



Post-Legislative Assessment of the Parliament (Joint Departments) Act 2007

Presented to Parliament
By the Lord Privy Seal and Leader of the House of Commons
By Command of Her Majesty
January 2011

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Introduction

This assessment has been prepared by the Office of the Leader of the House of Commons and the authorities of the House of Commons, as part of the post-legislative scrutiny process detailed in the document '*Post-legislative Scrutiny – The Government's Approach*' (Cm 7320).

The Parliament (Joint Departments) Bill was introduced on 23 January 2007 and received Royal Assent on 19 July 2007. No amendments were made to the Bill during its passage.

The objectives of the Act

The legislation was intended to create a framework for the employment of staff in Joint Departments of both Houses of Parliament, bearing in mind that neither the House of Commons (Administration) Act 1978 nor the Parliamentary Corporate Bodies Act 1992 made such provision.

The legislation was designed to facilitate the creation of PICT (Parliamentary Information and Communications Technology) as the first such Joint Department, but also to put in place an enabling mechanism for the future. There was no specific intention that there should be more Joint Departments, but the issue remains under review while the administration of both Houses consider ways in which resources might be used more economically.

Implementation

The Act came into force when it received Royal Assent on 19 July 2007. There have been no subsequent amendments to the Act.

Section 1 – Joint departments of the Houses of Parliament

- (1) The Corporate Officers may establish joint departments of the Houses of Parliament.*
- (2) A joint department has the functions that the Corporate Officers allocate to it from time to time.*
- (3) The Corporate Officers may divide, amalgamate or abolish joint departments.*
- (4) Their powers in connection with joint departments include power—*
 - (a) to acquire, hold, manage and dispose of land and other property of any description;*
 - (b) to enter into contracts;*
 - (c) to do anything reasonably necessary or expedient for or incidental to their powers.*
- (5) In this Act—*

“Corporate Officers” means the Corporate Officer of the House of Commons and the Corporate Officer of the House of Lords;

“joint department” means a department established under this section.

Section 1 (1) and (2) were used in 2007/08 to create the Parliamentary Information and Communications Department (PICT) under the Act. Those provisions have not as yet been used to create any other joint department and no use has been made of section 1(3) to divide, amalgamate or abolish joint departments.

Section 2 – Exercise of functions of the Corporate Officers

- (1) The Corporate Officers’ functions in connection with joint departments are exercisable by them only jointly.*
- (2) Subsection (3) applies to—*
 - (a) the exercise of functions under section 1(1) or (3);*
 - (b) the exercise of functions under section 1(2), if it changes the overall character of the services provided by the joint department.*
- (3) In those cases—*
 - (a) the Corporate Officer of the House of Commons may act only with the approval of the House of Commons Commission;*

(b) the Corporate Officer of the House of Lords may act only in accordance with recommendations made by the House Committee of the House of Lords and approved by that House.

(4) In subsection (3)(b) the reference to the House Committee includes a reference to any committee the House of Lords designates instead of that Committee for the purposes of this section.

The Corporate Officer of the House of Commons complied with section 2(3)(a) by obtaining the approval of the House of Commons Commission in November 2007.

The Corporate Officer of the House of Lords complied with section 2(3)(b) by referring the proposal to create PICT to the House Committee which reported to the House on 5 December 2007 (HL Paper 20). A motion was approved by the House of Lords on 13 December 2007.

For the purposes of sub-section (2)(b) the Corporate Officers defined the “the overall character of the services provided by the joint department” as:

To provide information and communications technology services to both Houses of Parliament and to carry out such functions related to those services as may be allocated to it by the Corporate Officers from time to time.

This formula was approved by both Corporate Officers in accepting the recommendations of the Joint Department Implementation Board in November 2007 and approved shortly afterwards by the House of Commons Commission. It provides a clear basis for determining the interpretation of “changes the overall character of the services provided by the joint department” in sub-section (2)(b). In other words a decision to put functions other than those related to information and communications technologies into an existing joint department would require approval of the House of Commons Commission and approval of the House of Lords on the recommendation of an appropriate committee, in the same way as a decision to create a new joint department.

Section 2(4) reflects the fact that, unlike the House of Commons Commission, the House of Lords House Committee is a non-statutory body, appointed on the decision of the House itself. It follows from this that the House of Lords could alter the name and composition of its main management committee without legislation. To date this has not happened.

Section 3 – Staff

(1) The staff of a joint department are appointed by the Corporate Officers and must be employed under a contract of employment with them.

- (2) *The Corporate Officers must ensure—*
- (a) *that the pay of staff is kept broadly in line with pay in the Home Civil Service;*
 - (b) *that, so far as is consistent with the requirements of both Houses of Parliament, the other conditions of service of staff are kept broadly in line with those in the Home Civil Service;*
 - (c) *that the pensions and similar benefits of existing and former staff are kept in line with the provisions of the principal Civil Service Pension Scheme, as it applies for the time being to the Home Civil Service.*
- (3) *Subsection (2)(c) does not apply to existing or former staff if provision for pensions and similar benefits—*
- (a) *was made for them under another scheme before they joined the joint department, and*
 - (b) *continues to be made under that scheme in respect of their service in that department.*

The arrangements set out in section 3 are reflected in all of the recruitment and employment practices of PICT as a joint department. Practical arrangements were set out in the *'Report to the Corporate Officers'* in October 2007, of the Joint Department Implementation Board; and approved by the Corporate Officers at that time. The Corporate Officers wrote to the Director of PICT on 28 March 2008 asking her "to exercise certain functions on our behalf as the joint employer of staff in PICT and also to manage the services provided by the Joint Department and to work with us and the two management boards on issues relating to these services".

The functions delegated to the Director of PICT in an annex to this letter included ensuring compliance with section 3 of the Joint Departments Act. Therefore, the two Corporate Officers retain personal responsibility for the appointment and management of the Director, but otherwise rely on the Director to exercise employment responsibilities on their behalf. Compliance with this section has been maintained in practice by aligning joint department pay and conditions broadly with the House of Commons service, which itself is kept broadly in line with the home civil service by the House of Commons (Administration) Act. Compliance with section 3(2)(c) is ensured by extending the House of Commons Staff Pension Scheme to include employees of the joint department.

The new arrangements came into effect on 1 April 2008 and have operated smoothly for the first two years without giving rise to any particular difficulties relating to the effects and interpretation of the Joint Departments Act.

Section 4 – Staff transfers

The Schedule (staff transfers) has effect. (Schedule not reproduced here)

The schedule ensures that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I.2006/246) ('TUPE') apply to transfers of staff under the Act, in so far as those Regulations would not apply in any event.

Following the approvals referred to in the commentary on section 2 above a standard 'TUPE' transfer was planned and implemented, with the appropriate notice and consultation and a target date of 1 April 2008 on which an agreed set of staff transferred from the employment of each House to employment by the two Corporate Officers jointly under the JDA.

As with any transfer of this kind involving staff with markedly different terms and conditions, significant effort was required to harmonise employment arrangements in permissible ways (i.e. protecting rights under TUPE), but the process was largely trouble free.

Section 5 – Application of enactments

- (1) An enactment applying in relation to persons employed under a contract of employment with the Corporate Officer of the House of Lords applies in the same way in relation to staff of a joint department.*
- (2) For the purposes of any enactment relating to either House of Parliament, anything done by or on behalf of a joint department or in relation to it is done by or on behalf of each House or in relation to each House (as the case may be).*
- (3) This section applies to enactments whenever passed or made.*

Preparatory work for the Bill had exposed minor differences in the application of various employment law enactments as between the staff of the two Houses. The purpose of section 5(1) and (3) together was therefore to establish that all such previous and subsequent enactments would apply to the joint department as they apply to the House of Lords. The House of Lords was chosen as the standard because in the cases of minor difference application to the House of Lords had generally conformed more to application to employees generally. No issues have yet arisen from this provision.

Section 5(2) and (3) together were designed to establish clarity about the application to a joint department of enactments such as the Freedom of Information and Data Protection Acts which are applied separately to the two Houses. As with employment law changes, section 5(3) ensures that there is clarity about how any future such enactments applied to the two Houses separately.

The *'Report to the Corporate Officers'* of the Joint Department Implementation Board in October 2007 considered the implications in detail, particularly in relation to the Freedom of Information (FOI) Act 2000, and proposed working arrangements to cover foreseeable cases.

Between 1 April 2008 and 1 March 2010 there were 27 FOI requests involving information held by PICT. Of these eight concerned information relating to the House of Commons, one concerned information relating to the House of Lords, and the remainder (18 requests) related to information of joint interest. Information held by PICT in relation to one House only is not regarded as 'held' by the other House for FOI purposes. In accordance with the arrangements devised by the Joint Department Implementation Board, the FOI officers of the two Houses conferred on appropriate responses to the requests of joint concern.

Secondary Legislation

The Act does not contain any powers to make delegated legislation.

Legal Issues

No legal issues have arisen since the Act received Royal Assent.

Post-legislative Reviews

The Act has not been reviewed. However, the services provided under the Act are regularly examined. In addition, PICT publishes an annual Business Plan and an annual report. PICT is raised in debates in the both Houses and in written parliamentary questions.

Assessment of the Act

The Act has worked well to date and no difficulties have arisen that were not anticipated and dealt with in the drafting.

The framework was intended to be flexible and did not tie the two Houses to administrative arrangements that might turn out to be transient.

At present there is only one Joint Department under the Act and it is one with a specific functional profile linked to information and communications technologies. As noted above, any significant change to that profile would require decisions by the House of Commons Commission and by the House of Lords, but would not require new legislation.

While no further joint departments have been proposed at this stage, there are two mechanisms under the Act through which joint departments could be created in the future, without the need for further legislation:

- The creation of further joint departments with specific functional responsibilities in parallel to PICT; and
- The transfer of additional responsibilities into the existing Joint Department without creating additional joint departments.



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