Economy, Energy and Tourism Committee

9th Report, 2012 (Session 4)

The Public Bodies (Abolition of British Shipbuilders) Order [2013]

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Economy, Energy and Tourism Committee

Remit and membership

Remit:

The remit of the Committee is to consider and report on the Scottish economy, enterprise, energy, tourism and renewables and all other matters within the responsibility of the Cabinet Secretary for Finance, Employment and Sustainable Growth apart from those covered by the remit of the Local Government and Regeneration Committee and matters relating to the Cities Strategy falling within the responsibility of the Cabinet Secretary for Health, Wellbeing and Cities Strategy.

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The Public Bodies (Abolition of British Shipbuilders) Order [2013]

The Committee reports to the Parliament as follows—

Background

1. The Public Bodies (Abolition of British Shipbuilders) Order [2013] 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”). Please see Annexe A for a copy of the draft instrument.

2. The proposal to abolish British Shipbuilding (BS) was announced as part of the Cabinet Office’s Public Bodies Review on 14 October 2010. The Public Bodies Act (PBA) 2011 is seen as an appropriate and effective vehicle for abolishing BS and for transferring its property, rights and liabilities to the Secretary of State. The legislative consent memorandum (LCM) was laid on 22 November 2012 and referred to the Economy, Energy and Tourism Committee for consideration on 27 November 2012. The Committee considered it on 19 December 2012. A copy of the legislative consent memorandum can be found here: [http://www.scottish.parliament.uk/parliamentarybusiness/Bills/50556.aspx](http://www.scottish.parliament.uk/parliamentarybusiness/Bills/50556.aspx).

Policy issues

3. BS is a public corporation established by section 1 of the ASIA 1977 that owned and managed large parts of the British (but not Northern Irish) shipbuilding industry.

4. It is no longer a trading enterprise and effectively operates as a ‘shell’ company. Its main remaining function is to act as the vehicle through which long term industrial disease liabilities of former employees are managed. BS does not have funds of its own for this purpose, and is dependent on the financial backing of the Secretary of State.

5. BS contracts a company to provide residual pension services, which involves investigating and handling unrecorded pension claims from former employees.
It is envisaged the arrangements for handling such claims will continue after abolition of BS.

6. It is unsatisfactory that a statutory corporation established for a specific purpose, namely the nationalisation, rationalisation, and subsequent reprivatisation of the shipbuilding industry, should be kept indefinitely to carry out a function for which it was not designed. BS is not itself directly liable to claimants who have, or are relatives of those who have had, industrial diseases. BS is liable rather as statutory surety for the judgment debts of subsidiaries it sold to third parties while retaining liabilities attributable to their pre-sale acts or omissions.

7. When the British shipbuilding industry was nationalised in 1977, it was assumed that BS would have more than sufficient assets to meet its liabilities. However, in recent years, the reserves of BS were placed under increasing pressure. First, BS insurer, Chester Street Holdings Limited, entered into liquidation, and in April 2004 BS was obliged to take back its insured liabilities. Secondly, the House of Lords ruling in Fairchild\(^1\) led to an increase in the number of mesothelioma personal injury claims against BS. These unforeseen pressures resulted in the near insolvency of BS in July 2006. In order to prevent this, interim arrangements to fund BS using Public Dividend Capital were agreed by the then Department of Trade and Industry’s Permanent Secretary as a temporary measure, on the basis that a proposed Bill would enable a long-term solution for managing and funding the liabilities to be implemented involving them being transferred to the direct responsibility of Government. HM Treasury agreed this as a temporary measure in 2006 on the basis that a Bill to transfer liabilities to the Secretary of State would provide a long term solution for managing the liabilities of BS.

8. The Secretary of State continues to fund this arrangement using Public Dividend Capital. BS’ liabilities currently cost about £7 million a year in compensation payments. This is mainly spent on dealing with health compensation claims from former shipyard workers suffering primarily from asbestos related diseases. It is estimated that there will be liabilities to be met at least into the late 2040s.

9. A firm of solicitors manage the on-going claims, and day-to-day oversight of BS is undertaken by the Coal Liabilities Unit in the Department of Energy and Climate Change (DECC). DECC leads on the governance responsibilities of BS.

Purpose of the instrument

10. Transferring the liabilities of BS to the Secretary of State will provide a long term solution for managing such liabilities and will provide continuity of funding responsibility for the period that claims continue to be presented. It is envisaged that the Coal Liabilities Unit in DECC will continue to play a role in oversight of claims post abolishing BS.

\(^1\) Fairchild –v- Glenhaven Funeral Services Ltd [2002] UK HL 22 – the House of Lords held that a worker who contracted mesothelioma after wrongful exposure to asbestos at different times by more than one employer or occupier of premises could sue any of them, notwithstanding that he could not prove which exposure actually caused the disease. A defendant would be 100% liable for the whole injury.
11. Section 8 of the Public Bodies Act 2011 states that a Minister may make an order under the Public Bodies Act 2011 only where they consider the order serves the purpose of improving the exercise of public functions, having regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. As a result of this order, the Government expects to see improvements in the following areas:

a) Efficiency: The decision to abolish BS and the transfer of liabilities to the Secretary of State is consistent with reducing unnecessary bureaucracy and overheads. BS only exists as a corporation to manage industrial disease and pension claims in respect of former employees. The transfer of liabilities will not have any effect or change claimants’ legal rights to seek compensation. Moreover, claimants will not see any change in process; it will just be a case that compensation will be paid by the Secretary of State rather than BS. There will therefore be greater flexibility to create more efficiencies. Finally, the back office functions will be more streamlined as they will be absorbed within the existing structure of the Department.

b) Effectiveness: The Department has met the costs and liabilities of BS for a number of years. The abolition of BS will provide a long term solution by transferring the responsibilities of BS to the Secretary of State. Claimants will then make claims direct to the Secretary of State rather than via a third party.

c) Economy: This reform will deliver a better deal for taxpayers as the current costs of running BS will be largely absorbed within the existing budget of the Department. Abolition of BS will provide annual savings of £15,000 in respect of the employment of a company secretary, and it will no longer be necessary to complete separate accounts for BS and lay them before Parliament. The cost of the liabilities, post abolition, will be included in the Department’s annual accounts.

d) Securing appropriate accountability to Ministers: The abolition of BS will not result in any lack of accountability to Ministers as accountability will be transferred to the Secretary of State.

12. Section 8(2) of the PBA 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.

13. The Minister considers that the conditions in section 8(2) of the Act are satisfied in respect this order. All property, rights and liabilities of BS are being transferred to the Secretary of State. Any rights a person may have had to bring a claim against BS will transfer such that any claim will be exercisable against the Secretary of State.
Subordinate Legislation Committee

14. The Subordinate Legislation Committee considered the instrument and did not raise any issues.

Economy, Energy and Tourism Committee’s consideration

15. The public body consent motion was considered by the Economy, Energy and Tourism Committee at its meeting on 19 December 2012. Members raised no issues in relation to the PBCM and consequently agreed to recommend to the Scottish Parliament that the forthcoming Public Bodies Consent Motion be approved.
ANNEXE A: THE PUBLIC BODIES (ABOLITION OF BRITISH SHIPBUILDERS) ORDER 2013

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

DRAFT STATUTORY INSTRUMENTS

2013 No. XXXX

PUBLIC BODIES

The Public Bodies (Abolition of British Shipbuilders) Order 2013

Made - - - - [2013]

Coming into force in accordance with article 1(2) and (3)

The Secretary of State makes the following Order in exercise of the powers conferred by sections

1(1), 6(1) and (5), 23(1), (2), (5) and (6), 24(1) and 35(2) of the Public Bodies Act 2011(a) ("the Act").

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); 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, Northern Ireland Assembly and Welsh Ministers has, so far as required, been obtained in accordance with section 9(1), 9(3) and 9(7) of the Act. The Secretary of State has consulted in accordance with section 10 of the Act.

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

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Public Bodies (Abolition of British Shipbuilders) Order 2013.

(a) 2011 c.24.
2

(2) Subject to paragraph (3), this Order comes into force on the day after the day on which it is made.

(3) Paragraph 15 of Schedule 1 comes into force on the day after that on which the other provisions of this Order come into force.

(4) In this Order—

“Secretary of State” means the Secretary of State for Business, Innovation and Skills; “subsidiary” has the meaning given by section 1159 of the Companies Act 2006(a).

Transfer of certain property, rights and liabilities to the Secretary of State

2.—(1) The property, rights and liabilities of British Shipbuilders are transferred to the Secretary of State.

(2) The property and rights of the subsidiaries of British Shipbuilders are transferred to the Secretary of State.

(3) The liabilities of the subsidiaries of British Shipbuilders are transferred to the Secretary of State.

(4) For the purposes of paragraph (3) any subsidiary of British Shipbuilders that was dissolved before this article comes into force is to be treated as if it had not been so dissolved.

Transfer of property, rights and liabilities: supplemental

3.—(1) Paragraph (2) applies to anything (including legal proceedings) that—

(a) relates to property, rights or liabilities vested in the Secretary of State by virtue of article 2, and

(b) on the coming into force of this article, is in the process of being done by or in relation to British Shipbuilders or a subsidiary of British Shipbuilders.

(2) The thing may continue to be done by, or in relation to, the Secretary of State.

(3) Paragraph (4) applies to anything done by, or in relation to, British Shipbuilders or a subsidiary of British Shipbuilders that relates to property, rights or liabilities vested in the Secretary of State by virtue of article 2.

(4) The thing is to be treated as having been done by, or in relation to, the Secretary of State (so far as is necessary for continuing its effect after this article comes into force).

(5) Paragraph (6) applies to any document that—

(a) relates to property, rights or liabilities vested in the Secretary of State by virtue of article 2, and

(b) has effect immediately before this article comes into force.

(6) Any reference in the document to British Shipbuilders or to a subsidiary of British Shipbuilders is to be read as a reference to the Secretary of State.
(7) In this article any reference to a subsidiary of British Shipbuilders includes a reference to a subsidiary that was dissolved before this article comes into force.

Abolition of British Shipbuilders

4.—(1) British Shipbuilders is abolished immediately after the transfer of its property, rights and liabilities to the Secretary of State under article 2(1).

(2) The subsidiaries of British Shipbuilders are abolished immediately after the transfer of their property, rights and liabilities to the Secretary of State under article 2(2) and (3).

(a) 2006 c.46.

3

(3) The reporting duties of British Shipbuilders in respect of its final accounting year must, after its abolition, be discharged by the Secretary of State.

(4) The reporting duties of British Shipbuilders are—

(a) its duties under section 17(1)(b) and (c) of the Aircraft and Shipbuilding Industries Act 1977(a) (statements of accounts), and

(b) its duties under section 18 of that Act (annual report).

(5) The final accounting year of British Shipbuilders is the period which begins on 1st April 2012 and ends on the abolition of British Shipbuilders.

Amendments consequential etc

5. Schedules 1 and 2 (which make consequential etc provision on the abolition of British Shipbuilders and the associated transfer scheme) shall have effect.

Name
Minister of State for Business and Enterprise
Date Department for Business, Innovation and Skills

SCHEDULE 1
CONSEQUENTIAL ETC AMENDMENTS TO PRIMARY LEGISLATION

House of Commons Disqualification Act 1975 (c.24)

1. In Schedule 1 to the House of Commons Disqualification Act 1975, in Part II (bodies of which all members are disqualified), omit the entry for British Shipbuilders.

Northern Ireland Assembly Disqualification Act 1975 (c.25)

2. In Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975, in Part II (bodies of which all members are disqualified), omit the entry for British Shipbuilders.

Aircraft and Shipbuilding Industries Act 1977 (c.3)

3.—(1) The Aircraft and Shipbuilding Industries Act 1977 is amended as follows.

(2) Part I is repealed.
(3) In Part II—
(a) sections 19(2), 20(4) and 40(4) and Schedule 2 are omitted; and
(b) sections 19(3) to (5), 20(1) to (3) and (5) to (7) and 40(1) to (3), (5) and (6) and Schedule 3 cease to have effect in relation to British Shipbuilders.

(4) In Part III—
(a) sections 47, 48, 49 and 53 are omitted; and
(b) in section 56(1) (interpretation)—

(a) 1977 c.3.

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(i) the definitions of “accounting year”, “associated person”, “equity share capital”, “group of companies”, “pension”, “pension rights”, “pension scheme”, “public dividend capital” and “public dividends”, “the relevant days”, “relevant trade union”, “shipbuilding industry vesting date” and “voting power” are omitted; and

(ii) in the definition of “the relevant vesting date”, paragraph (b) and the word “and” immediately preceding it are omitted.

(5) The repeal of sections 17 and 18 is subject to the transitional provision made by article 4(3) to (5).

British Aerospace Act 1980 (c.26)

4. In the British Aerospace Act 1980, omit section 10 (which makes provision for certain provisions of the Aircraft and Shipbuilding Industries Act 1977 to cease to have effect in relation to British Aerospace etc.).

Local Government, Planning and Land Act 1980 (c.65)

5.—(1) The Local Government, Planning and Land Act 1980 is amended as follows.

(2) In section 170 (interpretation: meaning of statutory undertakers), omit subsection (2).

(3) In Schedule 16 (bodies to whom Part 10 applies), omit paragraph 12.

British Shipbuilders Act 1983 (c.15)

6. The British Shipbuilders Act 1983 is repealed.

Miscellaneous Financial Provisions Act 1983 (c.29)


National Audit Act 1983 (c.44)

8. In Schedule 4 to the National Audit Act 1983 (nationalised industries and other public authorities), in Part 1, omit the entry for British Shipbuilders.

British Shipbuilders (Borrowing Powers) Act 1983 (c.58)

British Shipbuilders (Borrowing Powers) Act 1987 (c.52)

10. The British Shipbuilders (Borrowing Powers) Act 1987 is repealed.

Housing Act 1988 (c.50)

11. In Schedule 9 to the Housing Act 1988, in paragraph 4(b) of Part 1 (meaning of statutory undertakers for certain purposes), omit the words “British Shipbuilders,”.

Companies Act 1989 (c.40)


Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)


Freedom of Information Act 2000 (c.36)

14. In Schedule 1 to the Freedom of Information Act 2000, in the list in Part 6 (other bodies which are public authorities for the purposes of that Act) omit the entry for British Shipbuilders.

Public Bodies Act 2011 (c.24)

15.—(1) The Public Bodies Act 2011 is amended as follows.

(2) In Schedule 1 (power to abolish: bodies and offices)—

(a) omit the entry for British Shipbuilders and any subsidiary of British Shipbuilders; and

(b) omit the note relating to the abolition of British Shipbuilders.

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order transfers the property, rights and liabilities of British Shipbuilders and its subsidiaries to the Secretary of State for Business, Innovation and Skills.

Article 3 makes provision supplemental to those transfers.

Article 4 abolishes British Shipbuilders, established under section 1(1)(b) of the Aircraft and Shipbuilding Industries Act 1977 (c.3), and abolishes its subsidiaries.

Article 5 makes consequential repeals, revocations and amendments of Acts and other instruments specified in Schedules 1 and 2. Article 5 also removes the reference to British Shipbuilders in Schedule 1 to the Public Bodies Act 2011 (c.24).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. The explanatory document is published with this Order on www.legislation.gov.uk.
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

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