

**EXPLANATORY DOCUMENT TO
THE ADVISORY COMMITTEE ON HAZARDOUS SUBSTANCES (ABOLITION)
ORDER 2012**

2012 No. [XXXX]

1. This explanatory document has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

The draft Order abolishes the Advisory Committee on Hazardous Substances (ACHS), established under section 140(5) of the Environmental Protection Act 1990, and makes repeals and revocations (including the repeal of the power to appoint a committee) associated with the abolition. The ACHS is one of the bodies listed in Schedule 1 to the Public Bodies Act 2011 which can be abolished by secondary legislation, using powers in that Act.

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

None.

4. Legislative Context

The draft Order is one of the first to make use of the power in section 1 of the Public Bodies Act 2011 to abolish a body listed in Schedule 1 to that Act. The draft Order also amends other legislation to remove references to the ACHS.

Amendments were tabled in debates in both Houses to prevent the ACHS from being listed in Schedule 1 of the Act but these were subsequently withdrawn, once the Government explained the rationale for their position and gave assurances about the successor body, in particular its independence from Ministers.

5. Territorial Extent and Application

This instrument extends to the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs, Lord Taylor of Holbeach, has made the following statement regarding Human Rights:

In my view the provisions of the Advisory Committee on Hazardous Substances (Abolition) Order 2012 are compatible with the Convention Rights.

7. Policy background

The abolition of the ACHS as a statutory Non Departmental Public Body, and its reconstitution as an expert scientific committee, is an outcome of the Government's 2010 review of public bodies. The ACHS must be abolished before its successor is put in place. 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.

Compliance with the purpose test in section 8 (1) of the Public Bodies Act 2011

The reform of the ACHS is also part of measures led by the Government Chief Scientific Adviser to increase the transparency, accountability, efficiency and effectiveness of scientific advisory bodies, for the delivery of independent and high quality scientific advice. By adhering to the Government Code of Practice for Scientific Advisory Committees, the successor body will remain independent, and where appropriate, retain the capacity to submit advice directly to Ministers.

The work of the successor 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 Chief Scientific Adviser, supported by his Science Advisory Council. This will provide greater scrutiny and co-ordination of scientific advice in the Department.

There is now less need for advice on domestic regulations given the advent of a directly applicable EU regime for regulating chemicals since the ACHS was established. However, there remains a need for general independent advice on hazardous substances, including on the aspects of this wider regime. This reform will give the successor body new, broader and more strategic and flexible terms of reference.

Taken together these changes will improve the continued exercise of the public functions of this body.

Compliance with the conditions in section 8 (2) of the Public Bodies Act 2011

Although the draft Order does not go beyond the abolition of the ACHS – the Minister considers that these conditions are met by virtue of the fact that 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 on the hazards and risks of chemicals in the environment. The governance arrangements that will support the Department's new expert scientific committees will ensure that they provide advice that is clearly independent from Government.

8. Consultation outcome

8.1 Defra started a consultation on 7 July 2011 on the future of the ACHS (www.defra.gov.uk/consult/2011/07/07/achs/), and asked for views to be expressed by 14 October 2011. The primary purpose of the consultation was to invite views on - (i) the proposed abolition of the ACHS as a statutory Non Departmental Public Body, using the powers contained in the Public Bodies Bill which was before Parliament at the time, following the Government's Arms Length Body Review; and (ii) the Government's preferred option to simultaneously reconstitute this body as a new expert scientific committee.

8.2 The three options in the consultation were:

- Option A Do not abolish the ACHS as an advisory statutory NDPB
- Option B Abolish the ACHS and put nothing in its place
- Option C Abolish the ACHS and reconstitute it as an expert scientific committee

The consultation also sought views on proposed new Terms of Reference, and a name, for the successor body.

8.3 Around 120 interests were invited to comment (in addition to publicising the consultation on the Defra and ACHS websites). There was limited public interest in the consultation as only 16 responses were received. 13 of the 16 respondents gave a view on the options in the consultation, and 11 of them favoured option C, which was the Government's preferred option. One of the 11 respondents could also support option A. Of the two other respondents (out of the 13), one favoured Option B and one favoured option A, but with clearer and extended responsibilities for the committee. Three respondents did not offer a view on the options, though one of them wished scientific advice to continue to be available.

In view of the strong support expressed during this consultation for the Government's preferred option, Defra is proceeding as planned to lay a draft Order to abolish the ACHS. No further consultation is necessary.

9. Guidance

9.1 The consultation document issued on 7 July also invited views on draft terms of reference and a name for the successor body. These aspects will be finalised after further discussion, in time for the first meeting of the successor expert scientific committee.

10. Impact

10.1 This Order has no impact on business, charities or voluntary bodies. It does not impose any new costs, administrative burdens or information obligations.

10.2 The impact on the public sector is neutral as a successor body will be established with the same level of Secretariat support from Defra.

10.3 An Impact Assessment has not been prepared for this instrument for the reasons mentioned above (and was not required for the consultation).

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The body which replaces the ACHS will continue to work openly, and papers for meetings will continue to be available, and members of the public and specialist chemical press and other stakeholders will be able to attend meetings. The terms of reference for the new committee will be kept under review, in line with Cabinet Office guidelines for such bodies. The oversight of the successor committee by the Defra Chief Scientific Adviser, supported by the Defra Science Advisory Council, will provide an additional level of peer review and scrutiny.

13. Contact

Patrice Mongelard at the Department for Environment, Food and Rural Affairs – Tel 0207 238 5719 or email patrice.mongelard@defra.gsi.gov.uk