National Assembly for Wales

The Public Bodies Bill 2010: Implications for Wales

December 2010

The *Public Bodies Bill* has been introduced into the House of Lords at Westminster. It is the UK Government's main vehicle for delivering its promised cuts of NDPBs. It is an "enabling" Bill in that its provisions provide Order making powers for Ministers in respect of bodies listed in the Bill. This could include their modification, merger or abolition.

The paper summarises the provisions of the Bill and parliamentary reaction. It also highlights general devolution issues that have been raised in respect of the Bill and issues of particular importance to Wales, including powers for Welsh Minister in respect of environmental bodies and the inclusion of S4C in the Bill.

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Members' Research Service

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The Public Bodies Bill [HL]: Implications for Wales

1. Introduction

The *Public Bodies Bill* was announced in the Queen's Speech on 25 May 2010. The main elements of the Bill were said to be:

- Ensuring greater accountability, transparency and efficiency in the UK Government by reducing the number and cost of public bodies (quangos).
- To give UK ministers the powers to abolish, merge or transfer quangos back into Departments. As at 31 March 2009, there were 766 non-departmental public bodies some of which relate to just England or England and Wales, others which are UK wide. They spend over £46 billion a year and employ over 110,000 people.
- To review the functions of all public bodies every three years, as opposed to the current practice of every five years. The review will comprise a test: 'Is the function technical; does it need to be politically impartial; and do facts need to be determined transparently?'[1]

On 14 October 2010, the Minister for the Cabinet Office, the Rt. Hon. Francis Maude MP, summarised plans to substantially reform hundreds of public bodies as part of the UK Government's commitment to make the changes to public bodies. **It proposed to reform 481 bodies. Of that total 192 will cease to be public bodies and their functions will either be brought back into Government, devolved to local government, moved out of Government or abolished altogether. Another 118 public bodies will be merged down to 57 and a further 171 will be substantially reformed.**[2] A full list is available here.

The Bill itself was introduced in the House of Lords on 29 October. A Cabinet Office Press Release explained:

> The Bill will enable the reforms to public bodies to be implemented where legislation is needed. It is necessary because some bodies that are due to be reformed were set up in legislation, so new powers are needed to be able to abolish or merge them, transfer or devolve their functions, or reform the way they operate.
>
> In addition, the Bill contains a schedule listing a number of public bodies which were part of the review process and which would need legislation to make any reforms to them in the future. The list includes bodies for which there are no plans to reform. This is to ensure that, if the Government wishes to make changes to these bodies in the future following further review processes, the necessary legal framework will already be in place.[3]

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[1] MRS, *The Queen's Speech 2010*, Research Paper, May 2010.
[2] Cabinet Office, *New legislation introduced to enable Quango reform,* Press Release CAB 185-10, 29 October 2010
[3] Ibid.

The *Public Bodies Bill* is, therefore, an enabling bill which means it will not itself make any changes to public bodies. It will:

- Create a legal framework that will enable UK Government departments to implement the majority of public bodies reforms that require legislation and that are not already covered in other departmental bills.
- Create legislative powers which give ministers the ability to abolish or merge bodies; modify a body's constitutional or funding arrangements; or transfer its functions elsewhere.
- Give Secretaries of State the necessary powers to take forward changes to their bodies in secondary legislation when they are ready to do so.

The Bill extends to England, Wales, Scotland and Northern Ireland. An order made under the Bill altering legislation **may** also extend to the devolved countries.[4]

The aim of this paper to identify provisions in the Bill that are of particular relevance to Wales. Some of these have already attracted attention, for example, the future of S4C and the future of environmental bodies. However, there are also wider issues relating to devolution generally which will be discussed more fully.

2. The Public Bodies Bill [HL]

2.1. Provisions in the Bill

As stated in the introduction, the *Public Bodies Bill* is an **enabling** Bill which confers a series of powers on Ministers. A summary of the provisions of the Bill is provided below.

Clause 1 confers on a UK Minister the power to make provision by order **to abolish** any body or office listed in **Schedule 1**.

Clause 2 confers on a UK Minister the power to make provision by order **to merge** any group of bodies or offices (or both) listed in **Schedule 2.**

Clause 3 confers on a UK Minister the power to make provision by order **to modify the constitutional arrangements** of any body or office listed in **Schedule 3**.

Clause 4 confers on a UK Minister the power to make provision by order **to modify the funding arrangements** of a body or office listed in **Schedule 4.**

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[4] *Public Bodies Bill* [HL Bill 25], Explanatory Notes [accessed 12 November 2010]

Clause 5 confers on a UK Minister the power to make provision by order **to modify the functions of a body or office-holder**, or **to transfer the functions of a body or office-holder** to an eligible person. In either case, the body or office must be listed in **Schedule 5**.

Clause 6 confers on a UK Minister the power to make provision by order to authorise a body or the holder of an office listed in **Schedule 6 to delegate some or all of its functions** to an eligible person.

Clause 7 provides that an order under clauses 1 to 6 may include **consequential, supplementary, incidental or transitional provisions or savings**.

Clause 8 stipulates the objectives to which the UK Minister must have regard when making orders under clauses 1 to 6. These are: achieving increased **efficiency, effectiveness and economy** in the exercise of public functions; and **securing appropriate accountability to Ministers** in the exercise of such functions.

Clause 9 limits the powers of UK Ministers in relation to devolved matters. This will be discussed more fully in Section 3 of this paper.

Clause 10 sets out the procedure applicable to any order made under clauses 1 to 6 of the Bill. It stipulates any such order must be approved by Parliament through the use of the **affirmative procedure**.

Clause 11 makes provision for a Minister to add a body or office specified in Schedule 7 to the other Schedules.

Clause 12 sets out the form and procedure applicable to any order made under clause 11 of the Bill.

Clauses 13 -16 confers a power on Welsh Ministers to, by order, modify and transfer the functions of the Countryside Council for Wales, the Environment Agency as it relates to Wales, and the Forestry Commissioners as they relate to Wales and makes related provisions. These are discussed more fully in section 4.

Clause 17 relates to the powers relating to **functions of Secretary of State to make an order amending the *Forestry Act 1967*** in relation to the exercise of certain functions, including those of managing, using, letting and disposing of forestry land.

Clause 18 allows **the Secretary of State by order to modify the constitutional arrangements of the Forestry Commissioners**; to modify their functions

relating to land in England; to transfer those functions and to delegate those functions to someone else.

Clause 19 stipulates that an order made under clause 17 or 18 is subject to the affirmative procedure in both Houses of Parliament.

Clause 20 stipulates that an order made under the preceding provisions of the Bill may not create or authorise the creation of powers of forcible entry, search or seizure, a power to compel the giving of evidence, or a power to make subordinate legislation.

Clause 21 restricts the order-making powers in the preceding provisions of the Bill in respect of the transfer or delegation of functions to eligible persons who do not already exercise public functions.

Clause 22 restricts the order-making powers in the preceding provisions of the Bill in respect of the **creation (or the authorisation of the creation) of criminal offences.**

Clause 23 confers a **power to make a scheme to transfer property, rights and liabilities on Ministers** in connection with an order under clauses 1 to 6, on Welsh Ministers under clause 13, and on the Secretary of State under clause 18(1)(c).

Clause 24 stipulates that **transfer schemes may be included within the order** to which they relate. If they are not included within the order, they **must be laid before the appropriate legislative body .**

Clause 25 confers power on the Treasury to make provision by order varying the way in which tax provisions will be applied either for anything transferred under a scheme made under clause 23, or anything done for the purposes of, or in relation to a transfer under such a scheme.

Clause 26 has provisions relating to the scope of power to amend Schedule 1 to the *Superannuation Act 1972.*

Clauses 27 and **28** deal with supplementary provisions and interpretation of meanings within the Bill.

Clause 29 deals with the **extent** of the Bill. The Explanatory Notes state:

> Generally, the Bill extends to the whole of the United Kingdom. *Subsection (2)* provides that an order made under this Bill which repeals, revokes or amends any enactment extending outside England, Scotland, Wales or Northern Ireland may have the same extent as the

> original enactment. For example, an order which amends an Act of Parliament which extends to the Channel Islands would have the same extent as the amended Act.[5]

Schedule 1 specifies the bodies and offices which are subject to the power to abolish described in clause 1.

Schedule 2 specifies the groups of bodies and offices which are subject to the power to merge described in clause 2.

Schedule 3 specifies the bodies and offices which are subject to the power to modify constitutional arrangements described in clause 3.

Schedule 4 specifies the bodies and offices which are subject to the power to modify funding arrangements described in clause 4.

Schedule 5 specifies the bodies and offices which are subject to the power to modify or transfer functions described in clause 5.

Schedule 6 specifies the bodies and offices which are subject to the power to authorise delegation, as described in clause 6.

Schedule 7 specifies the bodies and offices which are subject to the power to add to other Schedules, as described in clause 11. This Schedule includes bodies and offices where there is (at the time of writing) no policy intention to make changes to their status or functions.

2.2. Parliamentary Reaction

The House of Lords Constitution Committee ("the Constitution Committee") reported on the Bill on 4 November 2010 and the Bill received its Second Reading in the House of Lords on 9 November 2010.

The Constitution Committee noted that the majority of the public bodies in the Bill were created by statute.[6] Thus, the Bill vastly extends Ministers' powers to amend primary legislation by order. These powers are commonly referred to as 'Henry VIII' powers. It further stated:

> We have several times in recent years reported on the extended use of such powers. As we have previously acknowledged, while they may have become an established feature of the law-making process in this country, they remain a 'constitutional oddity'. That is: they are pushing at the boundaries of the constitutional principle that only Parliament may amend or repeal primary legislation.

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[5] *Public Bodies Bill* [HL Bill 25], Explanatory Notes [accessed 12 November 2010]
[6] HL Constitution Committee, *The Public Bodies Bill [HL]*, Sixth Report, 2010-2011, 4 November 2010.

> Where the further use of such powers is proposed in a Bill, we have argued that the powers must be clearly limited, exercisable only for specific purposes, and subject to adequate parliamentary oversight. **When assessing a proposal in a Bill that fresh Henry VIII powers be conferred, we have argued that the issues are 'whether Ministers should have the power to change the statute book for the specific purposes provided for in the Bill and, if so, whether there are adequate procedural safeguards'. In our view, the Public Bodies Bill [HL] fails both tests**.[7]

The Constitution Committee argued that the UK Government had not made out the case as to why the vast range and number of statutory bodies affected by this Bill should be abolished, merged or modified by force only of ministerial order, rather than by ordinary legislative amendment and debate in Parliament. In respect of safeguards and limitations it stated:

> Under clause 10, ministerial orders to abolish, merge, or modify (etc) a public body are subject to the affirmative resolution procedure. This is a necessary procedural safeguard (and, as such, we welcome it) but of itself it is far from sufficient. Two comments may be made in this regard. First, unlike in the Legislative and Regulatory Reform Act 2006, no mention is made in the Public Bodies Bill [HL] of 'super-affirmative resolution procedure' (see section 18 of the 2006 Act). This procedure requires Ministers to take into account any representations, any resolution of either House, and any recommendations of a parliamentary committee, in respect of a draft order (a draft order being laid for a period of 60 days). Secondly, and again unlike in the Legislative and Regulatory Reform Act, there is in the Public Bodies Bill [HL] no requirement on Ministers to consult with interested or affected parties before an order is made. This strikes us as an unacceptable omission. Under the Legislative and Regulatory Reform Act (section 12) not only must there be consultation, but following that consultation the Minister must lay his order in draft, and it must be accompanied by an explanatory document.[8]

The Constitution Committee also noted that the Bill as drafted appears to allow for the rolling up in a single ministerial order of changes to a number of diverse public bodies. Such bodies may even operate in unrelated policy domains. It expressed concern "that 'omnibus orders', covering a disparate range of institutions, pose yet more difficulties in terms of effective parliamentary scrutiny".[9]

The Constitution Committee made a strong conclusion that:

> The Public Bodies Bill [HL] strikes at the very heart of our constitutional system, being a type of 'framework' or 'enabling' legislation that drains the lifeblood of legislative amendment and debate across a very broad range of public arrangements. In particular, it hits directly at the role of the House of Lords as a revising chamber.
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> The Public Bodies Bill [HL] is concerned with the design, powers and functions of a vast range of public bodies, the creation of many of which was the product of extensive parliamentary

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[7] HL Constitution Committee, *The Public Bodies Bill [HL]*, Sixth Report, 2010-2011, 4 November 2010.
[8] HL Constitution Committee, *The Public Bodies Bill [HL]*, Sixth Report, 2010-2011, 4 November 2010.
[9] Ibid

debate and deliberation. **We fail to see why such parliamentary debate and deliberation should be denied to proposals now to abolish or to redesign such bodies.**[10]

Introducing the Bill in the Second Reading debate, Lord Taylor of Holbeach stated:

> The coalition Government, following manifesto commitments of both coalition parties, are committed to the creation of a more transparent and accountable system of government in the United Kingdom. As part of this process, we are committed to making substantial reforms to the public bodies landscape. These reforms are long overdue. While we recognise the excellent work done by public bodies and their staff, we equally recognise the widely held view that what is often referred to as the quango state can add unnecessary complexity to public life, diluting the proper accountability of Ministers to the electorate.
>
> The quango state has in the past suited both government and politicians. It has never suited the British public, who expect clarity and, as taxpayers, insist, rightly, that Ministers ensure that every pound the Government spend is spent efficiently and effectively. In 2009, £38.4 billion of public money was spent by public bodies; it is our duty to ensure that this expenditure is properly focused and that all public bodies are fit for purpose.[11]

While most speakers on both sides of the House agreed with the aim of the legislation the majority expressed serious concerns about the structure of the Bill. The Opposition put down an amendment that would allow the Bill to be scrutinised by a specially constituted Select Committee rather than a Committee of the Whole House but this was defeated. Leading for the Opposition, Baroness Royall of Blaisdon said:

> As noble Lords will be aware, in the normal course of affairs this House does not overturn draft orders that are subject to the simple affirmative procedure. However, the procedure that the Government are proposing so overloads the practice and principle of secondary legislation that we give them fair notice that the circumstances of the Bill are such that it may well be right in this instance not to follow that approach. In this we are in line with the conclusions of the most recent examination of the convention carried out by a Joint Committee of both Houses, chaired by my noble friend Lord Cunningham of Felling. The Joint Committee's report, approved by all parties in both Houses, states that the House of Lords should not regularly reject statutory instruments but that in exceptional circumstances it may be appropriate for it to do so. One exceptional circumstance mentioned by the committee is when a parent Act was a skeleton Bill and the provisions of the SI are of the sort more normally found in primary legislation. This is exactly the circumstance that we are in with this Bill. It is precisely this kind of provision in the Bill that a Select Committee would be best placed to consider.[12]

The former Lord Chief Justice of England and Wales, Lord Woolf said that he regarded "the Bill as a matter of grave concern to the judiciary". His concerns arose because "the bodies in Schedule 7 include bodies that are intimately and directly concerned with the administration of justice in this country-the

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[10] HL Constitution Committee, *The Public Bodies Bill [HL]*, Sixth Report, 2010-2011, 4 November 2010.
[11] HL Debates, 9 November 2010,cols.63-64
[12] Ibid., col.71

administration of civil justice and the administration of criminal justice." He continued:

> I have to say to the Minister that I do not believe that this Bill, in so far as it refers to the bodies that I have indicated, is consistent with the Constitutional Reform Act. I do not believe that there was any proper consultation before these bodies were included. They were included because they properly can be described as quangos, but it is not because they are quangos that they should be subject to the truncated procedure.[13]

However, Lord Freeman saw the Bill as "restoring ministerial responsibility":

> It is an anachronism that in this Chamber and in the other place one cannot directly question a Minister about the performance of a non-departmental public body, although obviously there can be correspondence. As a democrat I am in favour of improving that ministerial responsibility, and under the Bill that will happen.[14]

A former Attorney-General, Lord Mayhew of Twysden, stated:

> Lastly, I come to the worst bit of all. By Clause 11, which we now know so well, Ministers are permitted by order to bring any of the 150 bodies listed in Schedule 7 into the ambit of the proceeding six schedules. We heard the sort of judicial bodies that are caught by that in a compelling speech by the noble and learned Lord, Lord Woolf, which was endorsed entirely by the noble and learned Baroness, Lady Scotland. The Explanatory Notes rather engagingly confess at paragraph 87 that at the time of going to press there was,
>
> "no policy intention to make changes to their status or functions".
>
> In other words, Clause 11 is included in the Bill on a "just in case" basis. That is no basis for taking Henry VIII powers or, indeed, many other powers. The clause is inappropriate for subordinate legislation, and it should be removed from the Bill.[15]

Lord Crickhowell, who sits on the House of Lords Constitution Committee, stated:

> I say to my noble friend Lord Taylor of Holbeach that if he wants his Bill, as I do, he would be very wise to offer the super-affirmative resolution procedure used in the Legislative and Regulatory Reform Act 2006, which requires Ministers to take into account any representations, any resolution of either House and any recommendations of a parliamentary committee in respect of a draft order, laid for 60 days, particularly where, perhaps quite recently, there has been lengthy scrutiny of the legislation that brought the bodies into existence. Would it also not be wise to follow another precedent established by the 2006 Act, which is that there must be consultation with affected parties and that, following the consultation, the order must be laid in draft accompanied by an explanatory document? Those steps would provide substantial reassurance that the more controversial changes can be adequately examined, which would be further strengthened by an undertaking from Ministers that the legislation would be used never to increase but only to reduce the powers of public bodies.[16]

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[13] Ibid., cols 75-76
[14] Ibid., col.85
[15] Ibid.col.96
[16] Ibid.cols 135-136

Peers from Wales who spoke all expressed concerns about the Bill. Lord Elystan-Morgan questioned whether the Bill was "redeemable"[17] and Lord Roberts said that "the precedent established here of a massive subjection of public bodies, largely established by primary legislation, to possible change by secondary legislation is not a happy one."[18] Baroness Finlay expressed concern about the provisions to abolish the office of the Chief Coroner.[19]

Following the Second Reading debate the Bill was also considered by the House of Lords Delegated Powers and Regulatory Reform Committee. Its report stated:

> The Committee considers that the powers contained in clauses 1 to 5 and 11 as they are currently drafted are not appropriate delegations of legislative power. They would grant to Ministers unacceptable discretion to rewrite the statute book, with inadequate parliamentary scrutiny of, and control over, the process.[20]

3. Devolution Issues

The Bill has application in all parts of the UK. Lord Foulkes of Cumnock sought clarification from the Minister during the Second Reading debate about what this might mean in practice:

> **Lord Foulkes of Cumnock:** My Lords, will the Minister clarify the position in relation to United Kingdom bodies like the Forestry Commission or the Security Industry Authority should the Scottish Government disagree with the United Kingdom Government? How would the matter be resolved?
> **Lord Taylor of Holbeach:** There has been a dialogue with the devolved authorities throughout the course of the Bill. This is a continuing process. There is a separate chapter on the Forestry Commission; I will speak to that shortly. It is a matter of debate. There is no division of view between the United Kingdom and the devolved authorities on this at this stage.
> **Lord Foulkes of Cumnock:** It is my understanding that the Scottish Government are of a different view from the United Kingdom Government in relation to both the Security Industry Authority and the Forestry Commission, so this is not a theoretical problem. I am asking the Minister not what discussions have taken place but, when there is a dispute, how it is to be resolved. It is not clear from the Bill how any resolution can take place.
>
> **Lord Taylor of Holbeach:** The Bill has proceeded on consensus. I do not imagine that it will deviate from that course in the future.[21]

Clause 9 of the Bill limits the powers of UK Ministers in relation to devolved matters. Orders made under clauses 1-6 which contain provision that would be within the legislative competence of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales **require the consent respectively**

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[17] Ibid.col 139
[18] Ibid. col.148
[19] Ibid.cols. 81-82
[20] HL Delegated Legislation and Regulatory Reform Committee, *The Public Bodies Bill*, 5th Report, 20010-2011, 10 November 2010
[21] HC Debates, 12 November 2010, col.66-67

of Scottish Ministers, the appropriate Northern Ireland Department or the Welsh Ministers. However, the Constitution Committee stated:

> We are concerned that it should be the consent of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales which should be obtained in these circumstances. We note that the protection afforded to the devolved institutions is considerably stronger in sections 9-11 of the Legislative and Regulatory Reform Act 2006 than that which is offered in this Bill.[22]

The relevant section to Wales in the *Legislative and Regulatory Reform Act 2006*, referred to in the quotation states:

> **11 Wales**
> An order under this Part may not make any provision—
> (a) conferring a function on the Assembly,
> (b) modifying or removing a function of the Assembly, or
> (c) restating any provision which confers a function on the Assembly,
> except with the agreement of the Assembly.[23]

4. Implications for Wales

4.1. Powers for Welsh Ministers to create a new Environment Body

On 6 July 2010 the Minister for Environment and Sustainability, Jane Davidson AM gave a written statement to the National Assembly stating that one of the issues for a natural environment framework is to examine whether current delivery arrangements are suitable for future needs, especially at a time of economic constraints. It further said:

> Elin Jones [Minister for Rural Affairs] and I have now agreed that we should go further and look together at more fundamental restructuring of delivery arrangements and functions in Wales in order to give best value in delivering an integrated, eco-system approach to the natural environment. The work will look at roles and functions, including the potential costs and benefits of separate Wales bodies and merging some or all of the delivery bodies and will make an initial report in the autumn. [24]

If a compelling case is made for restructuring, then any plans would be developed with full involvement of those affected and would require legislation.

Clauses 13 to 16 of the Bill would give Welsh Ministers specific powers to reform environmental bodies in Wales. Lord Taylor of Holbeach told the House of Lords that these "powers have been requested by the Welsh Assembly Government to enable changes following their current review of environmental regulation".

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[22] HL Constitution Committee, *The Public Bodies Bill [HL]*, Sixth Report, 2010-2011, 4 November 2010.
[23] *Legislative and Regulatory Reform Act 2006* (c.51)
[24] Written Statement, Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Environmental Delivery Options*, 6 July 2010.

Lord Morris of Aberavon noted:

> There are a number of clauses referring to the National Assembly for Wales. In the absence of a proper briefing, the idea of enabling legislation bringing together the functions of the Countryside Commission, the Environment Agency and Forestry Commission Wales appears very appealing, since agriculture is already a devolved matter.[25]

Clause 13(1) enables Welsh Ministers by order, subject to affirmative procedure in the Assembly, to alter, abolish or add to the functions of the Countryside Council for Wales (CCW), the Environment Agency in Wales (EAW) and the Forestry Commissioners in Wales (FAW). Clause 13(2) to (4) provides for orders to transfer functions between Welsh Ministers, the CCW, the EAW, the FAW or a new body. The House of Lords Delegated Powers and Regulatory Reform Committee expressed similar concerns about the powers afforded to Welsh Ministers in this clause as it did to powers granted to UK Ministers in clauses 1-5. It further noted:

> There is a further aspect which seemed to the Committee to call for an explanation which is not provided in the memorandum. It is apparent from clause 13(7) that orders under subsection (7) should be capable of applying to matters which are not within the legislative competence of the NAW (see subsections (7)(a), (c) and (d) and (8)). It is by no means unprecedented for Welsh Ministers to have power to make subordinate legislation in relation to matters about which the NAW could not enact a measure. But these are no ordinary powers, for they involve re-writing the statute book. The net result of what is proposed here is that Parliament should delegate to Welsh Ministers the power to amend Acts of Parliament in matters as respects which Parliament has not delegated to the NAW the power to amend Acts of Parliament by enacting measures, and all subject to no Parliamentary control at Westminster whatsoever. **The Committee calls to the attention of the House this unexplained aspect of clause 13, so that it might seek an explanation from the Government.**[26]

It should be noted that the *Government of Wales Act 1998* also gave the National Assembly for Wales (then a corporate body) powers to reform or abolish Assembly Sponsored Public Bodies (ASPBs). In particular, Section 28 and Schedule 4 of the 1998 Act gave the Assembly powers to amend primary legislation by Order so as to restructure certain ASPBs by transferring functions to other quangos, local government or the Assembly, or by abolishing functions or whole quangos.[27]

On 25 October 2010, the Minister for Rural Affairs, Elin Jones AM issued a clarification in respect of the future of the FAW:

> Recent media reports suggesting that Welsh forests would be among those to be sold off are unhelpful, misleading and without foundation. Forestry is a devolved matter and decisions affecting the future of Wales's national forests lie with Welsh Ministers, not with Westminster.

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[25] HL Debates, 9 November 2010, col.144
[26] HL Delegated Legislation and Regulatory Reform Committee, *The Public Bodies Bill*, 5th Report, 20010-2011, 10 November 2010
[27] MRS, *The Reform of Assembly Sponsored Public Bodies*, Research Paper 04/0020, 2004.

> I believe the national forest is an important asset to Wales, providing access, employment, support for the timber and tourism industries and has a major role to play in helping us to tackle climate change.
>
> The activities of the Forestry Commission in Wales are currently under review as part of the wider review of environmental delivery bodies which will be concluded early next year. I am also in contact with my counterparts in England and Scotland to ensure that the needs of Wales are considered as part of any proposals to change the management of forestry in England.[28]

4.2. S4C

On 14 October 2010 the UK Culture Minister, the Rt.Hon. Jeremy Hunt MP, announced that funding arrangements for S4C would be reformed. The Department for Culture, Media and Sport (DCMS) press release stated:

> The Broadcasting Act 1990 (as amended) includes a provision that S4C will be funded at the level it was in 1997, then increased annually by the amount of the Retail Price Index. The Government considers that this is unsustainable in the current financial climate and intends to change it so that the Secretary of State will determine the level of funding.[29]

S4C is, therefore, listed in Schedule 4 to the Bill as a body where Ministers may make an Order to modify funding arrangements. It is also listed in Schedule 7 as a body that could be moved to other Schedules where it could be subject to abolition, merger or changes to its constitutional arrangements by Ministerial Order.

Starting in April 2013, the BBC will make a significant financial contribution to the operation of S4C, above and beyond its current supply of programming. This has raised concerns in some quarters that S4C will lose its independence and that funding will not be safeguarded.

The Minister for Heritage, Alun Ffred Jones AM made a statement regarding S4C on 22 September in which he said:

> I have written to the Secretary of State for Culture, Olympics, Media and Sport, Jeremy Hunt MP, to express concern over the £2 million-worth cut to S4C's budget announced earlier this year. I have sought reassurances that the cut will not result in S4C's funding falling below the amount calculated in the Broadcasting Act 1990, and I have asked for a meeting, which is to take place next week. In addition, the First Minister has written to the Secretary of State for Wales, outlining the Welsh Assembly Government's concerns in relation to S4C's financial situation.

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[28] Welsh Assembly Government Press Release, *Wales' Rural Affairs Minister dismisses media reports of forestry sell off*, 25 October 2010.

[29] DCMS, *Improving efficiency and transparency: DCMS cuts quangos*, 096/10, 14 October 2010

> We are aware that discussions have taken place between the Department for Culture, Media and Sport and S4C in relation to S4C's future budget. We believe that S4C should be treated similarly to other public service broadcasters in the discussions about its long-term future and financing. However, that must take place within the context of the arrangements that were set out and agreed under the Broadcasting Act.[30]

In the Second Reading debate in the House of Lords, Lord Elystan-Morgan stated:

> It is my contention that this body is wholly unique. It is unique because it was set up with a commission. That commission was that it should do everything within its power - indeed, its existence is based on this - to preserve the life and future of the Welsh language. It is unique also in relation to the scene that existed 28 years ago when it was set up, when there had for many years in Wales been a long, bitter campaign of civil disobedience and lawlessness against those opposed to a Welsh channel. William Whitelaw, a man of immense understanding, diplomacy and integrity, ultimately came to a compact with the Welsh people and said, "You will have your channel". A legislative framework was set up that guaranteed funds for the channel that would be adequate for it to carry out its commission. Indeed, its independence was guaranteed by statute.
>
> The viability of that channel is now challenged and jeopardised by the fact that that financial guarantee disappears. The independence is jeopardised by the fact that it is contemplated that it should be merged with the BBC as a very junior, meagre partner. Its independence cannot possibly be real in those circumstances; indeed, the major decisions may well be taken by the broadcasting trust in London.[31]

Lord Roberts of Conwy observed:

> The Welsh channel authority is also included in Schedule 7 as a body that may be shifted to another schedule, possibly relating to a change in its constitution. Again, the essence of that change, and what it is hoped to achieve, has been spelt out by the Secretary of State for Culture, Media and Sport. Of course, at the end of the day such changes as are made will be by secondary legislation, with all its parliamentary limitations, to a body established and developed by primary legislation over some years and after a great deal of discussion. Such extensive discussion may again be necessary, judging by the ferment in Wales at present, but that would be possible only with primary legislation.[32]

Committee stage commenced in the House of Lords on 23 November and Lord Roberts will lay amendment calling on the UK Government to take S4C out of the *Public Bodies Bill*.

On 10 November 2010 the Chair of the BBC Trust, Sir Michael Lyons, wrote to John Walter Jones, the Chair of the S4C Authority:

> Regarding the spending review announcement, Jeremy Hunt has made clear that having decided to reduce its own funding for S4C as part of the Comprehensive Spending Review,

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[30] Oral Cabinet Statement, Minister for Heritage, Alun Ffred Jones, *S4C*, 22 September 2010.
[31] HL Debates, 9 November 2009, col 140-141
[32] Ibid.col.147

> the Government decided that a new partnership model with the BBC was the best way of securing the long term future of the service and this proposition was put to the BBC in the context of discussions on a new licence fee settlement.
>
> We now need to work together to take forward this policy. A new arrangement will see the BBC build upon its commitment to the provision of a broad range of Welsh language services – with the new, additional responsibility for funding a large part of a high quality S4C service. I want to be clear with you, and other members of the S4C Authority, that the BBC has no ambitions to take over S4C. We are committed to a creatively independent S4C, which attracts revenue from a range of sources, including the licence fee. We share your determination that S4C should retain its strong relationship with the independent production sector in Wales.[33]

On 17 November 2010 the National Assembly discussed the motion, *The National Assembly for Wales believes an independent S4C is essential for the future of public broadcasting and the Creative Industries in Wales,* laid by Members of all four parties. A number of speakers took exception to the comment Sir Michael made in the letter along the lines that the BBC Trust would require oversight to ensure that the licence fee is well spent. Some AMs interpreted this as meaning a "takeover" by the BBC. These concerns were reflected in the comments of the Heritage Minister:

> I will add that I share Rhodri Glyn Thomas's concerns about Sir Michael Lyons's letter, because there was some suggestion in that letter that the BBC would take over the service in the future, with some supervisory role over all that was happening.

The motion was agreed unanimously.[34]

4.3. Merger of Sport England and UK Sport

The UK Government proposes to merge Sport England with UK Sport. This has raised questions about funding arrangements for the sports bodies in Wales, Scotland and Northern Ireland. Professor Laura MacAllister, chair of Sport Wales, commented:

> recent government announcements about mergers and abolitions were startling in their lack of devolutionary sensitivity. By way of illustration, UK Sport and Sport England are to merge, English sports minister Hugh Robertson tells us.
>
> Fine...if sport were not a devolved matter and if there had been proper consultation and agreement from the home nations. UK Sport has shown itself to be an effective coordinator of

[33] Letter from Sir Michael Lyons, Chair of the BBC Trust to John Walter Jones, Chair of the S4C Authority, 10 November 2010
[34] RoP, 17 November 2010

provision for high-performance athletes from the four nations in the UK, especially at Olympic and Paralympic level.[35]

A Scottish MP, Michael McCann asked the Junior Minister, Hugh Robertson MP about it in the House of Commons:

Hugh Robertson: My apologies, Mr Speaker. They discussed bringing together UK Sport and Sport England, and that was also discussed at an inter-ministerial meeting on 13 September. I also met my devolved counterparts to discuss the issue when I was in Delhi and I have, of course, discussed it with many others in sport and inside the two bodies.

Mr McCann: Recent correspondence from the Scottish Executive somewhat complacently suggests that they are merely aware of the proposed merger. Given UK Sport's responsibilities for the world-class performance programme across the United Kingdom, how will the Minister ensure that there is a fair distribution of financial support for our elite athletes?

Hugh Robertson: That was one of the issues that we discussed in Delhi. I am sure that it will not have escaped the hon. Gentleman's notice that part of the comprehensive spending review announced on Wednesday was framed by a decision to increase the amount of money going in to sport. We were able to announce not only that we would stick to the original spending limits envisaged for London 2012 and would honour those commitments in full, but that UK Sport would have the same level of funding, or slightly better, for the start of the Rio cycle than it is enjoying this year.[36]

4.4. Agricultural Wages Board for England and Wales

The Agricultural Wages Board for England and Wales (AWB) is to be abolished. It is an independent body with a statutory obligation to fix minimum wages for workers employed in agriculture in England and Wales. The Board also has discretionary powers to decide other terms and conditions of employment such as holidays and sick pay.

On July 22 the Secretary of State for the Environment, Rural Affairs and Agriculture, the Rt. Hon. Caroline Spelman MP, stated:

today I am announcing that we will be seeking agreement with the Welsh Assembly Government to abolish the Agricultural Wages Board. In England, we will be taking measures to bring agricultural workers within the scope of the National Minimum Wages Act ….We are discussing with the Welsh Assembly Government the arrangements they wish to propose in respect of Wales.

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[35] Professor Laura MacAllister, *Cutting quangos –let's learn a lesson from Wales, Public Service.co.uk*, 15 October 2010.
[36] HC Debates, 25 October 2010, col.12

The AWB is to be abolished in Wales. However, in an oral answer in Plenary on 6 October 2010, the Rural Affairs Minister, Elin Jones AM, suggested that this decision had been made reluctantly.

> **Joyce Watson:** You sent me a letter recently outlining the decision to scrap the Agricultural Wages Board for England and Wales. I recognise that you were forced to take that decision, as a result of the Secretary of State for the Environment, Food and Rural Affairs' plans to abolish several arm's length bodies. I am greatly concerned by the board's abolition, as it will result in farmworkers' and craftsmen's pay safety net being taken away from them. This is profoundly unfair and represents a regression of the work of the Labour Government to ensure fair pay for workers. Do you agree with me, Minister, that the decision of the Westminster Government to abolish a body whose function it was to make sure that people earn a decent wage is representative of the Liberal Democrats-supported Tory party's ideology of considering the loss of people's livelihoods as a price worth paying?
>
> **Elin Jones:** I share your frustration and disappointment at the speed at which this decision has been taken and its implication for us in Wales. My decision to agree to the change as pushed forward by the Department for Environment, Food and Rural Affairs was made reluctantly. I had the option to consider whether we could establish a Wales-only agricultural wages board, although that decision would have required considerable work as well as considerable budget funding allocation. It was clear that DEFRA did not intend to devolve any budget to us, should we have taken that decision. I am disappointed that we are losing the work that the agricultural wages board has undertaken for workers in Wales. I think the decision should have been taken with due consultation. There was absolutely no consultation with agricultural workers, their representatives or communities in general; nor was there adequate consultation with this Government.[37]

The abolition is opposed by the Unite union and the Farmers' Union for Wales, although the National Farmers Union are in favour.

4.5. British Waterways

British Waterways is currently a public corporation responsible to the UK Government and Scottish Government to maintain and manage the waterways so that they fulfil their full economic, social and environmental and heritage potential. Its sponsoring departments are the UK Department for Environment, Food and Rural Affairs for England and Wales, and in Scotland, the Department for Transport, Infrastructure and Climate Change. It also liaises with the Welsh Government.

As part of its reform of public bodies, the UK Government has decided to reconstitute British Waterways' network in England and Wales as a charitable trust, akin to the National Trust.

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[37] RoP, 6 October 2010.

The charity will continue to be funded through a combination of government grants, income from boat licences, third party grants and commercial activities. The main change would be through the establishment of a guaranteed, long-term contract with Government; a 'charity lock' on British Waterways' property endowment and; growing income from tax relief and charitable sources (e.g. donations, legacies etc).

The transfer of the business of British Waterways, including its powers and obligations, to a new waterways charity will be done using Order-making powers under the *Public Bodies Bill*. It is listed in Schedules 5 and 7 to the Bill.

The core of the new charity will be made up from British Waterways' existing network of canals and rivers in England and Wales. Defra has stated its intention to explore the potential inclusion of other river navigations currently under the management of the Environment Agency.

The change to charitable status is something that British Waterways was already contemplating and has the support of an existing charity, the Inland Waterways Association (IWA). Clive Henderson, IWA National Chairman, said:

> A great deal of work is now required so that the charity can have a successful launch and we expect to play our part. First, it must be financially viable from day one. The National Trust was not an overnight success and started from small beginnings. The new charity does not have the opportunity to grow over time – it has to be up and running immediately – and engaging with the public, securing new revenue streams, will take some time.[38]

The Scottish Government will separately decide whether it wishes to include Scotland's waterways in the new body or not.[39]

4.6. Sustainable Development Commission

The Sustainable Development Commission is the UK Government's independent adviser on sustainable development. It reports to the Prime Minister, the First Ministers of Scotland and Wales and the First Minister and Deputy First Minister of Northern Ireland. In 2009, the Sustainable Development Commission (SDC) became an executive non-departmental body (Executive NDPB). Defra announced its decision to abolish the Commission in July 2010. However, it also funded offices in Wales, Scotland and Northern Ireland. The Welsh Government has said it will fund the Commission in Wales until the end of March 2011.

The Environment and Sustainability Minister, Jane Davidson AM, has announced a proposal to bring together the remit of Cynnal Cymru – Sustain Wales (Cynnal

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[38] Inland Waterways Association, IWA welcomes Government confirmation that British Waterways is to become a chartitable body, Press Release, 14 October 2010.
[39] British Waterways website

Cymru), the SDC in Wales and the secretariat of the Climate Change Commission to form a single body. A stakeholder event was held on 17 November 2010 and the proposals are out for consultation until the end of December 2010

The draft objectives of the new body are to:

- Promote sustainable development as the central organising principle in all sectors and communities in Wales, in line with the Assembly Government's Sustainable Development Scheme;
- Provide leadership for catalysing action for sustainable development and within this to address the causes and consequences of climate change in all sectors of Welsh civil society, through:
    - communicating and promoting sustainable development;
    - advocating the behaviour change and action required to promote a more sustainable Wales; and
    - engaging with, and building the capacity of, Welsh civil society to undertake action for sustainable development;
- Inform and build capacity amongst practitioners on the solutions and actions needed to promote sustainable development in Wales;
- Convene stakeholders representing particular sectors or issues and develop partnerships to address difficult issues based on a 'coalition of the willing' approach
- Advise Assembly Government Ministers on the policies required to promote and implement sustainable development and tackle climate change.

The Welsh Government also suggests that "the new arrangements could be headed-up by a single commissioner with authority to act as a respected commentator/advisor within government and public life on sustainable development."[40]

4.7. Implications for other bodies operating in Wales

- The **Land Registry**, established in 1862, registers title to land in England and Wales, records dealings with registered land (for example, sales and mortgages), and guarantees title to registered estates and interests in land. It is proposed that the Land Registry will be retained but scope for private sector investment will be explored. The Ministry of Justice is undertaking a

[40] Welsh Assembly Government, *Sustainable Development in Wales: The Future, New Arrangements Consultation*, webpage [accessed 23 November 2010]

feasibility study into future private-sector investment in the Land Registry and plans to report back in the early in 2012.

- The **Equality and Human Rights Commission is** to be retained but "substantially reformed" with an emphasis on its regulatory role.

Some Ministry of Justice public bodies will no longer operate as non departmental public bodies, including:

- The **Youth Justice Board for England and Wales** will be abolished and its functions brought within the Ministry of Justice
- The **Legal Services Commission** will become an executive agency of the Ministry of Justice
- **Courts boards** work in partnership with Her Majesty's Courts Service to achieve effective and efficient administration of the courts. The Courts Boards do not manage or administer the courts themselves, but give advice and make recommendations to foster improvement in the administrative services provided. There are three in Wales. These will be abolished.

The **Administrative Justice and Tribunals Council** (AJTC) keeps under review the administrative justice system as a whole with a view to making it accessible, fair and efficient. A Welsh Committee was established in 2008. In January 2010, the AJTC Welsh Committee published its first special report following its review of tribunals operating in Wales on which the Counsel General, John Griffiths AM, provided an update in form of a Written Statement, on 16 November 2016. Tribunals operating in Wales generally fall into two categories: "Welsh tribunals" which operate in fields in devolved areas and all or some executive responsibility for those tribunals has been devolved to the Welsh Government.There are also cross-border tribunals which operate in fields which are not devolved. The Counsel General noted that the UK Government intended to abolish the AJTC and its Welsh Committee and commented:

> The AJTC have provided us with a valuable source of information and advice and it would have been useful to have had them to guide us through the implementation of the recommendations and to carry out further complementary work. Various options for maintaining some level of support are being examined currently.[41]

[41] Written Cabinet Statement, Counsel General, *Response of the Welsh Assembly Government to the Report of the Review undertaken by the Welsh Committee of the Administrative Justice and Tribunals Council*, 16 November 2010.