Competence Issues

10. The Secretary of State proposes to make the Order pursuant to sections 1, 6 and 35 of the Public Bodies Act 2011.
11. The Order would abolish the ACHS and make repeals and revocations associated with the abolition.
12. The National Assembly has legislative competence in relation to "hazardous substances" (see under the "Environment" heading in Part 1 of Schedule 7 to the Government of Wales Act 2006). The National Assembly also has relevant legislative competence in relation to environmental protection (including pollution), the promotion of (human) health, the prevention of illness, animal health and welfare and plant health.
13. It is the view of the Welsh Government, therefore, that in light of the scope of the Committee's responsibilities, the abolition of the ACHS is within the legislative competence of the Assembly. For this reason, the consent of the National Assembly is sought pursuant to

section 9(6) of the Public Bodies Act 2011, in so far as the Order makes provision to abolish the ACHS in relation to Wales.

Advantages of utilising this Order

14. It is the view of the Welsh Government that this Order represents the most appropriate and proportionate legislative vehicle to implement these proposals in Wales, so that the ACHS may be abolished at the earliest opportunity. A non-statutory successor can then be established for the public benefit and in the interests of ensuring Ministers and others continue to receive expert, impartial and independent advice against a changing regulatory landscape.

Financial Implications

15. As the ACHS is funded entirely by Defra, there are no financial implications for Wales associated with this Order.

John Griffiths AM
Minister for Environment and Sustainable Development