

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
28 January 2013

Meeting time:
14:45

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

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Agenda

1. Future Inquiries

Private Session

At the last meeting the Committee resolved to exclude the public from the start of the meeting in accordance with Standing Order 17.42(ix):

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(ix) any matter relating to the internal business of the Committee, or of the Assembly, is to be discussed

2. Introduction, apologies, substitutions and declarations of interest

3. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA206 – The Civil Enforcement of Parking Contraventions (County Borough of Vale of Glamorgan) Designation Order 2013

Negative Procedure. Date made 14 January 2013. Date laid 17 January 2013. Coming into force date 1 April 2013

CLA207 – The Civil Enforcement of Parking Contraventions (County Borough of Bridgend) Designation Order 2013

Negative Procedure. Date made 14 January 2013. Date laid 17 January 2013. Coming into force date 1 April 2013

4. Orders made under the Public Bodies Act 2011 (Pages 1 – 35)

CLA CM5 – Consent Motion for Public Bodies (Abolition of Administrative Justice Tribunals Council) Order 2013

Papers :

CLA(3)–04–03(p1) – Consent Motion for Public Bodies (Abolition of Administrative Justice Tribunals Council) Order 2013

CLA(4)–04–13(p2) – The Public Bodies (Abolition of Administrative Justice Tribunals Council) Order 2013

CLA(4)–12–12(p3) – Explanatory Document to The Public Bodies (Abolition of Administrative Justice Tribunals Council) Order 2013

5. Evidence in relation to the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill (Pages 36 – 40)

(3.15pm)

Mick Antoniw AM, Member in Charge;

Vaughan Gething AM;

Lisa Salkeld, Legal Services

(4pm)

Lesley Griffiths, Minister for Health

Mark Osland, Deputy Director of Finance, Welsh Government;

Fiona Davies, Legal Services, Welsh Government

Papers:

CLA(4)–04–13(p4) – Letter from Presiding Officer to Chair

6. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the conclusions or recommendations of a report it proposes to publish

7. Draft report on The Regulated Mobile Homes Sites (Wales) Bill

Transcript

View the [meeting transcript](#).

CONSENT MEMORANDUM

PUBLIC BODIES ACT 2011: ABOLITION OF ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

Consent Motion

1. “To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, in accordance with the draft laid in Table Office on 7 January 2013.

Background

2. This memorandum has been laid by Carwyn Jones, First Minister, in accordance with the arrangements agreed by Business Committee on 7 February 2012.
3. The above Motion is tabled to seek the agreement of the National Assembly for Wales (the “National Assembly”), in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make an Order for the abolition of the Administrative Justice and Tribunals Council (“AJTC”). Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly in circumstances where an Order made under sections 1 to 5 of that Act makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly.
4. A copy of the Order was laid in Table Office on 7 January.

Summary of the Order and its Policy Objectives

5. The Order abolishes the AJTC. The AJTC was established by the Tribunals, Courts and Enforcement Act 2007.
6. The AJTC’s main functions can be summarised as follows.
 - (a) keeping under review the administrative justice system;
 - (b) considering ways to make it accessible, fair and efficient;
 - (c) advising on the development of and changes to the system;
 - (d) making proposals for research into the system.

For these purposes “*administrative justice system*” means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures

for making such decisions, the law under which such decisions are made and systems for resolving disputes and airing grievances in relation to such decisions.

The AJTC is also responsible for keeping under review and reporting on the working of listed tribunals and also on statutory inquiries – either of its own volition or as referred to it by the Welsh Ministers, Lord Chancellor or Scottish Ministers. A statutory inquiry is an inquiry or hearing in pursuance of a duty imposed by any statutory provision or an inquiry designated by the Lord Chancellor and Secretary of State.

7. The Welsh Committee of the AJTC exercises similar functions so far as relating to Wales.
8. The decision to abolish the AJTC follows the outcome of the UK Government's review of public bodies. The UK Government believes that an advisory body is no longer required in the field of administrative justice.

Competence Issues

9. The Secretary of State proposes to make the Order pursuant to sections 1, 6 and 35 of the Public Bodies Act 2011. The Order would abolish the AJTC and make consequential amendments associated with the abolition.

10. *To the extent that there are:*

(a) overall systems for making decisions of an administrative or executive nature in relation to particular persons, which fall within the Assembly's areas of competence listed in Schedule 7 GoWA 2006; and

(b) tribunals or statutory inquiries in Wales dealing with matters which fall within the Assembly's areas of competence listed in Schedule 7 GoWA 2006,

it is the view of the Welsh Government that taking these matters in Schedule 7 together, it is within the competence of the National Assembly to abolish a regime which makes provision for the review and reporting on such systems, tribunals and inquiries. It is the view of the Welsh Government that the Order, in abolishing the AJTC, is legislating *partly* for purposes which fall within the legislative competence of the National Assembly. For this reason, the consent of the National Assembly is sought pursuant to section 9(6) of the Public Bodies Act 2011.

11. For example, powers and duties of local authorities and their members and officers are within competence in Schedule 7 of the

2006 Act. The Adjudication Panel for Wales hears references about whether local authority members have breached the authority's code of conduct. Such adjudications are conducted by tribunals. This Order would abolish the AJTC which reviews and reports on such tribunals and such abolition would also, *to that extent*, in the view of the Welsh Government, be within the competence of the Assembly.

12. As a further example, other tribunals in Wales which fall within the scope of AJTC's functions deal with education issues. As education is a matter within competence in Schedule 7, *to that extent*, the abolition of the body which reviews and reports on such tribunals would, in the view of the Welsh Government, be within the competence of the Assembly.

Advantages of utilising this Order

13. It is the view of the Welsh Government that the UK Government is firmly committed to abolishing the AJTC. While the Welsh Government considers that the AJTC carries out important work in relation to tribunal reform in Wales, we have worked out alternative arrangements to carry out the AJTC's role in this respect (see 15 below). We are therefore content that this Order should be made, and that it represents the most appropriate and proportionate legislative vehicle to implement the proposal in Wales, so that the AJTC may be abolished at the earliest opportunity.
14. The intention following abolition of the AJTC is for the Welsh Government to establish a non-statutory body to oversee the reform of tribunals in relation to which it exercises executive power. The Ministry of Justice has also said it will work with the Welsh Government to agree protocols for the body to ensure that the Lord Chancellor gives due consideration to its recommendations on devolved Welsh tribunals and consults the body on relevant matters in relation to devolved Welsh tribunals.

Financial Implications

15. Provided the Welsh Government establishes a non statutory body to oversee such tribunal reform in Wales, the Ministry of Justice will reimburse costs of up to £100,00 per annum in 2013/14 and 2014/15. The continuing need for a non statutory body will be reviewed before 2015.

Carwyn Jones
First Minister

Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

DRAFT STATUTORY INSTRUMENTS

2013 No.

PUBLIC BODIES

**The Public Bodies (Abolition of Administrative Justice and
Tribunals Council) Order 2013**

Made - - - - *****
Coming into force - - *in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 1(1), 6(1) and (5) and 35(2) of the Public Bodies Act 2011(a) (“the Act”).

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

- (a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and
- (b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The consent of the Scottish Parliament, the consent of the National Assembly for Wales and the consent of the Welsh Ministers have been obtained in accordance with sections 9(1), (6) and (7) of the Act.

The Secretary of State has consulted in accordance with section 10 of the Act.

The Secretary of State has consulted the Scottish Ministers in accordance with section 88(2) of the Scotland Act 1998(b) and the Welsh Ministers in accordance with section 63(1) of the Government of Wales Act 2006(c).

A draft of this Order, and an explanatory document containing the information required by section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3). In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

(a) 2011 c.24.
(b) 1998 c.46.
(c) 2006 c.32.

Citation, commencement and extent

1.—(1) This Order may be cited as the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013.

(2) Subject to paragraph (3), this Order comes into force on the day after the date on which it is made.

(3) Paragraph 41(a) of the Schedule comes into force on the day after that on which the other provisions of this Order come into force.

(4) Amendments, repeals and revocations in this Order have the same extent as the provisions amended, repealed or revoked.

Abolition of the Administrative Justice and Tribunals Council

2.—(1) The Administrative Justice and Tribunals Council is abolished.

(2) The Schedule (which makes consequential provision etc) has effect.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

SCHEDULE

Article 2(2)

Consequential provision etc

Chronically Sick and Disabled Persons Act 1970

1. In the Chronically Sick and Disabled Persons Act 1970(a), in section 21(7E) (badges for display on motor vehicles used by disabled persons), omit “but the Secretary of State shall consult with the Administrative Justice and Tribunals Council before making regulations that so provide”.

Health and Safety at Work etc Act 1974

2. In the Health and Safety at Work etc Act 1974(b), omit section 44(4A) (appeals in connection with licensing provisions in the relevant statutory provisions).

House of Commons Disqualification Act 1975

3. The House of Commons Disqualification Act 1975(c) is amended as follows.

4. In Part 2 of Schedule 1 (bodies of which all members are disqualified), omit the entries for—

- (a) the Administrative Justice and Tribunals Council;
- (b) the Scottish Committee of the Administrative Justice and Tribunals Council; and
- (c) the Welsh Committee of the Administrative Justice and Tribunals Council.

(a) 1970 c.44. Section 21(7E) was inserted by the Transport Act 1982 (c.49), section 68, and was amended by the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 8, paragraph 2.

(b) 1974 c.37. Section 44(4A) was inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 3.

(c) 1975 c.24. These three entries were inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 4.

Town and Country Planning Act 1990

5. In the Town and Country Planning Act 1990(a), omit—
- (a) paragraph 8(1A) of Schedule 6 (determination of certain appeals by person appointed by Secretary of State);
 - (b) paragraph 8(7) of Schedule 7 (simplified planning zones); and
 - (c) paragraph 5(3A) of Part 1 of Schedule 8 (constitution and procedure on references).

Social Security Administration Act 1992

6. The Social Security Administration Act 1992(b) is amended as follows.

7. In Part 2 of Schedule 4 (construction of references to government departments etc), in paragraph 3 omit—

- (a) paragraph (b) and the preceding “or”;
- (b) the words after paragraph (b).

8. In Schedule 7 (regulations not requiring prior submission), omit paragraphs 9 and 14.

Transport and Works Act 1992

9. In the Transport and Works Act 1992(c), omit section 23(9A) (exercise of Secretary of State’s functions by appointed person).

Tribunals and Inquiries Act 1992

10. The Tribunals and Inquiries Act 1992(d) is amended as follows.

11. In section 9 (procedure in connection with statutory inquiries)—

- (a) in subsection (1), omit “, after consultation with the Council,”;
- (b) omit subsection (3A); and
- (c) omit subsection (4)(b) and the preceding “and”.

12. In section 10 (reasons to be given for decisions of tribunals and Ministers)—

- (a) in subsection (7), omit “, after consultation with the Council,”;
- (b) in subsection (8), omit “made after consultation with the Council”.

13. In section 16 (interpretation), omit the entries for—

- (a) “Council”;
- (b) “Scottish Committee”; and
- (c) “Welsh Committee”.

14. In Schedule 1 (tribunals under general supervision of Council)—

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- (a) 1990 c.8. Paragraph 8(1A) of Schedule 6, paragraph 8(7) of Schedule 7 and paragraph 5(3A) of Schedule 8 were inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 9 to 12.
 - (b) 1992 c.5. Paragraph 3(b) of Schedule 4 has been amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 17 and 18; the words after paragraph (b) were inserted by the Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), Schedule 3, paragraphs 101 and 104(5)(d). Paragraphs 9 and 14 of Schedule 7 have been amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 17 and 19.
 - (c) 1992 c.42. Section 23(9A) was inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 20 and 22(1) and (3).
 - (d) 1992 c.53. Section 9(3A) was inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 23 and 28. Sections 9(4), 10(7) and 10(8) have been amended by the Schedule to the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678). The three definitions in section 16 were substituted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 23 and 30(a), (c) and (d).

- (a) in the heading to Schedule 1, for “Tribunals Under General Supervision of Council” substitute “Tribunals to which this Act Applies”;
- (b) in the heading to Part 1, for “Tribunals Under Direct Supervision of the Council” substitute “Tribunals – General”; and
- (c) in the heading to Part 2, for “Tribunals Under Supervision of Scottish Committee” substitute “Scottish Tribunals”.

Pension Schemes Act 1993

15. In the Pension Schemes Act 1993(a), omit section 185(8) (consultation about other regulations).

Law of Property (Miscellaneous Provisions) Act 1994

16. In the Law of Property (Miscellaneous Provisions) Act 1994(b), in section 17(3) (notices affecting land: absence of knowledge of intended recipient’s death)—

- (a) in paragraph (b)—
 - (i) for “is” substitute “was”; and
 - (ii) after “(functions etc of Administrative Justice and Tribunals Council)” insert “immediately before the coming into force of the repeal of that Schedule”;
- (b) for the words “within” to “2007” substitute “of any tribunal referred to in sub-paragraph (b)”.

Town and Country Planning (Scotland) Act 1997

17. In the Town and Country Planning (Scotland) Act 1997(c), omit—

- (a) paragraph 5(4A) of Schedule 6 (planning inquiry commissions); and
- (b) paragraph 8(4A) of Schedule 7 (joint planning inquiry commissions).

School Standards and Framework Act 1998

18. In the School Standards and Framework Act 1998(d), in paragraph 47 of Schedule 30 (minor and consequential amendments), for “tribunals under general supervision of Council on Tribunals” substitute “tribunals to which that Act applies”.

Greater London Authority Act 1999

19. In the Greater London Authority Act 1999(e), omit section 338(10) (examination in public).

Welfare Reform and Pensions Act 1999

20. In the Welfare Reform and Pensions Act 1999(f), in Schedule 11 (contributions and pensions administration), omit paragraph 23.

(a) 1993 c.48. Section 185(8) has been amended by the Welfare Reform and Pensions Act 1999 (c.30), Schedule 11, paragraphs 20 and 23, and the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 32.

(b) 1994 c.36. Relevant amendments have been made to section 17(3) by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 33.

(c) 1997 c.8. Paragraph 5(4A) of Schedule 6 and paragraph 8(4A) of Schedule 7 were inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 49 to 51.

(d) 1998 c.31. There has been an amendment to paragraph 47 which is not relevant to this Order.

(e) 1999 c.29. Section 338(10) was substituted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 52.

(f) 1999 c.30.

Freedom of Information Act 2000

21. The Freedom of Information Act 2000(a) is amended as follows.
22. In Part 6 of Schedule 1 (other public bodies and offices: general), omit the entries for—
- (a) the Administrative Justice and Tribunals Council;
 - (b) the Scottish Committee of the Administrative Justice and Tribunals Council; and
 - (c) the Welsh Committee of the Administrative Justice and Tribunals Council.

Education Act 2002

23. In the Education Act 2002(b), in paragraph 22 of Schedule 21 (minor and consequential amendments), for “tribunals under general supervision of Council on Tribunals” substitute “tribunals to which that Act applies”.

Title Conditions (Scotland) Act 2003

24. The Title Conditions (Scotland) Act 2003(c) is amended as follows.
25. In section 104 (taking effect of orders of Lands Tribunal etc), in subsection (1), omit “, after consultation with the Scottish Committee of the Administrative Justice and Tribunals Council,”.
26. In section 126 (fees chargeable by Lands Tribunal in relation to functions under this Act), omit “, after consultation with the Scottish Committee of the Administrative Justice and Tribunals Council,”.

Gender Recognition Act 2004

27. The Gender Recognition Act 2004(d) is amended as follows.
28. In Schedule 1 (gender recognition panels)—
- (a) in paragraph 6(5), omit “, after consulting the Administrative Justice and Tribunals Council, ”;
 - (b) for the heading which immediately precedes paragraph 9, substitute “Tribunals and Inquiries Act 1992”;
 - (c) in paragraph 9, for “tribunals under supervision of Council on Tribunals” substitute “tribunals to which that Act applies”.

Civil Contingencies Act 2004

29. In the Civil Contingencies Act 2004(e), omit section 25 (establishment of tribunal).

Serious Organised Crime and Police Act 2005

30. In the Serious Organised Crime and Police Act 2005(f), in paragraph 62 of Schedule 4 (minor and consequential amendments relating to SOCA), for “tribunals under supervision of Council on Tribunals” substitute “tribunals to which that Act applies”.

(a) 2000 c.36. These three entries were inserted by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 53.
(b) 2002 c.32.
(c) 2003 asp 9. Sections 104(1) and 126 have been amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraphs 56 to 58.
(d) 2004 c.7. Paragraph 6(5) of Schedule 1 has been amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 60.
(e) 2004 c.36. Section 25 has been amended by the Tribunals, Courts and Enforcement Act 2007, Schedule 8, paragraph 61.
(f) 2005 c.15.

Tribunals, Courts and Enforcement Act 2007

- 31.** The Tribunals, Courts and Enforcement Act 2007(a) is amended as follows.
- 32.** In section 42 (fees)—
- (a) omit subsection (5)(b) and the preceding “and”;
 - (b) omit subsection (10).
- 33.** Omit section 44 (the Administrative Justice and Tribunals Council).
- 34.** Omit section 45 (abolition of the Council on Tribunals).
- 35.** In Part 2 of Schedule 5 (Tribunal Procedure Committee), in paragraph 21—
- (a) omit sub-paragraph (1)(b) and the preceding “and”;
 - (b) omit sub-paragraph (3).
- 36.** Omit Schedule 7 (Administrative Justice and Tribunals Council).
- 37.** In Schedule 8 (tribunals and inquiries: consequential and other amendments)—
- (a) in paragraph 30, omit sub-paragraphs (a), (c) and (d); and
 - (b) omit paragraphs 2, 3, 9 to 12, 17 to 19, 22(3), 28, 32, 33(3), 49 to 53, 56 to 58, 60 and 61.

Legal Services Act 2007

- 38.** The Legal Services Act 2007(b) is amended as follows.
- 39.** In section 207 (interpretation) in the definition of “court”, in paragraph (a)—
- (a) for “is” substitute “was”; and
 - (b) at the end, insert “immediately before the coming into force of the repeal of that Schedule”.

Planning Act 2008

- 40.** In the Planning Act 2008(c)—
- (a) in section 95 (hearings: disruption, supervision and costs), omit subsection (3); and
 - (b) in section 97(1) (procedure rules), omit “, after consultation with the Administrative Justice and Tribunals Council,”.

Public Bodies Act 2011

- 41.** In the Public Bodies Act 2011(d), omit the entry “Administrative Justice and Tribunals Council.” in each of—
- (a) Schedule 1 (power to abolish: bodies and offices);
 - (b) Schedule 3 (power to modify constitutional arrangements: bodies and offices);
 - (c) Schedule 4 (power to modify funding arrangements: bodies and offices); and
 - (d) Schedule 5 (power to modify or transfer functions: bodies and offices).

(a) 2007 c.15.
(b) 2007 c.29.
(c) 2008 c.29.
(d) 2011 c.24.

Children’s Hearings (Scotland) Act 2011

42. In the Children’s Hearings (Scotland) Act 2011(a), omit section 78(1)(g) (rights of certain persons to attend children’s hearing).

The National Health Service (Service Committees and Tribunal) Regulations 1992

43. The National Health Service (Service Committees and Tribunal) Regulations 1992(b) are amended as follows.

44. In regulation 10 (procedure on appeal), in paragraph (10), omit “Subject to the provisions of regulation 33 (attendance by representative of Administrative Justice and Tribunals Council),”.

45. Omit regulation 33 (attendance by member of Administrative Justice and Tribunals Council).

46. In Schedule 4 (procedure for investigation by discipline committees), in paragraph 5(1), omit “Subject to the provisions of regulation 33 (attendance by representative of Administrative Justice and Tribunals Council),”.

The Deregulation (Model Appeal Provisions) Order 1996

47. In the Deregulation (Model Appeal Provisions) Order 1996(c), in the Schedule (model rules for appeals), omit—

- (a) paragraph 6(9) (appointment of tribunal); and
- (b) paragraph 37 (supervision by the Administrative Justice and Tribunals Council).

The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999

48. The Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999(d) is amended as follows.

49. In the Schedule, omit the entry “Administrative Justice and Tribunals Council” in column 1, and the corresponding entry in column 2.

The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999

50. The Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999(e) is amended as follows.

51. In Schedule 1 (cross-border public authorities), omit the entries for—

- (a) the Administrative Justice and Tribunals Council; and
- (b) the Scottish Committee of the Administrative Justice and Tribunals Council.

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- (a) 2011 asp 1.
 - (b) S.I. 1992/664. Regulation 10(10), regulation 33 and paragraph 5(1) of Schedule 4 have been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008 (S.I. 2008/2683).
 - (c) S.I. 1996/1678. Paragraphs 6(9) and 37 of the Schedule have been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008; paragraph 6(9) has also been amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678).
 - (d) S.I. 1999/1319. This entry in the Schedule was inserted by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.
 - (e) S.I. 1999/1747. These two entries were inserted into Schedule 1 by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.

The Seeds (National Lists of Varieties) Regulations 2001

52. In the Seeds (National Lists of Varieties) Regulations 2001(a), in regulation 16 (representations and hearings), omit paragraph (4)(c)(ii) and the preceding “and”.

The Parole Board (Scotland) Rules 2001

53. In the Parole Board (Scotland) Rules 2001(b), in rule 26(2) (attendance at hearing)—

- (a) at the end of sub-paragraph (f), insert “or”; and
- (b) omit sub-paragraph (h) and the preceding “or”.

The Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

54. In the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003(c), omit regulation 21 (attendance by member of Administrative Justice and Tribunals Council).

The Adjudicator to Her Majesty’s Land Registry (Practice and Procedure) Rules 2003

55. In the Adjudicator to Her Majesty’s Land Registry (Practice and Procedure) Rules 2003(d), in rule 30 (site inspections)—

- (a) in paragraph (1), in the definition of “a request for entry”, omit sub-paragraph (c) and the preceding “and”;
- (b) in paragraph (4), omit “and any member of the Administrative Justice and Tribunals Council”; and
- (c) omit paragraph (6).

The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004

56. In the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004(e), omit paragraph 9(2) of Schedule 2 (the Employment Tribunals (National Security) Rules of Procedure).

The National Health Service (Tribunal) (Scotland) Regulations 2004

57. In the National Health Service (Tribunal) (Scotland) Regulations 2004(f), omit regulation 33 (attendance by member of Administrative Justice and Tribunals Council).

The Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005

58. In the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005(g), omit regulation 27 (meetings of the Reconsideration Committee).

(a) S.I. 2001/3510. Regulation 16(4) has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.

(b) S.S.I. 2001/315. Rule 26(2) has been amended by the Parole Board (Scotland) (Amendment) Rules 2010 (S.S.I 2010/164).

(c) S.I. 2003/2099. Regulation 21 was substituted by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.

(d) S.I. 2003/2171. Rule 30 has been amended by the Adjudicator to Her Majesty’s Land Registry (Practice and Procedure) (Amendment) Rules 2008 (S.I 2008/1731).

(e) S.I. 2004/1861. Paragraph 9(2) of Schedule 2 has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.

(f) S.S.I. 2004/38. Regulation 33 has been amended by the National Health Service (Tribunal) (Scotland) Amendment Regulations 2010 (S.S.I 2010/227).

(g) S.I. 2005/669. Regulation 27 has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.

The Pension Protection Fund (PPF Ombudsman) Order 2005

59. In the Pension Protection Fund (PPF Ombudsman) Order 2005(a), omit paragraph (2)(k) of article 7 (restrictions on the disclosure of information) and the preceding “and”.

The Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005

60. In the Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005(b), omit regulation 14 (attendance at proceedings by member of Administrative Justice and Tribunals Council).

The Financial Assistance Scheme (Appeals) Regulations 2005

61. In the Financial Assistance Scheme (Appeals) Regulations 2005(c), omit—

- (a) regulation 21 (attendance at proceedings by member of Administrative Justice and Tribunals Council); and
- (b) regulation 28(3)(l) (restriction on use of documents and information provided for investigations).

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005

62. In the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005(d), omit rule 66(6)(c) (hearings in public or private).

The Railways and Other Guided Transport Systems (Safety) Regulations 2006

63. In the Railways and Other Guided Transport Systems (Safety) Regulations 2006(e), omit regulation 27(4A) (appeals).

The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006

64. In the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006(f), omit rule 27(7)(i) (attendance at hearings).

The National Health Service (Discipline Committees) (Scotland) Regulations 2006

65. In the National Health Service (Discipline Committees) (Scotland) Regulations 2006(g) omit regulation 16 (attendance by member of Administrative Justice and Tribunals Council).

The Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007

66. The Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007(a) is revoked.

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- (a) S.I. 2005/824. Article 7(2)(k) was inserted by the Pension Protection Fund (PPF Ombudsman) Amendment Order 2005 (S.I. 2005/2023) and has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.
 - (b) S.I. 2005/2024. Regulation 14 has been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.
 - (c) S.I. 2005/3273. Regulations 21 and 28(3) have been amended by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008.
 - (d) S.S.I. 2005/519. Rule 66(6) has been amended by the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2008 (S.S.I. 2008/396).
 - (e) S.I. 2006/599. Regulation 27(4A) was inserted by the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (S.I. 2011/1860).
 - (f) S.S.I. 2006/88. Rule 27(7) has been amended by the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010 (S.S.I. 2010/152).
 - (g) S.S.I. 2006/330. Regulation 16 has been amended by the National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010 (S.S.I. 2010/226).

The Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007

67. The Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007(b) is revoked.

The Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Order 2007

68. The Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Order 2007(c) is revoked.

The Adjudicator to Her Majesty's Land Registry (Practice and Procedure) (Amendment) Rules 2008

69. In the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) (Amendment) Rules 2008(d), omit rule 19 (amendment of rule 30 of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003).

The Company Names Adjudicator Rules 2008

70. In the Company Names Adjudicator Rules 2008(e), omit rule 8(6) (public proceedings).

The Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008

71. In the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008(f), in Schedule 1 (consequential amendments), omit paragraphs 52 to 54, 72(a), (c) and (d), 129, 137, 176, 238, 256(c), 288, 289, 299, 301 to 303 and 331.

The Transfer of Tribunal Functions Order 2008

72. In the Transfer of Tribunal Functions Order 2008(g), omit paragraph 104(5)(d) of Schedule 3 (minor, consequential and supplemental provisions).

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2008

73. In the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2008(h), omit rule 2(5) (amendment of the Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Rules 2005).

The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009

74. In the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009(i), in paragraph 188 of Schedule 1 (consequential amendments and supplemental provisions – primary legislation)—

- (a) for “tribunals under general supervision of council” substitute “tribunals to which this Act applies”;

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- (a) S.I. 2007/2876.
 - (b) S.I. 2007/2951, to which there are amendments not relevant to this Order.
 - (c) S.S.I. 2007/436, to which there are amendments not relevant to this Order.
 - (d) S.I. 2008/1731.
 - (e) S.I. 2008/1738.
 - (f) S.I. 2008/2683.
 - (g) S.I. 2008/2833.
 - (h) S.S.I. 2008/396.
 - (i) S.I. 2009/56.

- (b) in paragraph 188(a), for “tribunals under direct supervision of council” substitute “tribunals – general”;
- (c) in paragraph 188(b), for “tribunals under supervision of Scottish Committee” substitute “Scottish tribunals”.

The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009

75. In the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009(a), omit paragraph 121 of Schedule 2 (consequential amendments to secondary legislation).

The Transfer of Functions of the Charity Tribunal Order 2009

76. In the Transfer of Functions of the Charity Tribunal Order 2009(b), omit—
- (a) article 4(2) (consequential and transitional provisions); and
 - (b) Schedule 2 (consequential amendment to secondary legislation).

The Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009

77. In the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009(c), omit paragraph 2 of Schedule 2 (consequential amendments to secondary legislation).

The Administrative Justice and Tribunals Council (Listed Tribunals) (Amendment) Order 2009

78. The Administrative Justice and Tribunals Council (Listed Tribunals) (Amendment) Order 2009(d) is revoked.

The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009

79. In the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009(e), omit—
- (a) paragraph 6(4) of Schedule 3 (the Board); and
 - (b) paragraph 6 of Schedule 6 (consequential amendments).

The Transfer of Functions of the Asylum and Immigration Tribunal Order 2010

80. In the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010(f), omit paragraph 28 of Schedule 2 (consequential provisions – secondary legislation).

The Transfer of Tribunal Functions Order 2010

81. In the Transfer of Tribunal Functions Order 2010(g), omit paragraph 143 of Schedule 3 (consequential amendments to secondary legislation).

(a) S.I. 2009/1307.
(b) S.I. 2009/1834.
(c) S.I. 2009/1835.
(d) S.I. 2009/3040.
(e) S.S.I. 2009/183. Paragraph 6 of Schedule 3 was inserted by the National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2011 (S.S.I.2011/32).
(f) S.I. 2010/21.
(g) S.I. 2010/22.

The Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010

82. In the Road Traffic (Parking Adjudicators) (Renfrewshire Council) Regulations 2010(a), omit regulation 9(4)(b) (right of Council member to attend hearing) and the preceding “; or”

The Train Driving Licences and Certificates Regulations 2010

83. In the Train Driving Licences and Certificates Regulations 2010(b), omit—

- (a) regulation 35(7) (appeals against decisions of the ORR); and
- (b) regulation 36(7) (appeals against decisions of railway undertakings and infrastructure managers).

The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010

84. In the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Amendment Rules 2010(c), omit rule 15 (amendment of rule 27 (attendance at hearings)).

The Parole Board (Scotland) Amendment Rules 2010

85. In the Parole Board (Scotland) Amendment Rules 2010(d), omit rule 2(6) (amendment of the Parole Board (Scotland) Rules 2001).

The National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010

86. In the National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010(e), omit regulation 2(9) (amendment of the principal regulations).

The National Health Service (Tribunal) (Scotland) Amendment Regulations 2010

87. In the National Health Service (Tribunal) (Scotland) Amendment Regulations 2010(f), omit regulation 2(7) (amendment of the National Health Service (Tribunal) (Scotland) Regulations 2004).

The Residential Property Tribunal Procedures and Fees (England) Regulations 2011

88. The Residential Property Tribunal Procedures and Fees (England) Regulations 2011(g) are amended as follows.

89. In regulation 24 (inspection of premises and neighbourhood), omit paragraph (2)(b) and the preceding “; and”.

90. In regulation 32 (persons entitled to be present at a hearing held in private), omit paragraph (1)(b).

(a) S.S.I. 2010/98.
(b) S.I. 2010/724.
(c) S.S.I. 2010/152.
(d) S.S.I. 2010/164.
(e) S.S.I. 2010/226.
(f) S.S.I. 2010/227.
(g) S.I. 2011/1007.

The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011

91. In the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011(a), omit regulation 2(8)(a) (amendments to the Railways and Other Guided Transport Systems (Safety) Regulations 2006).

The Railways (Interoperability) Regulations 2011

92. In the Railways (Interoperability) Regulations 2011(b), omit regulation 37(5) (appeals in Great Britain).

The Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011

93. In the Additional Support Needs Tribunals for Scotland (Disability Claims Procedure) Rules 2011(c), omit rule 28(7)(i) (attendance at hearings).

The Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Amendment Order 2011

94. The Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Amendment Order 2011(d) is revoked.

The Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011

95. In the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011(e), in regulation 18 (procedure at a hearing), omit paragraph (4)(b) and the preceding “; and”.

The Road Traffic (Parking Adjudicators) (East Ayrshire Council) Regulations 2012

96. In the Road Traffic (Parking Adjudicators) (East Ayrshire Council) Regulations 2012(f), in regulation 9 (procedure at a hearing), omit paragraph (4)(b) and the preceding “; or”.

The Road Traffic (Parking Adjudicators) (South Ayrshire Council) Regulations 2012

97. In the Road Traffic (Parking Adjudicators) (South Ayrshire Council) Regulations 2012(g), in regulation 9 (procedure at a hearing), omit paragraph (4)(b) and the preceding “; or”.

The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012

98. In the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012(h), in regulation 24 (inspection of premises and neighbourhood), omit paragraph (2)(b) and the preceding “; and”.

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- (a) S.I. 2011/1860.
 - (b) S.I. 2011/3066.
 - (c) S.S.I. 2011/104.
 - (d) S.S.I. 2011/405.
 - (e) S.S.I. 2011/442.
 - (f) S.S.I. 2012/139.
 - (g) S.S.I. 2012/142.
 - (h) S.I. 2012/531 (W. 83).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order abolishes the Administrative Justice and Tribunals Council (AJTC), which was set up by section 44 of the Tribunals, Courts and Enforcement Act 2007. The Schedule makes consequential amendments etc.

An impact assessment was prepared in relation to the abolition of the AJTC as part of the Ministry of Justice's consultation on the Public Bodies Act 2011; it is available at <http://www.justice.gov.uk/consultations/reform-public-bodies.htm>.

EXPLANATORY DOCUMENT TO
THE PUBLIC BODIES (ABOLITION OF ADMINISTRATIVE JUSTICE AND
TRIBUNALS COUNCIL) ORDER 2013
2013 No. xxxx

1. This explanatory document has been prepared by the Ministry of Justice (MoJ) and is laid before Parliament under section 11(1) of the Public Bodies Act 2011.

2. Purpose of the instrument

2.1 The purpose of this instrument is to abolish the Administrative Justice and Tribunals Council (AJTC). The Order abolishes the AJTC and the Schedule to the Order makes a number of consequential amendments and repeals to legislation which refer to the AJTC or its Committees.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Committee will note article 1(3) of the instrument, which repeals the entry in Schedule 1 to the Public Bodies Act 2011 ('the Act') relating to the AJTC. Section 6(5) of the Act, which is cited as one of the enabling powers in the instrument, provides that an order under sections 1 to 5 may include provision repealing the entry in the Schedule by virtue of which the order was made.

4. Legislative Context

4.1 The AJTC was established by section 44 of the Tribunals, Courts and Enforcement Act 2007. Under this Act, the AJTC adopted a role in relation to the supervision of tribunals similar to that previously exercised by the Council on Tribunals. In addition the AJTC was charged with keeping the administrative justice system as a whole under review. It was tasked with considering how to make the system more accessible, fair and efficient, and advising the Lord Chancellor, the Scottish Ministers, Welsh Ministers and the Senior President of Tribunals accordingly. The AJTC's wider administrative justice role was concerned with ensuring that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution routes satisfactorily reflect the needs of users.

4.2 Its key statutory functions are as follows:

- a. to keep under review a) the overall administrative justice system, b) the constitution and working of the tribunals under its oversight and c) the constitution and working of statutory inquiries;

- b. to advise ministers on the development of the administrative justice system and its accessibility, fairness and efficiency;
 - c. to put forward proposals for changes;
 - d. reporting on the workings of listed tribunals; and
 - e. to make proposals for research.
- 4.3 The AJTC consists of the Parliamentary Commissioner for Administration and not more than fifteen nor fewer than ten appointed members, of which either two or three are appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers and either one or two by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. The remaining appointed members are appointed by the Lord Chancellor with the concurrence of the Scottish Ministers and Welsh Ministers. There is also a Scottish Committee and a Welsh Committee of the Council.
- 4.4 The AJTC is an advisory non-departmental public body, not a tribunal or any other form of judicial body. Its abolition will therefore have no direct impact on judicial independence or judicial decision making.
- 4.5 The Government announced planned reforms to public bodies on 14 October 2010¹, with a view to increasing transparency and accountability, cutting out duplication of activity, and discontinuing activities which are no longer needed. In conducting its review of public bodies, the MoJ first addressed the overarching question of whether a body needed to exist and its functions needed to be carried out at all. It was considered that the oversight of the administrative justice system and development of administrative justice policy was properly a function of Government and also that the AJTC's oversight functions with regard to tribunals were no longer required given the robust governance and oversight arrangements that exist within Her Majesty's Courts and Tribunals Service (HMCTS)². The AJTC was therefore included in Schedule 1 to the Act, which allows abolition of the listed bodies. This instrument, made under the Act, provides for the abolition of the AJTC with no transfer of functions. There are significant consequential amendments to both primary and secondary legislation.

5. Territorial Extent and Application

- 5.1 This instrument extends to England and Wales, Scotland and Northern Ireland. The amendments, repeals and revocations made by the Schedule to the Order have the same extent as the provision which is affected.

¹

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101014/wmstext/101014m0001.htm>

² Her Majesty's Court Service (HMCS) merged with the Tribunals Service in April 2011 to create Her Majesty's Courts and Tribunals Service (HMCTS).

6. European Convention on Human Rights

- 6.1 The Lord Chancellor has made the following statement regarding Human Rights:

In my view the provisions of the Public Bodies (Abolition of the Administrative Justice and Tribunals Council) Order 2013 are compatible with the Convention rights.

7. Policy background

- 7.1 The AJTC was set up under the Tribunals, Courts and Enforcement Act 2007 with the role to keep under review the administrative justice system, to consider how it might be made more accessible, fair and efficient and to advise the Lord Chancellor, Welsh Ministers, Scottish Ministers and the Senior President of Tribunals accordingly.

- 7.2 The AJTC was included in the review, carried out in 2010, of the MoJ's public bodies, and the Lord Chancellor decided that its functions are either no longer required or are more properly performed by Government. On 23 November 2011 during Consideration of Commons Amendments to the Public Bodies Bill, the Minister of State for Justice, Lord McNally, said:

“The AJTC was set up to advise the Lord Chancellor, Ministers of the devolved Administrations in Scotland and Wales and the Senior President of Tribunals on administrative justice. One of the Council's functions is to keep under review the constitution and working of tribunals. However, we have moved on from a structure in which tribunals were funded by the department whose decisions they reviewed. We now have the unified Her Majesty's Courts and Tribunals Service supporting the majority of central government tribunals and ensuring that tribunal users have access to timely and effective justice. Previously disparate management, procedures, appeals and funding mechanisms are now administered centrally by the Ministry of Justice. There are also a number of ways by which ministerial accountability is assured for the performance of Her Majesty's Courts and Tribunals Service, further reducing the need for the kind of oversight that the AJTC provides.

The Ministry of Justice is committed to maintaining and developing its overview of the end-to-end administrative justice system. It is working with other departments and the devolved Administrations in Scotland and Wales to ensure that there continues to be a UK-wide overview of administrative justice.”

- 7.3 The Government does not believe that the independence of the AJTC in challenging policy proposals is of sufficient value in and of itself to merit its ongoing funding. While the MoJ is clear that there is scope for improvement in the decision-making performance of its bodies, the

reasons why decisions are overturned by tribunals are varied both within and between jurisdictions. The Government does not believe that the AJTC's continued operation is necessary to bring about significant improvements in this area. Analysis of data on trends and issues arising from the administration of tribunals is now carried out by HMCTS as a matter of course. Using this analysis to develop targeted approaches that deliver improvements – whether in initial decision making or other parts of the administrative justice process – can be more effectively and efficiently undertaken by officials in the Ministry of Justice and HMCTS, working with colleagues across Government. The MoJ will strengthen governance arrangements with other Government departments to implement key policy and service improvements.

- 7.4 The statutory duty to consult the AJTC in various circumstances will be removed. So too will the right to attend tribunal hearings, including the deliberations of judges, be removed. The Government believes that this statutory right has been largely superseded by the governance arrangements in place under HMCTS as a means via which to monitor tribunal performance. In recent years the right has been exercised by the AJTC largely to “inform and illuminate”³ research projects rather than as a primary source of insight to tribunal functioning. The Government does not believe that the removal of this right will have a substantive impact on the oversight of tribunals, the majority of which are carried out in public forum.
- 7.5 The Public Administration Select Committee reported on the future oversight of administrative justice in March 2012⁴. This report suggested that the House would require some reassurance that sufficient and appropriate provision was being made for the continued performance of necessary functions currently carried out by the AJTC. While this instrument does not provide for the formal transfer of the AJTC's functions to another body or department, the MoJ will continue to oversee the development of policy on administrative justice and tribunals, alongside the operational management of tribunals under HMCTS.
- 7.6 Staff members working on administrative justice are drawn from across the MoJ, including HMCTS. It is an interdisciplinary team, with expertise in policy, finance, law, analysis and operations. Staff are deployed flexibly according to the demands of the work, in line with the wider approach to ensure that resources are prioritised efficiently and effectively to meet departmental priorities.
- 7.7 The following section provides more detail on the Government's plans for the oversight of the administrative justice system in the absence of

³ Administrative Justice & Tribunals Council. ANNUAL REPORT 2009/2010

⁴ <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpublic/1621/162102.htm>

the AJTC and the actions that will be taken to ensure a fair, efficient and accessible system.

Administrative Justice and Tribunals Strategic Work Programme

- 7.8 The Government will very shortly publish, and place in both Houses, a strategic work programme setting out its key objectives in the area of administrative justice and tribunals under six themes:
1. Governance of the Administrative Justice and Tribunals system;
 2. Non-HMCTS tribunals and new appeal rights;
 3. Funding of tribunals administered by HMCTS;
 4. Improving initial decision making;
 5. Enhancing proportionality; and
 6. Maintaining a user focus.
- 7.9 Under the governance theme the MoJ will strengthen bi-lateral arrangements with other Government departments and other actors in the administrative justice and tribunals system to consider performance right through the system, address concerns constructively and transparently, and share good practice. For example, the MoJ and HMCTS have worked with the UK Border Agency to introduce pilots that seek to improve the number of immigration and asylum appeals where the respondent's evidence is produced ahead of the hearing.
- 7.10 For the tribunals that remain outside of the unified tribunal structure administered by HMCTS and new appeal rights, the MoJ plans to:
- establish a proportionate programme of transfer into HMCTS for existing tribunals on a cost/benefit basis;
 - work with sponsoring departments to ensure that those tribunals that remain outside of the unified tribunal structure sensibly align with that system; and
 - establish an appeal right gateway to ensure the need for a new appeal right is considered in light of its impact across the administrative justice and tribunals system and, where established, is fair, efficient and supports access to justice.
- 7.11 Under the strand examining funding of tribunals administered by HMCTS, the MoJ will explore whether the funding arrangements we currently have for tribunals are working as effectively as they could, looking in particular at whether they best reflect the total cost to Government of decision making and provide the right incentives to use the tribunal system efficiently. The MoJ is already working with the departments that place the most demand on the tribunals system such as the Department for Work and Pensions, Home Office and Department for Business, Innovation and Skills to improve cost data to identify a range of funding and fee options.

- 7.12 The MoJ's plans to improve initial decision making will involve working across departments to establish better end-to-end performance information across different appeal routes. This will give greater clarity on where there are systemic issues with decision making and where Government action is having an effect. The MoJ will also build on the work already taken forward with the Department for Work and Pensions to improve the quality and usefulness of feedback to departments from the onward appeal processes, particularly on judicial decisions.
- 7.13 On proportionality, the MoJ will develop a framework that will allow the MoJ and other actors in the administrative justice and tribunals system to better focus initiatives to resolve disputes in the most proportionate way possible and in the most appropriate setting. The MoJ is already working in a number of jurisdictions to resolve more disputes before they reach a tribunal and, where they do require judicial consideration, to make processes as streamlined as possible.
- 7.14 The Government has recognised the need for policy development in administrative justice to adequately reflect the diverse needs and views of users. The MoJ plans to gather better information on users via a number of means such as targeted surveys, user input into process improvement exercises (using the Lean methodology) and complaints. User groups exist across most jurisdictions that can also be drawn upon to provide input to jurisdiction-specific policy. This information will be used to inform policy proposals. The AJTC has to some extent been able to provide a user focus to its policy advice by garnering views from across the field. The new arrangements for policy development mean that it is more efficient to gain such insight directly.
- 7.15 To support this, the MoJ has established an Advisory Group formed of representatives from across a wide range of user-focused bodies to examine issues arising from users of the administrative justice and tribunals system and provide early testing of policy proposals. This group, which will meet twice annually, was formed in May 2012 and has already held two formal meetings chaired by the Director of Access to Justice in the MoJ. Its core membership has been established, but will remain flexible to best reflect the changing nature of the administrative justice field. As a group it will also be drawn upon to consider specific policy issues or proposals, either in workshops or in writing. This has already been demonstrated when the MoJ called upon the Group and a wider network to run a focused policy workshop in October to work through some specific proposals for the administrative justice strategic work programme. The secretariat for this group will continue to be resourced from within MoJ's Justice Policy Group (JPG).

Section 8 of the Public Bodies Act 2011

7.16 The Minister considers that the instrument serves the purpose in section 8(1) of the Act for the following reasons:

- i. Efficiency: The decision to abolish the AJTC is consistent with the elimination of duplication of functions and to deliver just that which is necessary to support courts and tribunals. The department is capable of providing Ministers with balanced, objective, impartial and expert advice on administrative justice policy. The AJTC's tribunal oversight functions are no longer required due to the establishment of a unified tribunal system within HMCTS which is committed to providing timely and effective justice to users. The MoJ considers that the needs of users can be effectively monitored through liaison with jurisdictional user groups and other sources of user information, such as complaints. The Advisory Group that has been established will provide an expert and critical forum to examine the issues raised and explore options to address them.

Oversight and advice on the development of the administrative justice system can be efficiently delivered within Government and should not be duplicated by a statutory advisory body. The AJTC's oversight role in relation to the constitution and working of tribunals and statutory inquiries (in practice inquiries relating to land use), is no longer considered vital to their satisfactory operation. A unified tribunals service administered by HMCTS is now well established, with a robust governance framework and management structure to ensure that tribunals meet key performance measures. Complaint handling mechanisms ensure that concerns expressed by users are dealt with fairly and inform service development. A common approach to judicial training and the two tier tribunal structure provide effective safeguards against poor decision making by tribunals. There are also robust quality assurance arrangements established in the Planning Inspectorate (which holds statutory inquiries into a range of land use developments).

- ii. Effectiveness: The Ministry can provide effective oversight of the administrative justice system as a whole, drawing upon independent advice where appropriate. The MoJ will promote and drive up effectiveness by strengthening governance arrangements with other Government departments, administrations and other actors in the administrative justice and tribunals system.

It is more effective for the oversight of tribunals to be exercised through the robust governance arrangements that exist within HMCTS, which are outlined in the HMCTS Framework

Document⁵. The creation of the Property Chamber in the First-tier Tribunal in 2013 will mark the end of major structural reforms of the tribunals system into a unified two-tier system administered by HMCTS. While some smaller and local tribunals remain outside of this system, most (apart from devolved tribunals) have been integrated into an independent, coherent and more efficient tribunal structure as envisaged by Sir Andrew Leggatt's review of tribunals in 2001.

- iii. Economy: At the time the proposal to abolish was announced in October 2010, gross savings from abolition of the AJTC were estimated to be in the region of £1.2m per annum (based on historic levels of running costs). Allowing for inflation and an anticipated closure date of 31 December 2011, cumulative gross savings were estimated to be £4.3m over the Spending Review period (2011/12 to 2014/15).

The Impact Assessment published alongside the consultation response in December 2011⁶ provided updated savings estimates for 2012/13 to 2015/16. Given the longer than expected passage of the Bill and the enhanced secondary legislation procedure provided for in the Bill, the revised estimates were based on an anticipated closure date of 30 September 2012. Cumulative gross savings for 2012/13 to 2015/16 were estimated at this time to be in the region of £4.6m. These savings cover a period starting and ending one year later than the October 2010 figures.

In March 2012, in its report on the future oversight of the administrative justice system⁷, the Public Administration Select Committee (PASC) made the following comment and recommendation in relation to MoJ's costs and savings estimates:

"The Government estimates that abolition of the AJTC could save approximately £4.6 million by 2015, but this assumes that the AJTC would not be required to reduce costs and improve efficiency like other public bodies. We also suspect that the full cost of carrying out these functions within the MoJ has been underestimated. We therefore doubt this estimate. The Government should provide a more detailed estimate, which addresses these points before asking Parliament to approve an abolition Order."

⁵ <http://www.justice.gov.uk/publications/corporate-reports/hmcts>

⁶ https://consult.justice.gov.uk/digital-communications/public_bodies_bill

⁷ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/Publications/previous-sessions/Session-2010-12/>

In its response to PASC in May 2012⁸, the Government said:

"The Government notes the Committee's recommendation and will provide further details, before Parliament is asked to approve the Order. The difference in the savings estimates are the result of delay to closure. We are now expecting to make an estimated £2.8m out of an original savings estimate of £4.3m. The methodology adopted by Ministry of Justice to establish the estimates provided in evidence is in line with HM Treasury's methodology for estimating total savings in the Spending Review.

This approved approach compared the economic benefit of closure against the 'do nothing' option, where total baseline costs rise with inflation. The Government recognises that comparisons could be made with other options, such as effecting cost savings within the AJTC. There is a limit to the cost savings possible for AJTC to continue operating at an acceptable level given its current statutory structure. An updated analysis of cost savings realised by AJTC's closure will be provided when the order is laid."

Our most recent analysis of cost savings from closing the AJTC for the Spending Review period is based on an anticipated closure date of 31 March 2013. Again, using the HMT methodology, gross cumulative savings of £1.4m are estimated from closure across the remainder of 2012/13, 13/14 and 14/15. As per the PASC's recommendation however, these estimates take into account that the AJTC has been required to reduce its expenditure in 2011/12 and 2012/13 (and is now operating at a cost of around £0.7m pa) and therefore the full running cost at the start of the SR period (£1.2m in 2010/11) will not be saved from closure alone.

There are some costs associated with closure and these are estimated to be £0.3m in 2012/13 for possible redundancies at the AJTC and £0.15m in each of 2013/14 and 2014/15 which is for reimbursements to the Scottish and Welsh governments for the creation of interim non-statutory bodies to replace the AJTC in Scotland and Wales (more detail on the arrangements with the devolved administrations is at section 8 of this document). Total costs for the rest of the Spending Review period following closure are therefore £0.6m. Net cumulative savings from closure over the remaining Spending Review period are therefore now estimated to be £0.8m. MoJ would of course continue to make savings beyond the SR period from no longer funding the AJTC.

⁸ <http://www.justice.gov.uk/publications/policy/moj/government-response-to-report-on-future-oversight-of-the-administrative-justice-system>

In respect of PASC's reference to the cost of carrying out the AJTC's functions within the department, the MoJ does not consider there to be any additional cost from this. Staff members working on administrative justice are drawn from across the Ministry of Justice, including HMCTS. Staff working on projects in this area will be drawn from across disciplines, with expertise in policy, finance, law, analysis and operations. Staff in the MoJ are deployed flexibly according to the demands of the work, in line with the wider approach to ensure that resources are prioritised efficiently and effectively to meet departmental priorities. This approach is in line with the Government's wider vision on civil service reform⁹, calling for a faster, more flexible workforce committed to open policy making.

The MoJ recognise the need to support existing AJTC staff in view of the proposed abolition. The AJTC staffing complement comprises six permanent MoJ staff; one staff member employed on a fixed term contract (FTC) and one staff member seconded from the Scottish Government. The latter will return to the Scottish Government on abolition and the staff member employed on a FTC will be given notice of the proposed abolition.

The six permanent MoJ staff at the AJTC will be placed at risk of redundancy. The MoJ will work with staff to seek redeployment opportunities within the MoJ or in other Government departments.

Staff will also be given the support of the MoJ's Career Transition Service. For the six permanent MoJ staff at the AJTC who do not wish to seek opportunities within the MoJ or in other Government departments the MoJ is exploring whether a voluntary redundancy scheme can be made available.

The department is committed to offering the six permanent MoJ staff at the AJTC the best possible support in order that compulsory redundancy can be avoided if at all possible.

- iv. Securing appropriate accountability to Ministers: The abolition of the AJTC will not result in any loss of accountability to Ministers. Ministers remain ultimately accountable for HMCTS as an executive agency of MoJ, and HMCTS is responsible for the performance of the tribunals, through their regional and central management. A minority of tribunals sit outside of HMCTS and which remain accountable to Ministers through their respective departmental channels. MoJ will examine the case for bringing these remaining existing tribunals into the unified tribunal system where appropriate.

⁹ <http://www.civilservice.gov.uk/reform>

7.17 The Minister considers that the conditions in section 8(2) of the Act are satisfied, both in respect of AJTC Council members and tribunal users. Abolition does not affect the exercise of any legal rights or freedoms either directly or indirectly. AJTC Council members do not have employee status but hold a statutory office. Tribunal users can still make their voice heard through the user groups that exist in most HMCTS tribunal jurisdictions.

Interest in the Houses of Parliament

7.18 During passage of the Public Bodies Bill, an amendment was tabled at Lords Committee stage on 29 November 2010 by Lords Borrie, Lloyd of Berwick, Newton of Braintree and Howe of Aberavon to remove the AJTC from the Bill. At debate there was significant opposition to the body being abolished, with all speakers in favour of the amendment except Lord Taylor. The debate proceeded to a vote which the Government defeated by 156 votes to 147.

7.19 A series of amendments was tabled by the late Lord Newton of Braintree at Lords Report stage on 23 March 2011 to add the AJTC to Schedules 2, 3, 4 and 5 to the Bill. Six speakers spoke against the Government, with none in support; opposition hinged on:

- Concerns that the Ministry of Justice could not perform all of the council's functions;
- The apparent inconsistency of retaining the Civil Justice Council but not the AJTC, as the two bodies have similar terms of reference; and
- The need to retain access to independent expertise.

The Government lost the resulting vote by 198 to 191 and the AJTC was introduced to Schedules 2-5.

7.20 The Government tabled an amendment at Commons Committee stage on 15 September 2011 to remove the AJTC from Schedule 2 to the Bill (power to merge). David Heath spoke for the Government and Jon Trickett, Valerie Vaz and Roberta Blackman-Woods spoke for the Opposition. The amendment was moved and agreed to.

7.21 Lord Newton tabled a motion at Lords Consideration of Commons Amendments on 23 November 2011 to include the AJTC and the Civil Justice Council together in Schedule 2 (power to merge). He was supported by several peers including Baroness Scotland, Lord Woolf and Lord Borrie. The points raised included concern over MoJ capability to properly oversee administrative justice, the need for an independent body to oversee the system, the effect of legal aid cuts,

questioning of the projected savings and devolution issues. The debate proceeded to a vote which the Government won by 236 to 233.

8. Impact of abolition on devolved administrations

Wales

- 8.1 Section 9(6) of the Public Bodies Act provides that an order to abolish, merge or transfer the functions of a public body requires the consent of the National Assembly for Wales to make provision which would be within the legislative competence of the Assembly if it were contained in an Act of the Assembly. Section 9(7) of the Act states that an order requires the consent of the Welsh Ministers to make provision not falling within subsection (6) which either modifies the functions of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, or which could be made by any of those persons.
- 8.2 Abolition of the AJTC meets the criteria set out under both sections 9(6) and 9(7), for the following reasons:
- a) The National Assembly for Wales is able to make provision about tribunals dealing with issues within its competence;
 - b) The National Assembly also has specific competence in relation to the Public Services Ombudsman for Wales, regulation and inspection of auditable public authorities, and inquiries in respect of matters for which the Welsh Ministers are responsible;
 - c) Welsh Ministers may refer matters which relate only to Wales to the AJTC for consideration, and this may include matters outside the competence of the National Assembly for Wales.

The tribunals in Wales within the remit of the AJTC for which Welsh Ministers are responsible are listed in the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007 (S.I. 2007/2876).

- 8.3 Jonathan Djanogly, as the then Parliamentary Under-Secretary of State for Justice, wrote to the First Minister for Wales in April 2012 to seek agreement to lay a consent motion in the National Assembly for the provisions within this order which come within section 9(6) and 9(7) of the Act.
- 8.4 The First Minister stated concerns around the proposal to abolish the AJTC, in light of the ongoing tribunal reform programme in Wales. After a period of negotiation between the UK and Welsh Government, the First Minister gave his agreement in principle to abolition of the AJTC by letter on 28 November 2012. Agreement was given based on the following agreed conditions:

- a) The Welsh Government will establish a non-statutory body to oversee tribunal reform in Wales, which will be supported by the Ministry of Justice, reimbursing costs up to £100,000 per annum in 2013/14 and 2014/15; and
- b) The Ministry of Justice will work with the Welsh Government to agree protocols for the non-statutory body to ensure that the Lord Chancellor gives due consideration to its recommendations on devolved Welsh tribunals and consults the Advisory Body on relevant matters relating to devolved Welsh tribunals. We envisage these protocols will involve a written commitment for the Lord Chancellor to formally respond to issues raised by the Welsh body in writing within a standard 28 day period.

8.5 The First Minister will table a Consent Motion in the National Assembly for Wales once the draft abolition order is laid in Westminster.

Scotland

8.6 Section 9(1) of the Public Bodies Act 2011 states that an order to abolish, merge or transfer the functions of a public body requires the consent of Scottish Parliament if:

- a) It would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, or
- b) It modifies the functions of the Scottish Ministers.

8.7 Abolition of the AJTC meets each of these criteria for the following reasons:

- a) The AJTC is a cross-border public authority (CBPA) within the meaning of section 88 of the Scotland Act 1998 – SI 1999/1319;
- b) The Scottish Parliament has legislative competence in relation to the removal of functions exercisable by the body in Scotland (section 90(1) of the Scotland Act 1998);
- c) The Scottish Ministers exercise functions in relation to the AJTC and these would be modified as a result of its abolition.

The tribunals in Scotland within the remit of the AJTC for which Scottish Ministers are responsible are listed in the Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Order 2007 (S.I. 2007/436).

8.8 Jonathan Djanogly, as Parliamentary Under-Secretary of State for Justice, wrote to Kenny MacAskill MSP, Scottish Cabinet Secretary for Justice, on 21 March 2012 to request that the Scottish Government seek consent of the Scottish Parliament to the terms of the Order.

- 8.9 Roseanna Cunningham MSP, Scottish Minister for Legal Affairs, replied on 4 April 2012 stating that she was content to support a Public Body Consent Memorandum to seek the consent of the Scottish Parliament providing that the following conditions were fulfilled:
- a) That various technical issues raised by Scottish Government officials were satisfactorily dealt with; and
 - b) That collective agreement was given by Scottish Ministerial colleagues.
- 8.10 Ministry of Justice officials amended the order based on the comments given by Scottish Government officials. The Government recognises that the Scottish Government is planning major reform to the structures, functions and leadership of Scotland's tribunals, under the 'Making Justice Work' programme¹⁰ and intended to be included in legislation in 2013. As part of this, the Scottish Government plans to establish, in legislation, a body to succeed the Scottish Committee of the AJTC as soon as Parliamentary time allows. Given this intention and the planned period of structural reform, which will in many ways mirror the reforms already implemented in English and reserved tribunals, the Government has agreed to continue to contribute funding in the short term for a non-statutory interim body to be established by the Scottish Government.
- 8.11 In recognition of the greater development of tribunals administered by HMCTS, and to ensure that users of the Scottish Tribunals Service are not disadvantaged compared to those who use the tribunals system in England, the UK Government will reimburse the Scottish Government costs up to £50,000 per annum in 2013/14 and 2014/15 to contribute to the costs of an interim body until such a time that Scotland establishes new arrangements under Scottish legislation.
- 8.12 Scottish Ministers gave their agreement in principle to seek the Scottish Parliament's consent to the abolition order by letter on 12 December 2012. The Scottish Government will lodge a Public Body Consent Memorandum in the Scottish Parliament once the draft abolition order is laid in Westminster.

Consultation outcome

- 9.1 A public consultation covering the bodies the Ministry of Justice proposed to reform through the Public Bodies Bill, including the AJTC, was launched on 12th July 2011 and closed on 11th October 2011.
- 9.2 A total of 41 responses were received regarding the proposal to abolish the AJTC including 18 from individuals, 12 from professional

¹⁰ <http://www.scotland.gov.uk/Topics/Justice/legal/mjw>

organisations and representative groups and four from charities. The AJTC itself provided a detailed response, with others received from the Welsh and Scottish governments and from Sir Robert Carnwath, at that time the Senior President of Tribunals.

- 9.3 Four respondents were not opposed to the abolition of the AJTC, including one respondent who thought that it was a logical step following the establishment of HMCTS, but the majority of respondents expressed the view that the AJTC should not be abolished. Respondents, many of whom are organisations active in the administrative justice field, commented that the AJTC's strength is that it is an independent organisation that exercises a UK wide overview of the administrative justice system. They felt that from this perspective it is able to represent the user and exercise a vital role in sharing best practice, mutual learning and collaborative working between courts, tribunals and ombudsmen. Concern was expressed about what arrangements would be made with regard to the oversight of tribunals that lie beyond the remit of HMCTS. Particular concern was also expressed about what arrangements would be made in respect of the oversight of local authority run school admission and exclusion panels; a role the AJTC currently exercises. One organisation representing those with disabilities, which opposed the abolition of the AJTC, highlighted the AJTC's experience in translating the understanding of the needs of those with learning disabilities into changes that will improve access to the justice system.
- 9.4 The Government's response to the consultation on proposals for reform of its bodies included in the Public Bodies Bill was published on 15 December 2011 and can be found, along with the Consultation Document itself and the responses regarding the AJTC proposal, on the MoJ website at:
https://consult.justice.gov.uk/digital-communications/public_bodies_bill
- 9.5 The Government's decision, after considering the responses to the consultation, was that the AJTC should be abolished. The department itself is capable of providing the required oversight of the administrative justice system and its officials can provide Ministers with the impartial, balanced, objective and expert advice necessary to develop effective policy in this area.
- 9.6 The MoJ does, and will continue to, take account of the views of service users including those in protected groups. It has established an Advisory Group of administrative justice experts and key stakeholders to test policy ideas and to help prioritise and advise on the administrative justice work programme. In addition, almost all tribunal jurisdictions have user groups to enable users to discuss issues of concern with the judiciary and HMCTS management. These groups operate at national and local levels, and bring together representatives of the public who use tribunals services, professional groups (such as the Bar and Law Society), the judiciary and officials.

- 9.7 There is now a well established unified tribunal system within HMCTS supporting the majority of tribunals. In particular the agency's work is overseen by a board, headed by an independent chair working with non-executive and judicial members to ensure Ministerial accountability for the performance of HMCTS. Almost all remaining central Government tribunals which are outside of HMCTS have been either transferred in to HMCTS, will be, or are being given further consideration for transfer-in. These transfers engender an increased perception of independence and impartiality as tribunals are separated from original decision makers and policy owners.
- 9.8 The Government is committed to an overview of the whole system, not just HMCTS administered tribunals. This includes those bodies administered by local authorities, like school admission and exclusion appeal panels. MoJ is already working with relevant departments and agencies in some areas, and in discussion with them about how best to do this in future.
- 9.9 The Government is committed to developing a strategic, UK-wide approach to the administrative justice system. MoJ officials already work closely with colleagues in the Scottish and Welsh governments to ensure that there is a proportionate overview, that best practice is shared and that consistency is achieved where desirable. This includes supporting the devolved administrations in their work in reforming tribunals.
- 9.10 The department has engaged with the devolved administrations in Scotland and Wales about the proposed abolition of the AJTC. Arrangements for the creation of temporary non-statutory bodies have been agreed with Scotland and Wales and clear protocols will be developed to ensure the views and advice of the temporary bodies in Scotland and Wales are properly considered where necessary by Ministers in the UK Government.

10. Guidance

- 10.1 The AJTC and MoJ have both taken a number of steps to plan for the AJTC's abolition. The AJTC have been liaising with JPG on administrative justice matters in advance of abolition. The AJTC will publish their final annual report outlining their activity prior to abolition. The AJTC will also alert their stakeholders to JPG's role with regard to Administrative Justice.
- 10.2 On abolition, the AJTC's website will be archived and will contain a searchable archive of activity conducted by the AJTC and the Council of Tribunals. Annual and other reports will be scanned and retained in the British Library archive. Following repeal of the relevant Schedule

of the 2007 Act, the Ministry of Justice will place on its website a list of all tribunals that came within the AJTC's statutory remit.

- 10.3 Ministers have written to the Chair of the AJTC to inform him of the decision to abolish. Officials have met regularly with the Chair and Chief Executive of the AJTC to keep them informed of the development of the proposal to abolish and AJTC staff have also been kept informed. Discussions have also been held about the work the AJTC might carry out before abolition and how MoJ officials might develop future administrative justice policy.

11. Impact

- 11.1 An Impact Assessment was published on 15 December 2011 alongside the consultation paper on the Public Bodies Bill proposals and an updated version was published together with the response to the consultation. The assessment identified potential impacts on AJTC staff, tribunal users and users of the administrative justice system together with the proposed mitigations. The section above which sets out how the Order meets the statutory test for economy purposes provides MoJ's most recent estimates of the overall savings from abolition of the AJTC. The Impact Assessment will be updated and published at the enactment stage to reflect the final assessment of the costs and savings and the final contents of the Order.
- 11.2 An initial Equality Impact Assessment screening was provided alongside the consultation paper. A full Equality Impact Assessment was published alongside the Government's response to the consultation response paper. This reflects that a response to the consultation identified a potential impact on those with learning disabilities who may need extra support to engage with the administrative justice system and the arrangements that are in place for such users to engage with HMCTS and the judiciary.

The IA and EIA are available on the MoJ website at:

https://consult.justice.gov.uk/digital-communications/public_bodies_bill

12. Regulating small businesses

- 12.1 The legislation does not apply to small business.

13. Monitoring and review

- 13.1 Cabinet Office will carry out a post legislative scrutiny review of the Public Bodies Act and MoJ will monitor the subsequent outcome.

14. Contact

14.1 Ed Bowie at the Ministry of Justice Tel: 0203 334 4018 or e-mail: ed.bowie@justice.gsi.gov.uk can answer any queries regarding the instrument.

Agenda Item 5

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



David Melding AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
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Your ref:
Our ref:

3 December 2012

Deau David

Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

I have written today to Mick Antoniw to confirm my view that, in accordance with section 110(3) of the Government of Wales Act 2006 (GoWA), the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill, is within the legislative competence of the Assembly and I intend to make a statement to that effect upon the Bill's introduction.

However, my decision in this case was not straightforward. I have received advice that credible arguments can be made that a number of provisions of the Bill may not be within the Assembly's legislative competence. The decision I have made is, therefore, a finely balanced one in these areas.

I enclose for your information a summary of the issues I considered in reaching my view on legislative competence. I feel it is appropriate, and important, to share this with you, so as to recognise and facilitate the role of Assembly Members on your Committee in scrutinising the Bill. The lawyer and Clerk supporting the Committee in that scrutiny will be able to provide more detailed information on the issues.

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh



This is the first time we have taken the approach of revealing difficult issues of competence considered by me. It is also the first case that has thrown up such issues since the recent Supreme Court judgment. There are undoubtedly sensitivities arising from how the Assembly debates matters of legislative competence during the progress of a Bill. The staff supporting your committee will be able to advise you on these and I would, of course, be happy to discuss in person.

In the meantime, I am writing in similar terms to Mark Drakeford as Chair of the Health and Social Care Committee.

I must stress that the advice I have received, and on which I have based my decision, is that the provisions of the Bill can legitimately be determined as being within the legislative competence of the Assembly. Nevertheless, I wish to ensure that the issues I have considered are shared with Committees so that further consideration can be given to them during scrutiny of the Bill, if Members so wish.

Rosemary Butler AM, Presiding Officer

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The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

Summary of Legislative Competence Issues

Background

1. The Recovery of Medical Costs for Asbestos Diseases (Wales) Bill has been submitted to the Presiding Officer by the Member in charge of the Bill, Mick Antoniw AM, to enable the Presiding Officer to state her view on whether the Bill is within the legislative competence of the Assembly. In accordance with section 110(3) of the Government of Wales Act 2006 (GoWA), and Standing Order 26.4, this statement must be made on or before the Bill being introduced.
2. After receiving advice from the Assembly's legal advisers, the Presiding Officer has decided that, in her view, the Bill is within competence. However, the Presiding Officer considers it appropriate to bring certain issues relating to competence, which she considered in reaching her view, to the attention of the Committees that will be scrutinising the Bill, so that they can decide whether or not to probe these issues further as part of the scrutiny process.

Overview of the Bill

3. The purpose of the Bill is to ensure that a person who pays compensation to a 'victim' of an 'asbestos-related disease' also has to reimburse the Welsh Ministers for costs incurred by the NHS in Wales in providing care to the 'victim'. The same applies if the compensation is paid by someone else on behalf of the person responsible for the harm to the 'victim', including insurance companies.

Competence Issues considered by the Presiding Officer

4. The first issue concerns section 15 of the Bill. This deals with the liability of insurers to pay the new charges which the Bill introduces. Schedule 7 to GoWA contains an exception from competence drafted in these terms: "Financial services, including ... insurance". This exception is set out under Heading 4, "Economic Development", whereas the provisions of the Bill relate to Subjects listed under Heading 9, "Health and Health Services". However, exceptions from competence apply equally to all the Subjects listed in Schedule 7.

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5. The Presiding Officer considers, on balance, that section 15 is within competence, on the grounds that it is incidental to the other provisions of the Bill, or appropriate to make the Bill fully effective.
6. The second issue concerns section 17 of the Bill. This provides that the Bill binds the Crown. As such, it will affect UK Government Departments. The question arises whether, in doing so, it will modify a function of a Minister of the Crown, or impose a new function on such a Minister, or merely create a liability to which such Ministers will become subject in certain circumstances..
7. Paragraph 1 of Part 2 of Schedule 7 to the GOWA 2006 prohibits a Bill from modifying a pre-commencement function of a Minister of the Crown. These are functions held by a Minister of the Crown since before 5th March 2011. The paragraph also prohibits a Bill from imposing a function on a Minister of the Crown. However, a Bill can do any of these things if the Secretary of State consents. Alternatively, a Bill can modify a function (but not impose one) if to do so would be incidental on, or consequential to, another valid provision of the Bill.
8. The Presiding Officer considers that section 17 should not be seen as outside competence, given that there are credible arguments that it does not modify a function of a Minister of the Crown or impose a new function on such a Minister; or that, if it does modify a function of a Minister of the Crown, the modification is incidental to other provisions of the Bill.
9. The third issue concerns whether section 2, the core provision of the Bill, relates sufficiently closely to one or more Subjects listed in Schedule 7 to GoWA.
10. Paragraph 4 of Part 2 of the Explanatory Memorandum cites heading 9 (Health and health services) in Schedule 7 to GoWA as providing the legislative competence to permit the National Assembly to pass this Bill. The subjects that appear under that heading, and that are potentially relevant to the Bill, are:
 - “Prevention, treatment and alleviation of disease, illness, injury [and] disability ... Provision of health services... Organisation and funding of national health service.”
11. The decision as to whether a provision of a Bill “relates to” a Subject is to be made primarily by reference to the “purpose” of the provision.
12. None of the Bill’s provisions have as their purpose the ‘prevention, treatment and allevation of disease (etc)’. The same applies to the Subject “provision of health services”.

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13. However, the Presiding Officer considers that all the provisions of the Bill do, on balance, “relate to” the subject ‘Organisation and funding of national health service’. This is because the purpose of section 2, and therefore of the whole Bill, is to reimburse the Welsh Ministers – the funders of the Welsh NHS – for the cost of funding certain asbestos-related NHS services. This is a sufficiently close relationship with the Subject to bring section 2, and therefore the whole Bill, within competence.
14. In reaching her decision that the provisions of the Bill were within competence, the Presiding Officer also considered all the other tests for competence set out in GoWA: compatibility with the Convention rights; compatibility with EU law; protection of certain other enactments; protection of the position of the Comptroller and Auditor General; and the test that the Bill must not have a prohibited effect on the Welsh Consolidated Fund. She was satisfied that the Bill clearly met all these tests.
15. Finally, the Presiding Officer considered whether it would be necessary for the consent of Her Majesty the Queen and of the Duke of Cornwall would be required for the Bill to be passed by the Assembly. She concluded that these consents may be necessary and the Member in Charge has been asked to address this issue before Stage 3 of the Bill. This is not an issue of legislative competence as such.