

EXPLANATORY MEMORANDUM TO
THE LOCAL BETTER REGULATION OFFICE (DISSOLUTION AND TRANSFER OF
FUNCTIONS, ETC.) ORDER 2012

2012 No. XXXX

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills (BIS) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Local Better Regulation Office (LBRO) was established under section 1 of the Regulatory Enforcement and Sanctions Act 2008 (RESA 2008) on 1st October 2008. The purpose of this Order, made in exercise of powers conferred by RESA section 18, is to implement policy changes in the area of regulatory enforcement and public bodies and specifically to underpin the dissolution of the LBRO as a non-departmental public body and transfer of continuing functions into BIS.

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

3.1 None.

4. Legislative Context

4.1 Section 18 of RESA conferred on the Secretary of State a power to provide by Order (subject to the affirmative resolution procedure) for the dissolution of LBRO. That section specifies that the Order may, among other things, provide for the transfer of functions, property, rights or liabilities of LBRO to another person.

4.2 Before making an Order to this effect the Secretary of State must consult the Welsh Ministers and such persons as may be substantially affected by the dissolution of LBRO. An Order under section 18, in order to provide for the dissolution of LBRO, may repeal, revoke or amend any enactment (which includes primary legislation).

4.3 A consultation on the future of the LBRO was carried out between 23 June and 16 September 2011. The consultation found support for the proposal that LBRO should cease to operate as a Non-Departmental Public Body and that instead the continuing functions should be moved into BIS.

4.4 This Order provides for the dissolution, on 1st April 2012, of the LBRO and the transfer of most of its statutory functions to the Secretary of State or (where appropriate) to the Welsh Ministers. It also transfers LBRO's property, rights and liabilities to the Secretary of State, and (as required by RESA section 18) applies the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the transfer of

staff. Schedules 1 and 2 to the Order make effect to those transfers and the necessary consequential, supplementary, incidental and transitional provisions, including amendments to RESA 2008.

4.5 Continuing functions of the LBRO will be undertaken by both the Secretary of State and Welsh Ministers as specified in the Order and in line with devolved/non-devolved responsibilities. Powers and duties currently granted to the LBRO to operate the Primary Authority scheme will transfer to the Secretary of State and be carried out within BIS, in consultation with Welsh Ministers as appropriate.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1. The Minister of State for Business and Enterprise, Mark Prisk has made the following statement regarding Human Rights: In my view the provisions of the Local Better Regulation Office (Dissolution and Transfer of Functions, Etc.) Order 2012 are compatible with the Convention rights.

7. Policy background - What is being done and why

7.1. LBRO was set up to improve local authority enforcement of environmental health, trading standards, licensing and fire regulations, its overall objective being to secure the effective performance of local authority regulatory services in accordance with the principles of better regulation. The Government legislated to give LBRO a statutory basis and powers to deliver that purpose.

7.2. Initially set up as a private company in 2007, it became a statutory non departmental public body (NDPB) with the commencement on 1st October 2008 of Part One of the Regulatory Enforcement and Sanctions Act 2008. RESA gives the organisation statutory powers and duties to: operate the Primary Authority scheme, issue guidance to local authorities, manage the list of national enforcement priorities (Rogers Review), provide advice to Government on enforcement and regulatory issues, develop formal partnerships with national regulators and provide financial support and assistance to local authorities to encourage innovation and good practice amongst local authorities.

7.3. The powers conferred by RESA were created as a response to the findings of the Hampton Review of inspection and enforcement in 2005. These powers reflected the desire for central intervention to improve local delivery.

7.4. The LBRO was reviewed in the context of the Government's wider review of public bodies in 2010. That review concluded that two of LBRO's main functions should continue and that one should stop; and that delivery by an NDPB was not the best option for managing the continuing functions. In the 14 October 2010 document Public Bodies

Reform - Proposals for Change¹ it was announced that Primary Authority and other deregulatory functions would be maintained and that an appropriate delivery mechanism to provide independence would be announced later.

7.5. In parallel, the political environment has changed. The policy drivers for this area of work now include:

- a) a focus on transforming regulation to support economic growth.
- b) the Coalition Government's commitment to reform regulatory enforcement to "end the culture of 'tick-box' regulation, and instead target inspections on high-risk organisations through co-regulation and improving professional standards."
- c) making public bodies more democratically accountable through ministers.
- d) to "achieve £2.6 billion of cumulative administrative savings across Government and divert public funds to essential frontline services."^[2], and
- e) the Coalition Government's commitment to localism

7.6. Following further consideration, and an options appraisal it was proposed that LBRO should be dissolved and the ongoing functions should transfer to BIS. The updated proposal on LBRO was announced on 16 March 2011 stating "Abolish as an NDPB and bring some functions into the department"^[3]. Hence there is a need to use RESA Section 18 powers to dissolve LBRO and to make associated amendments to the Act.

7.7. Some of the amendments made to RESA by this Order relate to matters within the competence of the Welsh Assembly. It will, therefore, be necessary for a consent order to be gained in the Welsh Assembly Government. This will be undertaken by Welsh Government officials in parallel with the UK legislative process.

8. Consultation outcome

8.1. BIS initiated a consultation regarding the proposed changes to the LBRO on 24 June 2011 which concluded on 16 September 2011. 86 responses were received. The overall balance of responses was supportive of the proposed changes.

8.2. The response rate is not especially high, reflecting the fact that the proposals bring about a change in organisational status and arrangements, but do not involve a wholesale change in policy. It is expected that the dissolution of the LBRO and transfer of functions into BIS will result in little practical change for stakeholders since they will experience continuity of service and will largely deal with the same experienced personnel.

8.3. The consultation gained majority support for all the proposals bar one. The one exception was the proposed membership for the Representative Steering Group – a group that is being proposed to help inform and steer the continuing work post-transition.

^[1] See: <http://www.number10.gov.uk/wp-content/uploads/2010-10-14-Public-bodies-list-FINAL.pdf>

^[2] See: <http://www.cabinetoffice.gov.uk/news/government-spend-billions-less-through-quangos>

^[3] See: <http://www.cabinetoffice.gov.uk/sites/default/files/resources/public-bodies-proposals-for-change.pdf>

Responses on the question of the proposed membership were evenly split, 50-50. The basic proposition to establish the group was supported, half the respondents agreed with the proposed membership, but others wanted to see the balance changed, or the group expanded, and a number wished to be added to the membership of the Group. Further work on the make up of the Representative Steering Group is being taken forward by BIS with support from LBRO.

8.4. Consultation responses confirmed stakeholder views on: the value of LBRO's work; the need for independence in managing the Primary Authority scheme; the importance of maintaining staff expertise; the value of LBRO's Expert Panels and the need for the new unit to be able to effectively represent the views of businesses, regulators and others when informing policy development. These remain key building blocks underpinning the new Better Regulation Delivery Office within BIS.

8.5. In line with the conclusions of the BIS led (public bodies) review of LBRO, the power to direct local authorities, and the power to enforce service improvement will be stopped. However, the power to issue guidance to local authorities will be retained, as will the requirement that local authorities must have regard to that guidance. This reflects the Government's policy on localism, and LBRO experience of the most effective ways of supporting change.

8.6. The consultation therefore demonstrated that the proposals to dissolve LBRO and transfer its continuing functions to government were agreed by stakeholders with just one caveat: that care would need to be taken when forming the Representative Steering Group to ensure its membership was acceptable and seen as fit for purpose by existing, and any new, stakeholders.

8.7. A full text of the government response has been published on the BIS website^[4].

9. Guidance

9.1. It is not expected that any guidance to end users – businesses or regulators – will be needed as a direct result of the dissolution of the LBRO under this legislation, since there will be no change to the processes or procedures to be followed for compliance.

9.2. However, there will be a need to communicate to all stakeholders to ensure: they are aware of the change of status of the LBRO and the new name for the unit, and they have knowledge of any amended contact details including changes to web and email addresses.

10. Impact

10.1. The impact on business will be negligible. The dissolution and transfer of functions of the LBRO should not impact upon the day to day workings of businesses with their regulators.

^[4] See: <http://www.bis.gov.uk/Consultations/future-of-local-better-regulation-office-and-primary-authority-scheme>

10.2. The impact on the public sector is an organisational one: the dissolution of a public body (NDBP) and transfer of continuing functions into a central government department. Staff currently working for the LBRO will be offered transfer terms into BIS under TUPE and it is expected that most will transfer with their posts. The expectation is that there will be a seamless continuity of service when the changes come into force.

10.3. An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1. The legislation does not regulate small business.

12. Monitoring & review

12.1. The changes implemented by this legislation will be considered successful if:

- a) there is a seamless continuity of service for the businesses and regulators;
- b) the Secretary of State and Welsh Ministers are aware of their new powers and duties and act upon them appropriately; and
- c) the estimated savings are achieved - (£6.4M over 10 years – as set out on page 3 of the Impact Assessment on page 3).

12.2. The SI will result in the dissolution of LBRO and the transfer of continuing functions to the Secretary of State (for Business, Innovation and Skills) or (as appropriate) the Welsh Ministers. A new unit will be formed within BIS to undertake the continuing functions. The unit will have internal agreements in place to make explicit some of the more complex areas of working brought about by the changes in legislation. These will include, but are not restricted to (i) an operating agreement setting out the role of the unit and of Ministers including the operation of the Primary Authority scheme, and (ii) an MOU between the Secretary of State and Welsh Ministers.

12.3. This new unit will be subject to internal review after 12 months to ensure that the changes made by this legislation are delivering the expected benefits. At that time it is expected that the proposed supporting internal agreements will also be reviewed for effectiveness and suitability.

12.4. Policy officials will review the management arrangements on a continuing basis to ensure they remain fit for purpose and provide understanding between the parties for best working practices.

13. Contact

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