

EXPLANATORY DOCUMENT TO
THE PUBLIC BODIES (ABOLITION OF THE DISABILITY LIVING
ALLOWANCE ADVISORY BOARD) ORDER 2013

2013 No. [DRAFT]

1. This explanatory document has been prepared by the Department for Work and Pensions and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.

2. Purpose of the Instrument

2.1 To abolish the Disability Living Allowance Advisory Board ('the Board') as part of the Government's public bodies reform programme.

2.2 The Board has no property, rights or liabilities, and therefore a transfer scheme under section 23 of the Public Bodies Act 2011 ('the Act') is not needed.

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

The Committee will note article 6 of this Order, which repeals the entry in Schedule 1 to the Act for the Board. This is permitted by section 6(5) of the Act, and that section is cited as one of the enabling powers in the Order. Article 6 is not a consequential amendment. Consequential amendments have a separate enabling power, namely section 6(1) of the Act.

4. Legislative Context

4.1 The Government is proposing to use the powers in the Act to abolish the Board as a non-departmental public body.

4.2 The Board was established by the Disability Living Allowance and Disability Working Allowance Act 1991 but upon the repeal of that Act the Board was continued in being by the Social Security Administration Act 1992.

4.3 The function of the Board is to give advice to the Secretary of State on such matters relating to the benefits Disability Living Allowance and Attendance Allowance as he may refer to the Board for consideration. That function is conferred by the Disability Living Allowance Advisory Board Regulations 1991. When those regulations came into force there was an additional function, namely to give advice to a medical practitioner who is an officer of the Secretary of State on any

case which he referred to the Board. That additional function no longer exists because its enabling power has been repealed.

- 4.4 The constitution of the Board is prescribed by its governing regulations. It must consist of a Chairman and not less than 11 and not more than 20 other members; the members must include people from the following fields: physiotherapy, occupational therapy, social work, nursing disabled persons, medical practice, and at least one member with experience of caring for a disabled person.
- 4.5 The proposal to abolish the Board was announced as part of the Public Bodies Bill Review (14 October 2010), in which the then Government proposed to increase radically the accountability, efficiency and transparency of all public bodies.
(<http://www.number10.gov.uk/news/public-body-review-published/>)
- 4.6 The 2010 Public Bodies Review applied the principle that public bodies should only exist at arm's length from ministers where there is a compelling reason for their functions to be carried out by an independent body. From the outset, the review examined whether the 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?
- 4.7 The Government's view is that, although the Board satisfied the three tests set out in paragraph 4.5, the performance of the Board's function is better suited to the Department for Work and Pensions' team of in-house medical advisers who can, in addition to providing input into policy development and operational matters, can also commission external advice as and when required.
- 4.8 The Board may only provide advice when asked to do so by the Secretary of State. Over the years since the Board was established the development of policy has become more collaborative with stakeholders, specifically with disability lobby groups and welfare groups so the need for the board to provide advice has gradually eroded. The Board's membership consists of some very eminent experts in their field and it is difficult to justify maintaining such a large team of eminent people when there is no immediate role for them. The Government believe that Ministers should be directly accountable for seeking advice from the most appropriate source and

should not rely upon a standing non-departmental public body. Ministers consider that the dissolution of the board will result in more direct control, accountability and responsibility for involving the right people at the right time in the development of Government policy. This does not preclude ministers from obtaining impartial expert advice but ensures that they are clearly and directly accountable for decision making on this issue.

- 4.9 As required by section 10 of the Public Bodies Act 2011, the UK Government has consulted the Scottish Government and the Department for Social Development in Northern Ireland. The Office of the Advocate General, the Wales Office and the Northern Ireland Office have all confirmed that in relation to this Order there is no requirement for the consent of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales.

5. Territorial Extent and Application

This Order extends to Great Britain. Separate but corresponding provision has been made for the Disability Living Allowance Advisory Board for Northern Ireland.

6. European Convention on Human Rights

The Minister for Disabled People, Esther McVey, has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Abolition of the Disability Living Allowance Advisory Board) Order 2013 are compatible with the Convention rights”.

7. Policy background

Activity during legislative passage

- 7.1 In debate during Committee Stage of the passage of the Act (on 11 January 2011), the Minister for Welfare Reform, Lord Freud explained in reaction to an amendment to request that the Board be retained :

“The board was established in 1991 to provide advice to the Secretary of State on matters relating to disability living allowance and attendance allowance. I am delighted to thank members of the board for the advice that they have provided over the years, which has contributed to policy debate in the department. However, as other noble Lords have pointed out, it should be noted that the board has not been asked to provide advice since November 2008 by the present or the previous Administrations.

Medical experts in the department are already providing the department, including disability living allowance decision-makers and departmental medical officers, with medical advice and medical input into policy decisions. When required, the department can obtain expert medical advice in specialist medical fields using "task and finish" groups. Members of Equality 2025, a public body, are well placed to provide personal insight into the effects of policy initiatives.

One of the things that has changed since 1991 is the creation of the Office for Disability Issues. The fact is that it has managed to organise a much wider range of channels from disabled people's organisations and groups which completely changes the environment in which this advisory body, among others, operates. It is in that context that we should look at this step.

I turn now to a specific point raised by the noble Lord, Lord McKenzie, about the reform of the DLA and the involvement of experts in that reform. We have a group of independent specialists in health, social care and disability, as well as disabled people. The group includes individuals from a range of professions such as occupational therapy, psychiatry, physiotherapy, social work, general practice, community psychiatric nursing, and representatives from RADAR and Equality 2025. We are pulling in from widespread channels a huge variety of relevant expertise. Let me finish my remarks on this particular board. This is a classic example of a body that was set up for a very good reason, but which has now outlived its useful life. Things have moved on since 1991 and the Public Bodies Bill will allow the Government to reflect those changes by abolishing this body."

What is being done and why

- 7.2 The Board is being abolished because the function that it performed is better suited to Department for Work and Pensions in-house medical advisers. The Department's team of in-house medical advisers, which provides specialist input into both policy development and operational matters, is a larger resource than is available through the health care professionals and medical practitioners who are Board members, and can also commission external advice as and when required.
- 7.3 Since the Department's medical advisers already provide advice to the Secretary of State, functions would be duplicated if the Board were to continue to exist.
- 7.4 In addition, the Board is in practice defunct. The current Secretary of State has not requested advice from the Board since his appointment in May 2010 and the last time the previous Secretary of State requested advice was in 2008.
- 7.5 Although the Department for Work and Pensions recognises the need to involve experts in the development of new policies it believes it will be more effective and cost efficient to seek any further advice on the

disability benefits through consultation and tailored engagement (such as time-limited advisory groups) rather than maintaining a non-departmental public body. For example:

(a) three consultation exercises have already been run in connection with the reform of Disability Living Allowance and its replacement benefit Personal Independence Payment for people of working age. This included an initial general consultation exercise, one on the draft assessment criteria and regulations and one on the detailed policy design and regulations. In addition, section 89 of the Welfare Reform Act 2012 requires the Secretary of State to lay before Parliament an independent report on the operation of assessments within 2 years beginning on the date on which the first regulations under section 80 of the Act come into force and within 4 years beginning with that date. Information about the consultation exercises is available on the DWP website <http://www.dwp.gov.uk/policy/disability/personal-independence-payment/#con> ; and

(b) a group has been set up to advise on the development of the assessment criteria for the new benefit, Personal Independence Payment, which replaces Disability Living Allowance for people of working age. Membership encompasses a wide range of expertise across health, social care and disability, including from occupational therapy, psychiatry, physiotherapy, social work, general practice, as well as representatives from Equality 2025 and Disability Rights UK.

7.6 Equality 2025 is an advisory non-departmental public body, comprising publicly appointed disabled people, who work across government to offer Ministers and senior government officials independent confidential strategic advice at the very early stages of policy development, as well as in-depth examination of new or existing policy areas. Equality 2025 is sponsored by DWP and is ultimately responsible to the Minister for Disabled People.

Efficiency, effectiveness, economy and accountability

7.7 In line with the requirements of the Act, a Minister may only make an order under section 1 of the Act abolishing a body if the Minister considers that the order serves the purpose of improving the exercise of public functions. In considering this, the Minister must have regard to efficiency, effectiveness, economy and securing appropriate accountability to Ministers. This has been considered and is addressed below.

7.8 The Department considers that this Order serves the purpose of efficiency because:-

(a) it will be more efficient to seek any further advice in the future on disability benefits through tailored consultation rather than by maintaining a standing non-departmental public body. An

example is the time-limited development group that has been set up to advise on the development of the new benefit, Personal Independence Payment; and

- (b) medical opinion, in the form of a larger resource than is available through the Board, is available from doctors in the Health, Work and Wellbeing Division of the Department or can be commissioned from them as and when it is needed; and
- (c) the views of the disabled community are available from numerous sources in the wider disability community including Equality 2025 which is another advisory non departmental public body sponsored by the Department and all the members of whom are themselves disabled people.

7.9 The Department considers that this Order serves the purpose of effectiveness because:-

- (a) the current Secretary of State has not requested advice since his appointment in May 2010 and the last time that the previous Secretary of State requested advice was in 2008; and
- (b) the Board is in practice defunct.

7.10 The Department considers that this Order serves the purpose of economy because abolition of the Board could save the Department money on fees and expenses (approximately £20,000, equivalent to about £5000 a year, over the current spending review period). The Board also required a permanent secretariat function supplied by the department and was required to produce an Annual Report.

7.11 The Department considers that this Order reaffirms the position of securing accountability to Ministers because the views and interests of the wider disabled community including groups representing disabled people and groups of disabled people are already being effectively sought by the Minister and appropriately represented to the Minister via Equality 2025 as well as by medical professionals within the Department. In fact, the abolition of the Board will increase accountability because obtaining advice from in-house medical advisers will result in more direct control, accountability and responsibility for involving the right people at the right time in the development of Government policy.

7.12 Also in line with the requirements of the Act, an order under the Act may not remove any necessary protection and may not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise. The Department does not consider that the Board gave any protection or conferred any right or freedom. Whilst the Department recognises that the Board performed a positive role, the Department also considers that

the same positive role will continue to be performed in the future, as and when it is needed, via Equality 2025, medical experts within the Department, and task and finish groups.

The Order

- 7.13 This Order abolishes the Board. There is no transfer scheme under section 23 of the Act.
- 7.14 The Schedule to the Order makes a number of amendments to both primary and secondary legislation which are consequential upon the abolition of the Board. It repeals the enabling section for the continued existence of the Board and revokes the Regulations that govern the Board. Other consequential amendments remove reference to the Board in secondary legislation.

Consolidation

- 7.15 This Order repeals section 175 of the Social Security Administration Act 1992. Informal consolidation will be included in due course in the Department's "The Law Relating to Social Security" (the Blue Volumes) which is available on the internet at no cost to the public. <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

- 8.1 The Act requires a Minister to consult such persons as appear to the Minister to be representative of interests substantially affected by the proposal. In relation to this Order, the only stakeholders affected by the proposal are the Secretary of State for Work and Pensions (as the sole recipient of advice) and the Board members themselves. Since no other persons are affected by the proposal, a public consultation was neither required nor necessary.
- 8.2 In line with the requirements of the Act, the Minister for Disabled People has consulted the body to which the proposal relates. Departmental senior officials discussed the future of the Board with the Board's Chair on 25 June 2010 at which juncture the Board's Chair accepted that the Board had probably run its course and that it could be replaced by task and finish groups. On 14 December 2010 the Minister for Disabled people met the Chair and Board members to explain the department's view on the future of the Board and to consult on Board Members' views and answer members' questions. At that meeting the Board expressed its concern about independent scrutiny of the Department's policy towards disabled people. The Minister responded that, as well as the scrutiny exercised by both Houses of Parliament (with relevant expertise in the Lords in particular) and by the system of Select Committees, Equality 2025's remit allows it to provide both advice and scrutiny. Board members said that they felt

they could consider matters in a measured way because as members of a multi-disciplined body they could not lobby on behalf of their own interest. The Minister responded that she believed in consultation, that the lobby was giving reasoned views, and that measured views could also be provided by ad hoc groups.

- 8.3 One of the amendments being made by this Order is that the reference to the Board in Schedule 1 of the Public Contracts (Scotland) Regulations 2012 (a Scottish instrument) is being removed. In line with the requirements of the Act, the Department has consulted with the Scottish Government on that amendment and the Scottish Government is content for the amendment to be made.
- 8.4 Another of the amendments being made by this Order is that the reference to the Board in the Northern Ireland Assembly Disqualification Act 1975 is being removed. The Department has consulted with the Northern Ireland Department for Social Development (DSDNI) and the Northern Ireland Office (NIO) in relation to that amendment. DSDNI has confirmed that no Northern Ireland department exercises functions in relation to disqualification from the Northern Ireland Assembly because that matter is the responsibility of the Westminster government. Both DSDNI and NIO are content for the amendment to be made.
- 8.5 The Department has liaised with the Wales Office who have confirmed that the Welsh Ministers do not exercise any functions relating to any matter in connection with this Order.
- 8.6 There is no requirement under existing legislation to consult the Social Security Advisory Committee although the department has notified the Committee that the Order is to be made.

9. Guidance

The nature of this Order, ie the abolition of the Board, makes it unnecessary to publish guidance in relation to it. The change will not affect the delivery of services.

10. Impact

- 10.1 This Order abolishes the Board but the functions of the Board will continue to be exercised in a more efficient manner as described in paragraphs 7.10 and 7.11 of this explanatory document. Therefore, the Secretary of State's access to advice, and to technical and operational input, in the field of disability benefits will not be diminished by the change.
- 10.2 The change will have no impact on businesses or civil society organisations.

10.3 The impact on the public sector is low or negligible because the Government's ability to obtain specialist input into both policy development and operational matters in connection with disability benefits will be maintained.

10.4 A full impact assessment has not been published for this Order.

11. Regulating Small Businesses

The legislation does not apply to small businesses.

12. Monitoring and Review

Not applicable.

13. Contact

Geraldine D'Arcy at the Department for Work and Pensions Tel: 020 7449 5283 or email: Geraldine.D'Arcy@dwp.gsi.gov.uk can answer any queries regarding the instrument.