

ADVANCED RESEARCH AND INVENTION AGENCY BILL

Memorandum from the Department for Business, Energy and Industrial Strategy to the Delegated Powers and Regulatory Reform Committee

Introduction

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Advanced Research and Invention Agency Bill (“the Bill”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

Purpose and effect of the Bill

2. The Bill creates the statutory corporation to be known as the Advanced Research and Invention Agency (“ARIA”). The policy intention behind the Bill is to create ARIA as a nimble body that can operate at pace and which undertakes ground-breaking research with a high tolerance to the risk of failure.

3. Provisions are described below in the order in which they appear in the Bill.

Delegated Powers

Clause 5 – Power to give national security directions

Power conferred on: the Secretary of State

Power exercised by: directions

Parliamentary procedure: none

Context and purpose

4. Clause 5(1) provides that, if the Secretary of State considers it necessary or expedient in the interests of national security, the Secretary of State may give directions to ARIA as to the exercise of its functions. Subsection (2) provides that this power includes power to vary or revoke a direction. Subsection (3) provides that ARIA must comply with such a direction.

Justification for power

5. In general terms ARIA will act independently from central government; however, the Department has identified a need for government to be able to intercede where national security may be at risk. For example, where the Secretary of State identifies that a party with hostile interest may have sought an association with ARIA. In such circumstances it is appropriate for the Secretary of State to have an immediate and flexible power to be able to direct ARIA as needed. The power to make directions is restricted to matters of national security only.

Justification for procedure

6. Where the need for a direction under this Clause arises, the Secretary of State will need to respond urgently and privately. In those circumstances the Department considers that no parliamentary procedure would be appropriate here.

Clause 8 – Power to dissolve ARIA

Power conferred on: the Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: draft affirmative

Context and purpose

7. Clause 8(1) provides that the Secretary of State may make regulations to dissolve ARIA. Subsection (2) provides that regulations under Clause 8 may not be made within 10 years after the date on which the Bill is passed. Subsection (3) puts an obligation on the Secretary of State to consult with ARIA and other appropriate parties before making such regulations.

8. Subsection (4) sets out the particular provisions which such regulations may make. This includes, under subsection (4)(e), a power to modify references to ARIA in any provision in or made under primary legislation or retained direct EU legislation.

9. Per subsections (1) and (2) of Clause 11 (Regulations), regulations made under this power may include consequential, supplementary, incidental, transitional, or saving provision, and may make different provision for different purposes.

10. The powers under Clause 8 allow the Secretary of State to make provision for the orderly winding up of the affairs of ARIA. Subsections (5)-(6) set out further detail of how the power in Clause 8 may be exercised.

Justification for power

11. As ARIA will be a statutory corporation, it is necessary to have a delegated power providing a legal mechanism for its dissolution if government policy on the delivery of science funding changes in the future.

12. Given the binary nature of the question of whether ARIA should be dissolved and the requirement to consult ARIA and interested persons, the Department considers that achieving dissolution by secondary legislation is appropriate, particularly in light of the requirement for the regulations to be draft affirmative regulations.

13. Two further elements of this Clause are necessary for the Secretary of State to make clean arrangements for the dissolution of the body:

(i) subsection (4)(e) enables regulations to provide that references to ARIA in primary legislation and retained direct EU legislation are to be treated as references to another person. This power is limited: it is only exercisable where necessary to deal with references to ARIA following its dissolution.

(ii) The effect of Clause 11(1)-(2) is that the Secretary of State will be able to amend legislation to repeal Clause 1 of the Bill establishing ARIA and to remove references to ARIA in other primary legislation (such as the Scotland Act 1998, the Equality Act 2010, and the Parliamentary Commissioner Act 1967).

14. If these powers were not included, then the Government would have to pass primary legislation in order to make all these changes to reflect ARIA's dissolution. Until then, Clause 1 would continue to say that ARIA is established, and other references to ARIA would remain elsewhere in legislation. This would be unclear and unsatisfactory.

Justification for procedure

15. The regulations are subject to draft affirmative resolution procedure, thereby giving Parliament a say on (1) whether to dissolve ARIA at all and (2) the arrangements for dissolution of ARIA. The Department considers this an appropriate counterbalance to the power being delegated.

Clause 10 – Power to make consequential provision

Power conferred on: the Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: draft affirmative where primary legislation or retained direct EU legislation is amended or repealed, otherwise negative resolution procedure

16. Clause 10 provides that the Secretary of State may by regulations make such modifications to existing legislation as the Secretary of State considers to be appropriate in consequence of any provision made by the Bill or regulations made under Clause 8 (Dissolution). The modifications that can be made include amendments, repeals and revocations. This power may be exercised in respect of the following forms of legislation—

- (a) primary legislation (Acts (which will include the Bill once enacted), Acts of the Scottish Parliament, Acts and Measures of Senedd Cymru and Northern Ireland legislation) passed before the end of the Session in which the Bill is passed;
- (b) secondary legislation (legislation made under primary legislation);
- (c) any provision of or made under retained direct EU legislation.

17. Clause 11(1) and (2) provide that the powers under Clause 10 enable the making of transitional or saving provisions and different provision for different purposes.

Justification for power

18. As regards the exercise of the power in consequence of any provision made by the Bill, the power in Clause 10 enables provision to be made applying to ARIA legislation that applies to bodies that are similar in nature to it. For example, in consequence of the creation of ARIA by Clause 1 of the Bill as a body which does not take the form of a public authority as defined by the Freedom of Information Act 2000, provision can be made for the application to ARIA of provisions that apply to such bodies. As ARIA does not follow other statutory bodies, there is a greater risk than usual of consequential amendments that are desirable coming to light. The power, so far as it is exercisable in relation to regulations under Clause 8, is needed so that (a) Clause 1 (and other provisions of the Bill) and (b) references to ARIA inserted by the Bill or regulations under Clause 10, can be repealed if ARIA is dissolved. This will allow the statute book to be tidied up.

Justification for procedure

19. Given that the power enables the amendment or repeal of primary legislation or retained direct EU legislation, it is appropriate for draft affirmative resolution procedure to apply to that extent.

Clause 14 – Commencement

Power conferred on: the Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: none

Context and purpose

20. The power enables the provisions of the Bill that do not come into force on Royal Assent to be brought into force. Clause 14(1) provides that the Secretary of State may make transitional or saving provision in connection with the coming into force of any provision of the Bill.

Justification for power

21. The power enables relevant provisions of the Bill to be brought into force at the appropriate times. This will allow the Secretary of State to take into account matters such as when ARIA is operationally ready.

Justification for procedure

22. The power does not enable any substantive provisions to be made but only enables provisions that Parliament has already agreed to be brought into force. There are numerous examples of powers to make commencement regulations for the substantive provisions of the Bill without parliamentary procedure, including recent practice.

Paragraph 11 of Schedule 1 – Conflicts of interest

Power conferred on: Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: negative

Context and purpose

23. The power enables provision to be made about the procedures to be adopted for dealing with conflicts of interest of members of ARIA or members of a committee or sub-committee. Clause 11(1) provides that the power under paragraph 11 includes power to make transitional or saving provisions and Clause 11(2) provides that the power under paragraph 11 also enables the making of consequential, supplementary or incidental provision.

Justification for power

24. ARIA has the power to regulate its own procedure. This power, together with the ability of the Secretary of State to attach conditions to grant funding to ARIA, may be sufficient to deal with conflicts of interest. In the event that this is not the case, the power enables the Secretary of State to impose rules on ARIA.

Justification for procedure

25. Negative resolution procedure is appropriate as the subject matter of any regulations would relate to detailed matters of the internal management of ARIA.

Paragraph 14(2) of Schedule 1 – power to make directions as to ARIA’s statement of accounts

Power conferred on: Secretary of State

Power exercised by: directions

Parliamentary procedure: none

Context and purpose

26. Paragraph 14(2) of Schedule 1 relates to ARIA’s obligation (under paragraph 14(1)) to prepare a statement of accounts in respect of each financial year. Paragraph 14(2) provides that each such statement must comply with any directions given by the Secretary of State as to its contents and form, or the methods and principles to be applied in preparing it.

27. This provision empowers the Secretary of State to require ARIA to supply certain information in preparing its statements of accounts, or to prepare them in ways specified by the Secretary of State.

Justification for power

28. This provision ensures that the statement of accounts is presented in a consistent format which can easily be compared to previous statements or to other statements relating to research funding overseen by the Secretary of State. Further, it ensures that Parliament is provided with the information it requires in relation to ARIA’s spending and functions.

Justification for procedure

29. The Department considers that there is no need for this administrative matter to be dealt with by parliamentary procedure – that would be disproportionate. This power simply relates to the form and content of ARIA’s accounting obligations. That form and content will be overseen by Parliament when the Comptroller and Auditor General’s reports are laid before Parliament (under paragraph 14(5) of Schedule 1).

Paragraph 18(2) and (3) of Schedule 1 – references to the Government Chief Scientific Adviser

Power conferred on: the Secretary of State

Power exercised by: regulations made by statutory instrument

Parliamentary procedure: negative

Context and purpose

30. Paragraph 18(2) of Schedule 1 provides that the Secretary of State may by regulations provide that references in Schedule 1 to the Government Chief Scientific Adviser are references to the person for the time being appointed to, or acting in, another office that is specified in the regulations. Paragraph 18(3) provides that the Secretary of State may by regulations make such amendments of Schedule 1 as appear to the Secretary of State to be appropriate in consequence of the exercise of the power under paragraph 18(2). Clause 11(1) provides that the power under paragraph 18(2) includes power to make transitional or saving provisions and Clause 11(2) provides that the power under paragraph 18(2) also enables the making of consequential, supplementary or incidental provision.

31. These powers enable amendments to be made to Schedule 1 in consequence of changes in the title of the principal adviser to the government on scientific matters or other changes in the arrangements for providing scientific advice to the government including abolition of the post of Chief Government Scientific Adviser. Clause 11(1) provides that the powers under paragraph 18(3) enable the making of transitional or saving provisions and different provision for different purposes.

Justification for power

32. The power is necessary in the event of the abolition of the post of Government Chief Scientific Adviser or any changes to the title of the post. Further, the power enables the Secretary of State to respond to the scenario where the role of the Government Chief Scientific Advisor changes in such a way as to make it no longer appropriate or desirable for the postholder to be a member of ARIA.

Justification for procedure

33. These powers enable provision to be made in consequence of the rearrangement of how scientific advice is provided to the government. They do not enable substantive amendments to be made to how ARIA will operate. Negative resolution procedure is therefore appropriate.

Schedule 2 – property transfer schemes and staff transfer schemes

Power conferred on: the Secretary of State

Power exercised by: instrument in writing

Parliamentary procedure: none

Context and purpose

34. Paragraph 1(1) of Schedule 2 enables the Secretary of State to make one or more property transfer schemes or staff transfer schemes. Paragraph 1(2) defines a “property transfer scheme” as a scheme for the transfer to ARIA from a permitted transferor (defined in paragraph 1(4) as the Secretary of State or United Kingdom Research and Innovation) of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment. Paragraph 1(3) defines a “staff transfer scheme” as a scheme for the transfer to ARIA from a permitted transferor of any rights or liabilities under or in connection with a contract of employment.

35. Paragraph 2(1)-(4) make further provision for how a property transfer scheme or staff transfer scheme may be undertaken.

Justification for power

36. The power enables the transfer of staff and property to ARIA in an administratively convenient manner. The same approach was taken in the Higher Education and Research Act 2017 when that Act established the Office for Students and United Kingdom Research and Innovation: see section 115 and Schedule 10).

Justification for procedure

37. The power relates to the transfer of staff, property and liabilities from one part of the public sector to another for purposes that are of an administrative nature in connection with the establishment of ARIA as a functioning organisation. This process is likely to generate a high level of detail and work, particularly to ensure the appropriate handling of employees. Further, the Department will comply with the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector. In light of these factors the Department considers it justified to perform this power in writing rather than through further Parliamentary procedure.

Department for Business, Energy and Industrial Strategy

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