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Consultation on the future of the Advisory Committee on Hazardous Substances

7th July 2011

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Chapter 1: Purpose, scope and process of consultation

1.1 Shortly after the 2010 election, in order to reduce the numbers and costs of arms-length bodies and improve accountability, the Government announced that it would review all public bodies against three tests:

- does it undertake a precise technical operation?
- is it necessary for impartial decisions to be made about the distribution of taxpayers' money? and
- does it fulfil a need for facts to be transparently determined, independent of political interference?

The results of this review of arms-length bodies were announced in October 2010¹.

1.2 The Public Bodies Bill is the main legislative vehicle for implementing the outcome of the Government's review of public bodies. Some public bodies are non-statutory, however, so do not need legislation to make the required changes. The Bill is mainly enabling legislation; it allows Ministers to make Orders to abolish or make certain changes to the statutory public bodies listed in the various schedules to the legislation.

1.3 The Public Bodies Bill² lists public bodies in appropriate schedules, according to the Government's proposed reform. The Advisory Committee on Hazardous Substances (ACHS) is in the list of bodies in Schedule 1 – bodies which can be abolished by secondary legislation. Such legislation cannot be made, however, without consultation and Parliament's consent.

1.4 The purpose of this consultation is therefore to seek views on the proposed abolition of the ACHS as a statutory Non Departmental Public Body; and on the Government's preferred option to simultaneously reconstitute this body as a new expert scientific committee. Ministers wish to consider respondents' views on their proposals, before reaching a final decision. The Government is willing to consider alternatives to its preferred option.

1.5 The effect of the Public Bodies Bill, which is currently before Parliament, will be to give Ministers the power to abolish the ACHS. The exercise of this power will require an Order to remove the legislation setting up the ACHS, as well as references to the ACHS in legislation. This consultation is not about that Order.

1.6 This consultation is about the (exercise of the) power in the Bill to abolish the ACHS, and about the successor arrangements which Government wishes to put in place to maintain the flow and independence of advice on the hazards and risks of chemicals in the environment, and enhance the work under the proposed new committee, in a changing landscape for scientific advisory bodies and for the regulation of chemicals.

¹ <http://www.defra.gov.uk/news/2010/10/14/public-bodies/>

² http://www.publications.parliament.uk/pa/bills/cbill/2010-2012/0188/cbill_2010-20120188_en_1.htm

1.7 Expert scientific committees are set up administratively – they are not statutory bodies and are not addressed in the Public Bodies Bill. However, to set up such a body to replace the ACHS, would be at odds with the will of Parliament – expressed in the Environmental Act 1990 - that such a body be statutory with its functions prescribed in that Act. This is why we would need to abolish the ACHS and remove its associated statutory duties and functions, before a non-statutory replacement can be established.

1.8 There are other reasons for reviewing the role and remit of the ACHS: namely, against a background of diminishing scope for domestic legislation in the sphere of hazardous substances since the adoption of the EU Regulation for the Registration, Evaluation, Authorisation and Restriction of Chemicals³ (REACH); and to align the committee's work with the wider landscape for Defra, and other Government, scientific advisory committees.

1.9 We consider that this proposal does not require an Impact Assessment (IA). It does not impose any new costs, administrative burdens, or information obligations. Similarly, given that the Government's preferred policy option is to reconstitute the committee as an expert scientific committee, an Equality Impact Assessment (EqIA) is not required. This consultation therefore does not include an IA or EqIA.

Deadline for comments

1.10 The closing date for this consultation is **14 October 2011**. Responses should be sent to the following email address: patrice.mongelard@defra.gsi.gov.uk or by post to Patrice Mongelard, Defra, Area 2A, Nobel House, 17 Smith Square, London SW1P 3JR.

Confidentiality

1.11 In line with Defra's policy of openness, at the end of the consultation period, copies of the responses we receive will be made available to the public in the Defra HQ library. Your response will be published in a summary of the responses to this consultation. If you do not consent to this, you must clearly request that your response should be treated as confidential. However, any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. Respondents should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000.

1.12 This consultation complies with HM Government's Code of Practice on Consultation which can be found at: <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

³ EC No 1907/2006. See http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm

Chapter 2: Background on Advisory Committee on Hazardous Substances and the changing context for its work

Advisory Committee on Hazardous Substances

2.1 The Advisory Committee on Hazardous Substances was established in 1991 under Section 140 of the Environmental Protection Act (EPA 90). Section 140(5) of the EPA 90 requires that the ACHS be consulted on any proposal to introduce regulations under Section 140 to control injurious substances or articles. Section 142(3) of the EPA 90 requires that the ACHS be consulted on any proposal to introduce an Order under that Section requiring information about potentially hazardous substances.

2.2 In April 2001, the ACHS adopted the additional role of advising the UK Chemicals Stakeholder Forum. In 2005 the remit of the ACHS was widened to include nanomaterials.

2.3 The ACHS current **Terms of Reference**, are:

a. *To advise the Secretary of State for the Environment, Food and Rural Affairs, the Minister of the Environment, Northern Ireland, the Scottish Ministers, and the First Minister, National Assembly for Wales and other Ministers (hereafter collectively known as "the Ministers") as appropriate on the exercise of the power to make Regulations under Section 140 of the Environmental Protection Act 1990 to prohibit or restrict the importation, use, supply or storage of specified substances or articles including nanomaterials*

b. *To advise the Ministers on the exercise of the power to make Regulations under Section 142 to obtain information about potentially hazardous substances including nanomaterials*

c. *To advise the UK Chemicals Stakeholder Forum and other bodies as appropriate on criteria, prioritisation and risk assessment of potentially harmful substances including nanomaterials*

d. *To advise the Ministers, the UK Chemicals Stakeholder Forum and other bodies as appropriate on research needs and the development of relevant indicators.*

2.4 The statutory advisory function of the ACHS under Section 140(5) of the EPA 90, with regard to domestic regulations has been invoked thirteen times. The subject matters of these regulations include lead shot and the control of ozone-depleting substances. Some regulations related to the implementation of the marketing and Use of Dangerous Substances Directive (76/779/EEC), and have now been superseded by REACH. No regulations have been made under Section 142 of the Act.

Changing regulatory context for work of ACHS

2.5 The regulatory landscape for chemicals has changed since the ACHS was established twenty years ago, principally with the adoption of REACH, which, as an EU regulation, applies directly in all EU Member States without the need for transposition into national legislation. There will be no future

need for separate UK chemicals control legislation while REACH remains in force, except where an emergency control is needed under the REACH Article 129 'safeguard clause'.

2.6 At the same time the REACH regime has opened up new areas where the Committee's scientific expertise can be brought to bear to support UK policy in this wider context.

Changing scientific advisory context for work of ACHS

2.7 To ensure that any Arms Length Body Review reforms are carried out in accordance with the Principles of Scientific Advice to Government, the Government, on the advice of the Chief Scientific Adviser, Professor Sir John Beddington, agreed that, where departments were considering reconstituting bodies as expert scientific committees, they should put in place a number of safeguards. Such committees must provide independent advice in line with the Government's Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees. Escalation routes must be in place to ensure advice from expert scientific committees can be submitted directly to Ministers, as appropriate. For departments who are significant users of science and/or have a large number of expert scientific committees or other science advisory bodies – it is good practice to have an overarching departmental Science Advisory Council with oversight of all such scientific advisory bodies.

2.8 On 14 October the Government announced its intention to reconstitute the majority of Defra's advisory bodies as committees of experts. In addition there was a review in 2010 of the Science Advisory Council of Defra⁴, led by Professor Charles Godfray. Consequently, as a result of the advice from the Government Chief Scientific Adviser, and the recommendations from the Godfray review, there was a statement made to Parliament on 26 January 2011⁵ by the Defra Secretary of State, Caroline Spelman.

2.9 The Secretary of State's statement recorded that the Arms Length Body Review had sought to ensure better co-ordination between scientific advisory bodies. As part of this exercise Defra had reviewed the role and functions of its eighteen scientific and technical advisory bodies. These would continue to provide independent advice but, in Defra, the scientific committees would now work more closely with the Science Advisory Council, and the Chief Scientific Adviser. The Council would support the Chief Scientific Adviser in oversight of all Defra scientific committees, and in providing advice and challenge on the science underpinning a range of Defra policies, including scrutiny of the bodies providing scientific advice to the department. This would ensure that Defra's evidence programme meets the needs of the department.

⁴ <http://sac.defra.gov.uk/2010/11/02/scientific-advice-to-defra-praised-in-independent-review-2-november-2010/>.

⁵ <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110126/wmstext/110126m0001.htm#11012644000014>

Chapter 3: Options for consideration, Government's preferred option and rationale

3.1 There are three options under consideration:

Option A Do not abolish the ACHS as an Advisory 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.

3.2 Option A fails to recognise that the landscapes for the regulation of chemicals, and for scientific advisory committees have changed significantly. The opportunity to take account of these changes and reform the ACHS would be lost.

3.3 Option B is counter to the importance which Ministers and society attach to the flow of independent, impartial and expert advice where necessary to protect the environment and public health.

3.4 Option C is the Government's preferred option – for a number of reasons:

- Defra is putting its scientific advisory committees on a new footing to strengthen its science and evidence base to support policy. The reform of the ACHS is part of this process which has been guided by advice from the Government Chief Scientific Adviser, and an independent review from an eminent scientist.

- Non-statutory advisory bodies are inherently more flexible and nimble and can be adapted, for example to acquire new terms of reference, new membership, new expertise – aspects which sometimes can become fossilised in legislation, with limited opportunity for parliamentary time to make changes.

- Statutory bodies can be overtaken by legislative developments – particularly where these stem from Europe. For example it is the case that for the regulation of hazardous substances the field is now largely occupied by the EU REACH regime, (obviating the need for domestic regulations). This reform reflects the position that we no longer require the ACHS to discharge statutory obligations with regard to domestic regulations.

- The committee retains an independent and technical advisory function in a sensitive area which Government requires, which society values, and which is best delivered through other arrangements, and for which the status of expert scientific committee best describes its role and function.

- The reconstitution of advisory NDPBs as expert scientific committees is about improving transparency and accountability, and enabling Defra to have continued access to independent, authoritative and cost effective advice to support Government policies.

3.5 The Government would welcome responses to the following questions:

Question 1

Do you support the Government's preferred option, to abolish the Advisory Committee on Hazardous Substances, and replace it with an expert scientific committee, for the reasons explained?

Question 2

If you do not support the Government's preferred option, what is your preferred alternative?

Question 3

Do you have any additional points you would wish Ministers to consider before making their final decision?

Chapter 4: Forward look - the Expert Scientific Committee on Hazards and Risks of Chemicals in the Environment

4.1 The current Terms of Reference for the ACHS are set out in paragraph 2.3. With the abolition of the ACHS, the links with Sections 140 and 142 of the Environmental Protection Act 1990 would disappear. The scope and requirement for domestic regulations on chemicals is now much reduced, and there does not appear to be a need for a specific statutory provision for a committee to give advice on such regulations.

4.2 However, looking ahead to the broader regulatory and scientific advisory committee landscape, Defra will continue to have science, evidence and policy support requirements relating to the protection of the environment, and human health via the environment from potentially hazardous chemicals. Ministers will continue to have a need for access to independent, expert and impartial advice, in this area.

4.3 As noted in the Secretary of State's statement on 26 January 2011, there is now a more integrated mechanism to strengthen the science and evidence base to support policy across Defra. The new committee would be an integral part of this new landscape. As noted in paragraph 2.7, there are safeguards to put in place for bodies which are reconstituted as scientific advisory bodies.

4.4 The remit of the committee would be the main driver for its work, and shape the issues and topics that it considers, as well as the expertise that its members require. In addition, Defra has developed a set of flexible general criteria for all of its advisory committees. These standard elements, as applicable to the new committee, would need to be carried forward into its Terms of Reference. The overall relationship between Defra and its expert committees is intended to be collaborative and forward looking.

4.5 We are therefore taking the opportunity of this consultation to invite views on proposed Terms of Reference for the expert scientific committee that will replace the Advisory Committee on Hazardous Substances. The new body, which we propose to call the Expert Scientific Committee on Hazards and Risks of Chemicals in the Environment (ESCHRCE), would have the following Terms of Reference:

- *To advise officials, UK⁶ Ministers, and other relevant bodies, on request or otherwise:*
 - *on matters of relevance at a domestic, European and global level, relating to the protection of the environment, and human health via the environment, from potentially hazardous substances and articles, including nanomaterials; including on future issues of concern, on impacts and on wider strategic linkages;*
 - *on the assessment of risks associated with potentially hazardous substances and articles, including nanomaterials;*

⁶ Includes Ministers in the Devolved Administrations

- *on research needs and other evidence gaps relating to potentially hazardous substances and articles, including nanomaterials; including analysing, interpreting, and assessing the quality and relevance of, evidence.*
- *To advise officials and UK Ministers, on request or otherwise, on policy development and evaluation, including the impact of different policy options; the assessment of new regulations and deregulation, and the development of voluntary initiatives, best practice advice and formal guidance, which are relevant to its remit.*
- *To report to, and engage with, the Defra Chief Scientific Adviser, and through them, the Defra Science Advisory Council.*
- *To support the Defra Chief Scientific Adviser, as necessary, during emergencies.*
- *To operate in line with the Government's Principles for Scientific Advice and the Code of Practice for Scientific Advisory Committees.*

The lead Defra Minister for this committee will:

- *Set Terms of Reference for the committee;*
- *Agree strategic work plans, receive reports and advice; and*
- *Receive periodic reviews of the committee's functions and value for money;*
- *Consult the Devolved Administrations and other Departments as appropriate, about the committee and its work.*

4.6 These proposed new Terms of Reference would not, in our view, require changes in the number of committee members, or the expertise that they must have, although these aspects will be kept under review in the normal way. Moreover, since the Government announced its proposal for the future of the ACHS, a number of reappointments have been made to the committee, on the basis that the new three-year terms of office, would, if necessary, straddle the current and proposed new arrangements.

4.7 The Government would welcome responses to the following questions:

Question 4

Do you have any views on the proposed Terms of Reference for the new committee?

Question 5

Do you have any views on the proposed name of the new committee?

Annex: Summary of consultation questions

Question 1

Do you support the Government's preferred option, to abolish the Advisory Committee on Hazardous Substances, and replace it with an expert scientific committee, for the reasons explained?

Question 2

If you do not support the Government's preferred option, what is your preferred alternative?

Question 3

Do you have any additional points you would wish Ministers to consider before making their final decision?

Question 4

Do you have any views on the proposed Terms of Reference for the new committee?

Question 5

Do you have any views on the proposed name of the new committee?

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