EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (ABOLITION OF ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL) ORDER 2013

2013 No. [DRAFT]

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 2010[1], 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.

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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 2012[4]. 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/cmpubadm/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 Document[5]. The creation of the Property Chamber in the First-

[5] http://www.justice.gov.uk/publications/corporate-reports/hmcts

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 2011[6] 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 system[7], 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."

In its response to PASC in May 2012[8], the Government said:

[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/

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

"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.

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 reform[9], 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.

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

[9] http://www.civilservice.gov.uk/reform

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' programme[10] 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 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

[10] http://www.scotland.gov.uk/Topics/Justice/legal/mjw

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.