

**EXPLANATORY DOCUMENT TO  
THE PUBLIC BODIES (ABOLITION OF BRITISH SHIPBUILDERS)  
ORDER 2013**

**2013 No. \*\*\*\*\***

1. This explanatory document has been prepared by the Department for Business, Innovation and Skills ('the Department') and is laid before Parliament under section 11(1) of the Public Bodies Act 2011 ('the PBA 2011').
2. **Purpose of the Instrument**
  - 2.1 This instrument abolishes British Shipbuilders ('BS') and its subsidiaries. This instrument also transfers the property, rights and liabilities of BS and its subsidiaries to the Secretary of State.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Government is proposing to use the powers in the PBA 2011 to abolish BS and its subsidiaries and to transfer the property, rights and liabilities of BS and its subsidiaries to the Secretary of State.
  - 4.2 Section 1 of the PBA 2011 permits a Minister to abolish by order a body or office specified in Schedule 1. BS is specified in Schedule 1. Section 23 of the PBA 2011 permits a Minister, in connection with an order under section 1, to make a scheme for the transfer of property, rights and liabilities.
  - 4.3 BS was established by section 1 of the Aircraft and Shipbuilding Industries Act 1977 ('the ASIA 1977'). Legislation is required to abolish BS.
  - 4.4 As required by sections 9 and 10 of the PBA 2011, the UK Government is seeking consent to this order from each devolved administration.
  - 4.5 This order will not be made until consent is obtained from the Northern Ireland Assembly (in accordance with section 9(3) of the PBA 2011), the Scottish Parliament (in accordance with section 9(1) of the PBA 2011) and the Welsh Ministers (in accordance with section 9(7) of the PBA 2011).
  - 4.6 The Northern Ireland consent requirement in section 9(3)(a) applies because this order makes provision which would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of the Assembly.

- 4.7 BS is not an excepted or reserved matter within the Northern Ireland Act 1998. The abolition of BS by this order, insofar as BS is able to exercise powers in Northern Ireland (including under section 3 of the ASIA 1977), falls within the legislative competence of the Northern Ireland Assembly.
- 4.8 The Scotland consent requirement in section 9(1)(a) applies because this order makes provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of the Parliament.
- 4.9 BS is not a reserved matter within the Scotland Act 1998. The abolition of BS by this order, insofar as BS is able to exercise powers in Scotland (including under section 3 of the ASIA 1977), falls within the legislative competence of the Scottish Parliament.
- 4.10 The Welsh Ministers consent requirement in section 9(7)(b) applies because this Order makes provision which could be made by the Welsh Ministers.
- 4.11 This order makes a consequential amendment to the Local Government, Planning and Land Act 1980 to remove BS from Schedule 16 to that Act. The Welsh Ministers, in relation to Wales, have power to remove entries from Schedule 16 to that Act. On this basis, in relation to Wales, the Welsh Ministers could make the consequential amendment to the Local Government, Planning and Land Act 1980 contained in this order.
- 4.12 This order abolishes BS from the day after the day on which this order is made. This order makes consequential amendments and an amendment to Schedule 1 to the PBA 2011.
- 4.13 Section 42 of the ASIA 1977 established the Aircraft and Shipbuilding Industries Arbitration Tribunal ('the Tribunal'). The Tribunal is also being abolished by an order to be made under the PBA 2011. Both the Tribunal order and this order are being laid in Parliament at the same time. However the orders are not dependent on each other so have not been combined in an omnibus order.

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

- 5.1 This instrument applies to all of the United Kingdom.

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

- 6.1 Michael Fallon MP, Minister of State for Business and Enterprise has made the following statement regarding Human Rights:

“In my view the provisions of the Public Bodies (Abolition of British Shipbuilders) Order 2013 are compatible with the Convention rights.”

## **7. Policy background**

- 7.1 The proposal to abolish BS was announced as part of the Cabinet Office's Public Bodies Review on 14 October 2010. Legislation is required to abolish BS. The 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.
- 7.2 BS is a public corporation that owned and managed large parts of the British (but not Northern Irish) shipbuilding industry. BS was established by section 1 of the ASIA 1977.
- 7.3 BS subsequently privatised all of its active shipbuilding subsidiaries and the one remaining engine manufacturer. BS 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.
- 7.4 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.
- 7.5 It is unsatisfactory that a statutory corporation established for a specific purpose, namely the nationalisation, rationalisation, and subsequent re-privatisation 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.
- 7.6 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*<sup>1</sup> 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

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<sup>1</sup> *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.

basis that a Bill to transfer liabilities to the Secretary of State would provide a long term solution for managing the liabilities of BS.

- 7.7 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.
- 7.8 A firm of solicitors manage the ongoing 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.
- 7.9 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.

#### Section 8 of the PBA 2011

- 7.10 Section 8 of the PBA 2011 states that a Minister may make an order under the PBA 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.

7.11 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.

7.12 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.

#### Interest in the Houses of Parliament

7.13 On 19 July 2010, the Secretary of State for Business, Innovation and Skills stated in the House of Commons: "The British Shipbuilders Corporation will be abolished next summer."

7.14 Lord Taylor of Holbeach also referred, on 1 December 2010 during the Lord's Committee Session on the Public Bodies Bill, to the purpose behind abolishing BS as a corporation and the transfer of the handling of BS' residual liabilities.

### **8. Consultation outcome**

8.1 A 12 week consultation on the proposal to abolish BS was launched on 2 February 2012 and closed on 26 April 2012. The consultation was a single consultation covering the proposed abolition of BS and transfer of residual liabilities to the Secretary of State. The consultation was carried out in accordance with sections 10 and 11 of the PBA 2011.

8.2 The consultation document was made widely available to all interested stakeholders and the wider public on the Department website. The Department also sent the consultation document directly to 23 organisations and to the devolved administrations.

8.3 The Department received four responses. Two expressed no concerns arising from the proposed abolition. The other two responses were from the London and Glasgow offices of the same firm of solicitors. Both sought reassurance on

clarity of the responsibilities which would pass to the Secretary of State. The Government's formal response to the consultation has been published on the Department website at: [www.bis.gov.uk/consultations/](http://www.bis.gov.uk/consultations/).

- 8.4 The responders expressed concern that information and statistics about the impact of asbestos exposure in the industry would no longer be published. The Department confirmed that details of the Department's annual spend on the liabilities would appear within its Annual Report and Accounts.
- 8.5 The responders highlighted that BS has dealt with claims against some other shipbuilding companies who were the parent companies of nationalised shipbuilding companies, including Carlsburn Investments Limited (formerly Scott's Shipbuilding & Engineering Company Limited) and Lithgows Limited. BS has also dealt with claims against certain companies that were sold out of nationalisation, such as Barclay Curle Limited.
- 8.6 The responders wanted assurance that the arrangements for transferring responsibility for future claims would continue. It was confirmed that the transfer of liabilities will encompass all current and future claims relating to those liabilities. The Department confirmed that where a company, in accordance with the contract under which it was sold, is entitled to an indemnity, the liability to indemnify will pass to the Secretary of State. Neither of Carlsburn and Lithgows were ever nationalised but BS agreed to extend a contractual right to indemnify their liabilities as employers or as occupiers of shipyards. However, it should be noted that Carlsburn and Lithgows are indemnified for their own acts and omissions, but not as parent companies.
- 8.7 Responders also sought clarification on the arrangements for on-going Court action after the transfer date. The Department confirmed that this order will transfer all responsibility for any claims which are on-going at the time this order is made.
- 8.8 Responders requested that the order should list all of BS' subsidiary companies. The Department confirmed that this was not necessary as the transfer of liabilities will include all subsidiaries within the meaning of the Companies Act 2006. It will also cover any subsidiary which was dissolved before this order is made. But for clarification the Government response to the consultation included a list of companies whose liabilities will transfer to the Secretary of State or that the Government has agreed a contractual indemnity with.
- 8.9 Responders said that protection must be maintained for claimants who develop industrial disease where exposure occurred during their employment with a 'sold subsidiary' company during the period of nationalised ownership, which has given rise to a 'gap in coverage' problem in the past. The Department confirmed that the abolition of BS will not have any impact on the status of the claims cohort identified as having a gap in coverage. The claims involved are those made against former BS companies that were sold with their liabilities during the privatisation, and which then subsequently became

insolvent (as did their insurer Chester Street Insurance Holdings Ltd). The Financial Services Compensation Scheme does not compensate former employees in respect of periods of employment with nationalised industries (such as BS) and the Department assumed liability for this compensation by way of the Minute to Parliament in 2003. PwC administer the Chester Street Estate and they in turn contract Capita to undertake the claims handling for the claims involved.

## **9. Guidance**

9.1 Not applicable

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 Abolition of BS will provide annual savings of approximately £15,000 for the public sector as BS will not require company secretarial services after it is abolished. There will also be administrative savings as separate accounts for BS will no longer be required to be prepared and laid before Parliament.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & Review**

12.1 Monitoring and review of this order is not necessary as no further action is required once this order comes into force and transfers the property, rights and liabilities of BS to the Secretary of State.

## **13. Contact**

Peter Joyce at the Department for Business, Innovation and Skills Tel: 020 7215 1165 or email: [peter.joyce@bis.gsi.gov.uk](mailto:peter.joyce@bis.gsi.gov.uk) can answer any queries regarding the instrument.