

## **PUBLIC BODIES ACT CONSENT MEMORANDUM**

### **THE PUBLIC BODIES (ABOLITION OF THE ADVISORY COMMITTEES ON PESTICIDES) ORDER 2015**

#### **Draft Public Bodies Act Consent Motion**

1. The draft motion, which will be lodged by the Cabinet Secretary for Rural Affairs, Food and the Environment, is:

“That the Parliament consents to the making of The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015, a draft of which was laid before the United Kingdom Parliament on 15 December 2014 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 Richard Lochhead, Cabinet Secretary for Rural Affairs, Food and the Environment, in accordance with Standing Orders under Chapter 9BA.

#### **Background**

##### *Public Bodies Act 2011*

3. The Public Bodies Act 2011 (“the 2011 Act”) gives UK Ministers the authority (via order making powers) to abolish, merge, modify or transfer the functions of public bodies listed in its Schedules. Some of those bodies operate in both the reserved and devolved areas, including the Advisory Committee on Pesticides which is a cross border public authority. Section 9 of the 2011 Act acknowledges the scope for effects on devolved interests by requiring Orders that include provision falling within devolved competence to be consented to by the Scottish Parliament.

4. Standing Orders include the process for scrutinising Public Bodies Act Consent Memorandums (PBACMs) at Chapter 9BA.

##### *Advisory Committee on Pesticides*

5. The Advisory Committee on Pesticides (ACP) is a statutory Non-Departmental Public Body which operates as an independent scientific advisory committee. It provides advice to UK Ministers and Ministers in the Devolved Administrations on any matters relating to the control of pests; with a view to:

- protecting the health of human beings, wildlife and plants,
- safeguarding the environment; and
- securing safe, efficient and humane methods of controlling pests; and
- with a view to making information about pesticides available to the public.

6. Under Section 16(9) of Part 3 of the Food and Environment Protection Act 1985 (FEPA), Ministers are required to consult the ACP:

- as to regulations which they contemplate making;
- as to approvals of pesticides which they contemplate giving, revoking or suspending; and
- as to conditions to which they contemplate making approvals subject.

7. The Scottish Government is represented on the ACP by a Scottish Assessor.

8. Scottish Ministers signed up to an Agency Agreement to allow Defra Ministers to act on the Scottish Government's behalf for the authorisation of new pesticides and plant protection products.

#### *UK Government reform proposal*

9. Shortly after the 2010 election, the UK Government announced that it would review arms-length bodies in order to reduce the numbers, costs and improve accountability. An announcement about the future of Defra's arms-length bodies (including ACP) was made in October 2010.

10. Defra consulted from March to May 2012 to seek views on the proposed abolition of the Advisory Committee on Pesticides and the UKG's preferred option to reconstitute the ACP as an expert scientific committee. The consultation explained that as the ACP's current status is set in statute, it has to be abolished in its present form before it can be reconstituted as a non-statutory expert committee.

11. The regulatory landscape for pesticides has changed since the ACP was given its statutory status under FEPA over 25 years ago. At that time, all decisions on the approval of pesticides were taken by UK Ministers. However, the European Union now plays an increasingly important role in the evaluation and approval of pesticides.

12. Since the 1990s, decisions on the approval of active substances falling within the remit of the ACP have been taken at EU level under pesticide legislation. This decision making process involves all Member States, the European Food Safety Authority (EFSA) and the European Commission.

13. Decisions on the authorisation of pesticide products containing those active substances are taken at Member State level in accordance with increasingly tightly defined rules and guidance. This is carried out by the Chemicals Regulation Directorate, part of the Health and Safety Executive, the UK's regulatory body for the authorisation of pesticide products.

14. This does not mean there is no remaining role for the UK regulator or for independent expert advice to support and challenge this work. The newly constituted expert Advisory Committee on Pesticides (the Committee) will also provide independent scientific advice to UK Ministers and Ministers in the devolved administrations on matters relating to the control of pests, and provide advice on the approval and authorisation of pesticides.

15. The Committee's advice will take account of legal requirements to protect the health of people, creatures and plants; safeguard the environment; and secure safe,

efficient and humane methods of controlling pests. The Committee will also be consulted on regulations which Ministers think about making.

16. While the new Committee will be able to provide any advice under its remit, it will not routinely be asked for advice to support decisions which do not raise new or contentious issues. This means the Committee will run more efficiently as it will be able to devote more time to the most important questions.

17. Additionally, non-statutory advisory bodies are more flexible and nimble and can be adapted, for example to acquire new Terms of Reference which means the new Committee can take on more flexible and strategic terms of reference to meet currently unforeseen changes in demand. This is in contrast to a statutory body, such as the current ACP, where changes in the body's arrangements would have to be brought about by way of legislation.

18. Exercising the power of the Public Bodies Act in abolishing the ACP will have the effect of dissolution of the ACP in law.

#### *Implications for Scotland*

19. The current membership of the ACP will be invited to transfer to the new Committee. Future members to the new Committee will be chosen in a similar way as at present, although appointments will be made by a senior official rather than by Ministers. Devolved Administrations will continue to be invited to agree to any proposed future appointments. However, as Defra Ministers will not be involved in the appointment process, approach will be between Defra and Scottish Government (SG) officials.

20. The new Committee will not be regulated by the Code of Practice of the Commissioner for Public Appointments but recruitment will be carried out in line with the guidance and principles on public appointments set by the Office of the Commissioner for Public Appointments (OCPA). However, OCPA assessors will not be involved in the recruitment process as they are not required for appointments to an expert committee. Members will be expected to act impartially and to follow the seven, "Nolan" principles of public life.

21. Scotland will continue to be represented on the Committee by the current Scottish Assessor. The Scottish Assessor will continue to provide scientific advice to the SG and, in consultation with SG pesticide policy officials, endorse or reject the Committee's recommendations to UK Ministers on the Scottish Government's behalf.

22. The Scottish Government will continue to have the same access to independent scientific advice.

23. Scottish Government officials intend to work with Defra officials to formalise the above arrangements in a memorandum of understanding underpinning the Committee's Terms of Reference.

#### **The draft Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015**

24. A draft Order to abolish the ACP (and the Advisory Committee on Pesticides for Northern Ireland), using the powers contained in the Public Bodies Act 2011, was laid before the UK Parliament on 15 December 2014. Copies of the draft Order and the accompanying draft explanatory memorandum, as laid at Westminster, are provided at Annexes A and B.

25. It is the effect of the abolition of the ACP which falls to the competence of the Scottish Parliament. This is because the functions which ACP 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 ACP's devolved functions are no longer exercisable in Scotland.

26. The Order abolishes the ACP (and the Advisory Committee on Pesticides for Northern Ireland) established under section 16(7) of the Food and Environment Protection Act 1985. It also makes repeals and revocations (including the repeal of the power to appoint a committee) associated with the abolition.

### **Scottish Government position**

27. The Scottish Government has sought assurances from Defra, who have confirmed that the restructured ACP will continue to provide independent, scientific advice, and that the change in status will not lead to any practical changes in the current procedures governing pesticide authorisations.

28. Additionally, it has been established that restructuring the ACP as an expert Committee would continue to allow the SG to draw on independent scientific expertise on pesticides as hazardous substances that can cause some public concern.

29. The new ACP, along with other scientific advisory bodies, will be overseen by Defra's Chief Scientific Adviser (CSA). While arrangements are still being developed, these are expected to be light touch, involving regular but infrequent meetings between the CSA and the chair of the Committee. Scottish interests will not be compromised by this arrangement.

### **Consultation**

30. Section 10 of the 2011 Act requires the UK Minister proposing an Order to consult on the proposed changes. The UK Government consulted on its proposals from 8 March to 15 May 2012 to seek views on the proposed abolition of the ACP and outlined three options:

Option A: Maintain the status quo – the ACP continues as a statutory, advisory Non-Departmental Public Body (NDPB).

Option B: Abolish the ACP and put nothing in its place.

Option C: Abolish the ACP and reconstitute it as an expert scientific committee.

31. A total of 45 responses were received. Of these, thirty were received from the farming/growing industry and businesses, six from government advisory bodies and nine from the public/Non-Government Organisations (NGOs).

32. Twelve respondents wished to maintain the status quo (Option A) but some suggested they would accept Option C if the new body were constituted to address their concerns. There was no support for Option B.

33. Twenty four respondents supported the Government's preferred option C to abolish the ACP and reconstitute it as an expert scientific committee. Eight respondents did not favour one option over the other, but provided comments on the remit and operation of the committee.

34. One respondent suggested abolishing the committee and replacing it with a new committee advising on the overall aspects of pest management with priority on non-chemical pest control.

35. UK Ministers have now formally concluded that the ACP should be abolished and reconstituted as a non-statutory expert committee.

#### **Financial/Resource Implications**

36. There are no financial implications for Scotland as the proposals do not impose any new costs, administrative burdens, or information obligations.

#### **Equal Opportunities Implications**

37. There are no Equal Opportunities implications.

#### **Conclusion**

38. The Scottish Government invites the Scottish Parliament to consent to the making of The Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015, a draft of which was laid before the UK Parliament on 15 December 2014 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  
January 2015**

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

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DRAFT STATUTORY INSTRUMENTS

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**2015 No. 000**

**PESTICIDES**

**PUBLIC BODIES**

**The Public Bodies (Abolition of the Advisory Committees on  
Pesticides) Order 2015**

*Made* - - - - - **\*\*\***

*Coming into force in accordance with article 1*

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

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) of the Act; 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, the consent of the Northern Ireland Assembly and the consent of the National Assembly for Wales has been obtained in accordance with section 9(1), (3) and (6) of the Act respectively.

The Secretary of State has consulted in accordance with section 10 of the Act.

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998(2) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(3).

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).

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(1) 2011 c. 24.  
(2) 1998 c. 46.  
(3) 2006 c. 32.

In accordance with section 11(4) of the Act, a 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.

### **Title and commencement**

**1.**—(1) This Order may be cited as the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015.

(2) It comes into force on the day after the day on which it is made, except as provided by paragraph (3).

(3) The entry for the Public Bodies Act 2011 in the table of repeals in Part 1 of the Schedule, and article 3 so far as relating to that entry, come into force on the second day after the day on which the Order is made.

### **Abolition of advisory committees**

**2.** The following bodies established under section 16(7) of the Food and Environment Protection Act 1985(4) are abolished—

- (a) the Advisory Committee on Pesticides(5); and
- (b) the Advisory Committee on Pesticides for Northern Ireland(6).

### **Repeals and revocations**

**3.** The Schedule (repeals and revocations) has effect.

Date	<i>Name</i> Parliamentary Under Secretary of State Department
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## SCHEDULE

Article 3

### Repeals and revocations

#### PART 1

##### Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Parliamentary Commissioner Act 1967 (c.13) (7)	In Schedule 2, the entry relating to the Advisory Committee on Pesticides.
Food and Environment Protection Act 1985 (c.48)	Section 16(7), (8) and (9). In section 25(4), the words “and Schedule 5 to this Act”. Schedule 5.
Food Standards Act 1999 (c. 28)	In Schedule 3, paragraph 16(6).

(4) 1985 c. 48.

(5) The Advisory Committee on Pesticides was established by article 3 of the Control of Pesticides (Advisory Committee on Pesticides) Order 1985 (S.I. 1985/1516).

(6) The Advisory Committee on Pesticides for Northern Ireland was established by article 4 of the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987 (S.R. (NI) 1987 No 341).

(7) Schedule 2 to the Parliamentary Commissioner Act 1967 was amended by S.I. 2011/2986.

Freedom of Information Act 2000 (c. 36)	In Schedule 1— (a) in Part 6, the entry relating to The Advisory Committee on Pesticides; (b) in Part 7, the entry relating to The Advisory Committee on Pesticides for Northern Ireland.
Public Bodies Act 2011 (c. 24)	In Schedule 1, the words “Advisory Committee on Pesticides and Advisory Committee on Pesticides for Northern Ireland (bodies established under section 16(7) of the Food and Environment Protection Act 1985).”.

## PART 2

### Revocations

<i>Instrument</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Control of Pesticides (Advisory Committee on Pesticides) Order 1985	S.I. 1985/1516(8)	The whole Order.
The Control of Pesticides (Advisory Committee on Pesticides) (Terms of Office) Regulations 1985	S.I. 1985/1517(9)	The whole Regulations.
The Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987	S.R. (NI) 1987 No 341.	The whole Order.
The Control of Pesticides (Advisory Committee) (Terms of Office) Regulations (Northern Ireland) 1987	S.R. (NI) 1987 No 342.	The whole Regulations.
The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999	S.I. 1999/1319(10)	In the Schedule, the entry in the table relating to the Advisory Committee on Pesticides.
The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999	S.I. 1999/1747(11)	Schedule 2.
The Scotland Act 1998	S.I. 1999/1512(12)	In Schedule 2—

(8) As amended by S.I. 1999/1747.

(9) As amended by S.I. 1999/1747.

(10) There are amendments not relevant to this Order.

(11) There are amendments not relevant to this Order.

(12) There are amendments not relevant to this Order.

(Agency Arrangements)  
(Specification) Order 1999

- (a) paragraph 2;
- (b) paragraph 3.

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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order abolishes the Advisory Committee on Pesticides and the Advisory Committee on Pesticides for Northern Ireland established under section 16(7) of the Food and Environment Protection Act 1985. It makes repeals and revocations associated with the abolition (including the repeal of the power to appoint a committee).

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

**EXPLANATORY DOCUMENT TO  
THE PUBLIC BODIES (ABOLITION OF THE ADVISORY COMMITTEES ON  
PESTICIDES) ORDER 2015**

**2015 No. [xxxx]**

**1.** This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.

**2. Purpose of the instrument**

2.1 This instrument abolishes the Advisory Committee on Pesticides (the ACP) and the Advisory Committee on Pesticides (Northern Ireland) (the ACP (NI) – jointly referred to in this document as the ACPs). The ACPs were established by section 16(7) of the Food and Environment Protection Act 1985 and abolition is part of the Government’s public body reform programme.

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

3.1 None.

**4. Legislative Context**

4.1 The ACPs are statutory bodies set up by Ministers under section 16 (7) of the Food and Environment Protection Act 1985 to advise on all matters relating to the control of pesticides. The Advisory Committee on Pesticides is established by the Control of Pesticides (Advisory Committee on Pesticides) Order 1985, SI No 1985/1516; and the Advisory Committee on Pesticides for Northern Ireland by the Control of Pesticides (Advisory Committee) Order (Northern Ireland) 1987, S.R. (NI) 1987 No 341. In practice the same body of experts has been appointed under both regulations, meaning that there is a single committee serving as both legal entities.

4.2 As statutory Non-Departmental Public Bodies (NDPBs), the ACPs should be abolished in their present form before they are reconstituted as a committee of experts. Both bodies were therefore included in Schedule 1 to the Public Bodies Act 2011, which allows abolition of the listed bodies by secondary legislation. This instrument, made under the Act, provides for the abolition of the ACPs.

4.3 The legislation which established the ACPs (the Food and Environment Protection Act 1985) does not provide for their abolition. Therefore, the ACPs were included in Schedule 1 to the Public Bodies Act 2011 in order to achieve their legislative dissolution. An announcement on Defra’s proposals to reform a number of public bodies, including the

ACPs, was made in July 2010 by the then Secretary of State for Environment, Food and Rural Affairs.

4.4 The Minister for the Cabinet Office announced the outcome of the Public Body Review on 14 October 2010, which included the proposal to abolish the ACPs. The Review examined whether a body's functions are needed and, if they are, whether the body should continue to operate at arm's length from Government. This decision was based upon three tests:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

## **5. Territorial Extent and Application**

5.1 This instrument applies to the United Kingdom. The ACP covers England, Scotland and Wales and the ACP (NI) covers Northern Ireland. Sections 16(7), 16(8), 16(9) of, and Schedule 5 to, the Food and Environment Protection Act 1985 are repealed by this instrument and Section 25(4) is amended. Those parts of the Act apply to the whole of the UK.

## **6. European Convention on Human Rights**

6.1 Lord de Mauley, Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (the "Minister") has made the following statement regarding Human Rights:

"In my view the provisions of the Public Bodies (Abolition of the Advisory Committees on Pesticides) Order 2015 are compatible with Convention rights".

## **7. Policy background**

### What is being done and why

7.1 The Government is proposing to abolish the ACPs as statutory NDPBs and to replace them with an expert committee of Defra. This committee would work for a number of UK Departments and for the Devolved Administrations as set out below.

7.2 The ACPs are established under section 16(7) of the Food and Environment Protection Act 1985 (FEPA) to advise Ministers, either when requested to do so or otherwise, on any matters relating to the control of pests in furthering the general purposes of Part III of FEPA. The general purposes (set out in section 16(1) of FEPA) are that the provisions of Part III shall have effect:

- (i) with a view to the continuous development of means:
  - (a) to protect the health of human beings, creatures and plants;

- (b) to safeguard the environment; and
    - (c) to secure safe, efficient and humane methods of controlling pests; and
  - (ii) with a view to making information about pesticides available to the public.
- 7.3 Under section 16(9), Ministers are required to consult the ACPs:
- (i) as to regulations which they contemplate making;
  - (ii) as to approvals of pesticides which they contemplate giving, revoking or suspending; and
  - (iii) as to conditions to which they contemplate making approvals subject.
- 7.4 Sections 16(7) and (9) of FEPA provide the terms of reference for the ACPs. The ACPs have a membership of about 18. Most members are academics working in areas relevant to assessing the risks and benefits of pest control – including pesticides. The remainder are appointed specifically to consider the issues from a lay perspective, or to bring practical experience of farming and horticulture.
- 7.5 The ACPs operate cross-border advising Ministers in Defra, DWP, DH, the Scottish and Welsh Governments and the Northern Ireland Executive. Collectively, these Ministers are referred to in this document as “the Ministers”. Appointments are made by Defra Ministers in agreement with the Ministers and in accordance with the Code of Practice of the Commissioner for Public Appointments<sup>13</sup>. One of the members is appointed on the basis of a nomination by the Food Standards Agency (FSA).
- 7.6 Since the ACPs were established, the regulatory system for pesticides has changed considerably. In the 1980s, all decisions on the approval of pesticides were taken by UK Ministers following a scientific assessment of risks to people and to the environment. This was then a new system under FEPA and required high levels of expertise to establish precedents and build a robust and consistent regulatory system. A team within the then Ministry of Agriculture, Fisheries and Food was set up to project manage the work and to carry out the technical assessment. In these early days, this team of in-house experts was spread thin in some areas and the expertise of the ACPs was central to carrying out all the necessary risk assessments.
- 7.7 The in-house Government expertise is now within the Health and Safety Executive (HSE), which carries out the day to day regulatory functions on behalf of the Ministers. The in-house team is very much stronger than was the case in the early stages of FEPA and the

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<sup>13</sup> <http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice/>

expertise of the ACPs therefore provides an independent check and challenge rather than an integral part of the assessment. The ACPs normally provide input on

- The first approval of an active substance in the UK;
- Special reviews of active substances (reviews triggered by new information. There is also a routine review programme within the EU);
- Emergency authorisations determined case by case on the basis of pressing need and safety assessment;
- Other applications that do not fit within the framework specified by the ACP or are of particular significance in terms of science or policy.

7.8 The EU has come to play an increasingly important role in the evaluation and approval of pesticides. Since the 1990s, decisions on the approval of active substances falling within the remit of the ACPs have increasingly been taken at EU level under provisions of legislation covering plant protection products and biocidal products. That transition from UK to EU decision-making for active substances is now almost complete. The process for deciding whether an active substance can be approved for use in the EU involves all Member States, an independent Agency (the European Food Safety Authority (EFSA) for plant protection products or the European Chemicals Agency for biocidal products) and the European Commission.

7.9 Decisions on the approval of products containing approved active substances are taken at national level but according to an increasingly tightly defined body of EU rules and guidance. Regulation (EC) No. 1107/2009 (which came into force in 2011) has further harmonised the regulatory system for plant protection products. In particular, previous arrangements that allowed provisional approval in Member States alongside applications for EU approval have been discontinued unless there are significant delays in the EU decisions.

7.10 Regulation (EU) No. 528/2012, which came into force on 1 September 2013, continues to offer a derogation to Member States allowing the issue of provisional authorisations for biocidal products, following a complete evaluation of the active substance and agreement of the Member States receiving an application for provisional authorisations that the product is likely to meet the requirements of the regulation.

7.11 These developments mean the role for the UK regulator (the Health and Safety Executive, reporting to the Ministers) and for independent expert advice to support and challenge this work has changed.

7.12 The proposed abolition of the ACPs as statutory NDPBs, and their reconstitution as a single expert scientific committee, is an outcome of the Government's 2010 review of public bodies. The Cabinet Office review aimed to increase the transparency and accountability of public bodies and to reduce their number and cost. Each body was tested under three criteria detailed in 4.4.

7.13 The ACPs were tested under these criteria and it was concluded that there was a continuing need for their work. However, it was concluded

that this could be better delivered through a different model. On 14 October 2010, Defra announced its intention to reconstitute the majority of its advisory bodies as committees of experts. The announcement read as follows.

“Recognising their excellent work for Defra, the department has reviewed the role and functions of its scientific and technical advisory bodies to determine the scope for rationalisation where it is relevant and appropriate to do so. The number of Defra’s scientific and technical advisory NDPBs is to be reduced significantly, with the majority of them becoming expert committees to the department. This will improve transparency and accountability, provide for stronger co-ordination whilst allowing Defra to have continued access to independent, authoritative and cost-effective advice to support its policies.”

- 7.14 Also in 2010, Professor Charles Godfray led a review of Defra’s Science Advisory Council (SAC)<sup>14</sup>. Following that review and informed by advice from the Government Chief Scientific Adviser (CSA), Professor Sir John Beddington, the then Secretary of State for Environment, Food and Rural Affairs, Caroline Spelman, made a statement to Parliament on 26 January 2011<sup>15</sup>.
- 7.15 The SAC remained a Non-Departmental Public Body with a strengthened role in supporting the CSA in the oversight of all Defra expert scientific committees. The reformed SAC provides independent advice to Ministers and the CSA on the science underpinning a wide range of Defra policies. The new SAC and the CSA have an oversight function for Defra’s science bodies.
- 7.16 The Government has given a commitment that, where Departments are considering reconstituting bodies as expert scientific committees, they should put in place a number of safeguards. Such committees must provide independent advice in line with the Government’s Principles for Scientific Advice<sup>16</sup> and the Code of Practice for Scientific Advisory Committees<sup>17</sup>. Escalation routes must be in place to ensure advice from expert scientific committees can be submitted directly to Ministers, as appropriate. These requirements will be met in establishing the successor to the ACPs and will be written into the draft terms of reference.
- 7.17 The ACPs must be abolished before their successor is put in place. The successor body will continue to provide expert, impartial and

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14 <http://sac.defra.gov.uk/2010/11/02/scientific-advice-to-defra-praised-in-independent-review-2-november-2010/>.

15 <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110126/wmstext/110126m0001.htm#11012644000014>

16 <https://www.gov.uk/government/publications/scientific-advice-to-government-principles/principles-of-scientific-advice-to-government>

17 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278498/11-1382-code-of-practice-scientific-advisory-committees.pdf)

independent advice to the Ministers and to the FSA. In respect of Defra's interests, it 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 pesticides since the ACPs were established.

7.18 Following the announcement of the review referred to at 7.13 above, Defra's Secretary of State wrote to each of the Devolved Administrations to outline the overall plans for changing the status of a number of Defra advisory bodies. In her letter, she recognised that arrangements would be needed to ensure that the Devolved Administrations and all UK Government Departments with an interest in pesticides policy and regulation had access to the new body and to the advice it will provide in the same way as at present.

7.19 Before the ACPs can be abolished, the Public Bodies Act 2011 requires: consultation with the Committee itself and other interested parties; scrutiny by the UK Parliament; and the consent of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. In addition, as the proposal is to abolish a cross-border body, Defra is required to consult with Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998 and with Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006.

7.20 Following official level discussions, Defra Ministers will shortly write to all Devolved Ministers seeking their agreement to the proposed changes to the ACPs, providing information on how the new body is intended to work and asking them to request the consent of their Assembly/Parliament. The Devolved Administrations – and all interested Whitehall Departments - will be fully engaged with all aspects of the successor body. In brief, this means that all will:

- Participate in the appointment process and agree appointments;
- Agree changes to the terms of reference including if there was ever a proposal to abolish the new committee;
- Receive and be able to commission advice from the new committee;
- Be able to nominate a representative ("Assessor") to attend meetings and receive papers and advice from the committee.

## **8. Satisfying the requirements of section 8(1) of the Public Bodies Act 2011**

8.1 Section 8 of the Public Bodies Act 2011 states that a Minister may make an order under that Act only where it is considered that the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. The Minister has reviewed the proposed legislative abolition of the ACPs and considers that this Order serves the purpose of improving the exercise of public functions in section 8(1) of the 2011 Act, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers.

- 8.2 The public function in question is set out at paragraphs 7.2 and 7.3 above. In summary it is the provision of advice to the Ministers on pesticides regulation and approvals. There are a number of strong features of the current ACPs, which include their independence, right of direct access to the Ministers, technical expertise and transparency. The proposed successor arrangements – which will cover the current range of issues – will retain these strengths. However, there will be several areas of improvement, arising in particular from the greater flexibility enabled by the new body’s non-statutory nature. These are outlined in paragraphs 8.3 to 8.13 below.

### Efficiency

- 8.3 The abolition of the ACPs and their replacement with an expert committee will be more efficient. This is because the requirement to consult the ACPs currently set out in the Food and Environment Protection Act 1985 is very broad. The proposed expert committee would be able to offer advice on any matter within its remit. But it would not routinely be asked for advice to support decisions which do not raise new or contentious issues. This will enable the new committee to devote more time to the most important questions.

### Effectiveness

- 8.4 There are two broad ways in which the new arrangements should be more effective than those they replace. First, a non-statutory basis will provide greater flexibility, particularly because terms of reference can be updated to reflect the changing EU regulatory regimes. Second, the new body will take its place in a more coherent system for science advice across Defra. The work of the new body will fall under new arrangements to strengthen the science and evidence base to support policy across Defra. The new body will operate within a closer network of expert bodies overseen by Defra’s CSA, supported by his SAC. This will provide greater co-ordination of scientific advice and evidence gathering within the Department, making the process as a whole more effective and flexible. These arrangements sit within wider Government reform for Arms-Length Bodies and measures led by the Government’s Chief Scientific Adviser.
- 8.5 One difficulty with the current static statutory arrangements derives from the fact that the regulatory systems for pesticides now derive from two EU regimes on plant protection products (PPPs - agricultural, horticultural, amenity and garden pesticides) and biocidal products. Under these two regimes, decisions on the approval of active substances are taken at the EU level. Product authorisations are determined nationally but according to common rules. Even authorisation is taking an increasingly transnational dimension with decisions being taken on a European ‘zonal’ basis for PPPs and the possibility of ‘Union authorisations’ for biocides. Mutual recognition of authorisations in between member states is a common efficiency measure for both PPPs and biocides under their respective regulations.

- 8.6 All this means that there is less need for UK specific expert advice on UK applications for approval. There remains a strong need for independent advice on broader risk assessment and risk management issues. However, the role is changed and the bodies carrying it out need to be adaptable in the face of constantly developing EU regimes.
- 8.7 Non-statutory advisory bodies are inherently more flexible and nimble and can be adapted, for example to acquire new terms of reference. The change of status to the ACPs will allow the successor body to take on new, more flexible and strategic terms of reference. It will then be more straightforward to adapt the terms of reference in future to meet currently unforeseen changes in demand.

### Economy

- 8.8 The costs of the ACPs are modest. Defra pays around £25,000 per year for administering meetings, meeting Members' travel and subsistence costs, and for recruitment campaigns. The costs to Defra of the Secretariat based in the Health and Safety Executive amount to around £40,000 per year. Similar amounts are also drawn from industry funding. The costs of the successor expert committee are likely to be slightly less. The size of the committee is likely to be similar to the ACPs but, as a result of the changes outlined at 8.3, the new committee may not need to meet so frequently. Minor savings in the costs of recruiting members are expected for the successor body, as it is anticipated there will no longer be a requirement to involve independent Office of the Commissioner for Public Appointments (OCPA) assessors.
- 8.9 There are no potential jobs impacts arising from this proposal – the size of the very small Secretariat for this body (within the Health and Safety Executive) will remain unchanged.
- 8.10 Immediate transitional costs will be negligible. The existing and proposed Committees will require a similar range of expertise in meeting the demand for the type of advice required in the near future. Current members of the ACPs are fully aware that, subject to the completion of the transition, their membership will carry across to the successor body.

### Accountability to Ministers

- 8.11 Across the Defra evidence network, the reconstitution of advisory NDPBs as expert scientific committees has been focussed on improving transparency and securing appropriate accountability to Ministers.
- 8.12 The new expert committee will retain the high degree of independence and transparency that characterised the ACPs. It will carry out an

independent and technical advisory function in a sensitive area which Government requires, which society values, and which is best delivered through other arrangements, for which the status of expert scientific committee best describes its role and function.

- 8.13 The new expert committee will bring together independent scientific experts and will work independently of Government and in an open manner. It will provide advice to the Ministers and to the FSA. It will be able to put advice direct to any of the Ministers where the Members consider this appropriate. The Ministers will be closely engaged with the committee's work, commissioning some of that work and considering its advice. They will also be involved in recruiting and appointing committee members. They will not control the committee's operations, which will remain at arms' length.

## **9. Compliance with the conditions in section 8(2) of the Public Bodies Act 2011**

- 9.1 Section 8(2) of the Public Bodies Act 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.
- 9.2 The Minister considers that the conditions in Section 8(2) are met. The ACPs statutory functions as advisory bodies have no impact on personal protections, rights or freedoms. It follows that abolition of the ACPs functions will not remove any necessary protection nor prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The proposals would not impose any new costs, administrative burdens, or information obligations on companies or third sector organisations.
- 9.3 The Government intends to reconstitute the committee as an expert scientific committee to continue its work after the draft Order comes into force. This will maintain the flow, openness and independence of advice.

## **10 Parliamentary activity during passage of the Public Bodies Act**

- 10.1 The debates that took place during the passage of the Public Bodies Bill are summarised below. Hyperlinks are provided to the full Hansard transcripts.
- 10.2 **During the Committee Stage of the Public Bodies Bill, 2nd sitting, 29 November 2010, in the House of Lords an amendment was**

**tabled by Lord Whitty<sup>18</sup>** seeking to remove the ACPs from Schedule 1 of the Bill. The proposer expressed concern at the prospect that these bodies, together with the Advisory Committee on Hazardous Substances (ACHS), might be abolished and not replaced. Lord Henley, the then Defra Minister, explained why abolition was proposed and how the issues covered by the Committees would be covered in the future. The amendment was withdrawn.

**10.3 During the Report Stage of the Public Bodies Bill, 1<sup>st</sup> sitting, 23 March 2011, in the House of Lords an amendment was tabled by Baroness Quin<sup>19</sup>** seeking to remove the Advisory Committee on Pesticides from Schedule 1 of the Bill. The proposer again asked why the ACPs and ACHS were to be abolished, saying that they had done good work on sensitive public issues. Lord Henley described the proposed arrangements and how the proposed changes fitted with those planned for other Defra science advisory bodies. The amendment was withdrawn.

**10.4 During the Committee Stage of the Public Bodies Bill, 2nd sitting, 8 September 2011, in the House of Commons an amendment was tabled by Roberta Blackman-Woods and Jon Trickett<sup>20</sup>** seeking to remove the Advisory Committee on Pesticides from Schedule 1 of the Bill. Dr Blackman-Woods asked how the proposed expert committee would do a better job than the existing committees. David Heath, the then Defra Minister, explained how the arrangements would work and why they would be more effective. The amendment was withdrawn.

## **11 Consultation outcome**

11.1 In accordance with Section 10 of the Public Bodies Act, a public consultation inviting comments on the Government's proposals on the future of the ACPs was carried out. It was launched on 8 March and closed on 15 May 2012. The three options in the consultation were:

Option A Maintain the status quo - the ACPs continue as statutory, advisory Non-Departmental Public Bodies;

Option B Abolish the ACPs and put nothing in their place;

Option C Abolish the ACPs and reconstitute as an expert scientific committee.

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<sup>18</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101129-0003.htm>

<sup>19</sup> <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110323-0001.htm#11032365000810>

<sup>20</sup> <http://www.publications.parliament.uk/pa/cm201011/cmpublic/publicbod/110908/pm/110908s01.htm>

- 11.2 The consultation explained that the Government's preferred option was to abolish the Committees as statutory NDPBs and to reconstitute them as a new expert scientific committee. However, the Government wished to consider alternative approaches and to hear respondents' views on their proposals.
- 11.3 Forty five responses were received. Thirty responses were received from the farming/growing industry and businesses, six from government advisory bodies and nine from the public or Non-Government Organisations (NGOs). Of these:
- No respondent supported Option B (to abolish the ACPs and put nothing in their place).
  - Twelve respondents stated specifically that they are opposed to the abolition of ACPs and wished to maintain the status quo (Option A) but some suggested that they could accept Option C if the new body were constituted so as to address their concerns (which, as set out at paragraph 11.6 below, is the intention).
  - Twenty four respondents supported the Government's preferred option (Option C) to abolish the ACPs and reconstitute as an expert scientific committee. However, some respondents in favour of this option attached a number of caveats in their support of its abolition.
  - Eight respondents did not favour one option over the other, but provided comments on the remit and operation of the committee.
  - One respondent suggested an alternative option - to abolish the committee and replace it with a new committee advising on the overall aspects of pest management with the priority on non-chemical pest control.
  - Many respondents highlighted similar views as to the strengths of the ACPs and the qualities which they would wish to see replicated in any expert committee. These included: independence; impartiality; scientific expertise; transparency; a direct line to Ministers; and the ability to initiate its own lines of enquiry.
- 11.4 The Minister wrote to the Chair of the ACPs on 16 October 2010 to inform them of the intention to abolish. The Committees were consulted, as required by Section 10(1)(a) of the PBA, on the proposal to abolish and were also consulted (at their 15 May 2012 meeting) on the remit and terms of reference of the proposed successor body.
- 11.5 In view of the support expressed during this consultation for the Government's preferred option, Defra is proceeding as planned to lay a draft Order to abolish the ACPs. The Government will work with the ACPs on the transitional and subsequent on-going arrangements.
- 11.6 The consultation showed strong support for a body to provide expert, impartial and independent advice on pesticides to the Ministers and FSA. The Government reaffirms that the proposed successor body to the ACPs would continue to take this role. The Committee would

operate in line with the Government's Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees.

- 11.7 The new committee would normally provide advice to officials supporting the Ministers on request but, as at present, would be entitled to choose its own subjects for consideration and to put advice direct to the Ministers.
- 11.8 The new committee would draw together an appropriate range of experts – and the Government will invite the current members to transfer to the new body. Future members would be chosen in a similar way as at present (although appointments would be made by a senior official rather than by a Minister). The new committee would not be regulated by the Code of Practice of the Commissioner for Public Appointments but recruitment would be carried out in line with the guidance and principles on public appointments set by the Office of the Commissioner for Public Appointments. Members would be expected to act impartially and to follow the seven 'Nolan' principles of public life.
- 11.9 The Government's response to the consultation was published on 14 November 2014 and can be found on the Single Government Website at <https://www.gov.uk/government/consultations/the-future-of-the-advisory-committee-on-pesticides>

## **12. Guidance**

- 12.1 This instrument abolishes a body providing expert advice to Ministers. It is not necessary to publish guidance for stakeholders or enforcement agencies in relation to this measure.

## **13. Impact**

- 13.1 This Order has no impact on business or civil society bodies. It does not impose any new costs, administrative burdens or information obligations. No Impact Assessment has therefore been prepared for this instrument.
- 13.2 The abolition of the ACPs and replacement with an expert committee will retain a number of good features of the ACPs but will produce improvements in effectiveness and efficiency.
- 13.3 The impact on the public sector is essentially neutral as a successor body will be established with the same level of Secretariat support from the Chemicals Regulation Directorate (a directorate of the Health and Safety Executive). Transitional costs will be negligible and ongoing savings will be small.
- 3.4 An Equality Impact Assessment initial screening was carried out for the ACPs. This showed no equality impact – ACP Members and the Secretariat will continue in similar roles as at present.

## **14. Regulating small businesses**

14.1 The legislation does not affect small businesses.

## **15. Monitoring and review**

15.1 The body which replaces the ACP will continue to work openly, and papers for meetings will continue to be available with agendas and minutes routinely published and detailed papers available on request in line with freedom of information legislation (Freedom of Information Act and Environmental Information Regulations). Members of the public, specialist press and other stakeholders will be able to attend annual open meetings. The terms of reference for the new committee will be kept under review, in line with Cabinet Office guidelines for such bodies. The openness of the replacement body will continue to be kept under review in line with the Code of Practice for Scientific Advisory Committees. The oversight of the successor committee by the Defra CSA, supported by the Defra SAC, will provide an additional level of peer review and scrutiny.

## **16. Contact**

16.1 David Williams at the Department for Environment, Food and Rural Affairs (Tel. 01904 455363 or e-mail [davidp.williams@defra.gsi.gov.uk](mailto:davidp.williams@defra.gsi.gov.uk)) can answer any queries regarding the instrument.