EXPLANATORY DOCUMENT TO

THE PUBLIC BODIES (ABOLITION OF COURTS BOARDS) ORDER 2012
2012 No. xxxx

1. This explanatory document has been prepared by The Ministry of Justice 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 Courts Boards.

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

3.1 The Committee will note that article 3 of the instrument repeals the entry relating to Courts Boards in Schedule 1 to the Public Bodies Act 2011 ('the Act'). This is permitted by section 6(5) of the Act, and this section is cited as one of the enabling powers in the instrument.

4. Legislative Context

4.1 Courts Boards were established by section 4 of the Courts Act 2003. They have a statutory role in relation to the Crown Court, county courts and magistrates' courts. They do not manage or administer the courts themselves but give advice and make recommendations to enable Her Majesty's Courts and Tribunals Service (HMCTS)[1] to improve the service it provides and to ensure that the courts' administration is run in a way that recognises the diverse needs of the community they serve.

4.2 The Government announced planned reforms to public bodies on 14th October 2010, updating the proposals in March 2011, with a view to increasing transparency and accountability, cutting out duplication of activity, and discontinuing activities which are no longer needed. In conducting the review of public bodies, the Ministry of Justice 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 answer was no for Courts Boards. Courts Boards were 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 Courts Boards with no transfer of functions.

4.3 Section 11(2) of the Act provides that this explanatory document must introduce and give reasons for the order, explain why the requirements

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

of section 8 of the Act are satisfied, and contain a summary of representations received in the consultation.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

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 Courts Boards) Order 2012 are compatible with the Convention rights.

7. Policy background

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

i. **Efficiency:** The decision to abolish Courts Boards is consistent with reducing unnecessary bureaucracy, overheads and management layers and to deliver just that which is necessary to support courts and tribunals. Courts Boards have only ever performed an advisory function: they give advice and make recommendations, ensuring that the views of the local community are taken into account in the way HMCTS operates. These functions can no longer be justified as they are already provided through other means such as local consultation exercises, customer satisfaction surveys, open days and effective use of court user meetings. These provide the community with a direct medium for their voice to continue to be heard.

ii. **Effectiveness:** The effectiveness of Courts Boards has also diminished in recent years. Their number has been reduced from 42 to 19 in order to mirror HMCTS Areas following amalgamations. This has resulted in some enlarged Courts Boards Areas which makes it more of a challenge for community members to effectively represent the whole community.

iii. **Economy:** Abolition of Courts Boards will save the Ministry of Justice approximately £1.6m (equivalent to about £400-450,000 a year) over the current spending review period.

iv. **Securing appropriate accountability to Ministers:** The abolition of the Courts Boards will not result in any lack of accountability to Ministers, since Ministers remain ultimately accountable for HMCTS as an executive agency of MOJ, and HMCTS is responsible for the performance of the courts, through their regional and central management.

7.2 The Minister considers that the conditions in section 8(2) of the Act are satisfied, both in respect of Courts Board members and, indirectly, court users. Abolition does not affect the exercise of any legal rights or freedoms either directly or indirectly. Courts Boards members do not have employee status but hold a statutory office. The legal rights and protections of court users are not affected, and they can still make their voice heard on service matters through other community engagement activities undertaken by HMCTS previously described.

7.3 During the legislative passage of the Public Bodies Act 2011, an amendment (no. 31) to remove Courts Boards from Schedule 1 to the bill was moved by Lord Hunt of Kings Heath at Lords Committee stage on 11 January 2011[2].

7.4 The debate from the opposition centred around two main concerns. The first was that, at a time of a programme of court closures, abolition of Courts Boards would remove the opportunity for local independent review of this process. The second was that Courts Boards can help to advise Her Majesty's Courts Service on ways in which policies can be implemented at local level so as to help to ensure the most effective use of resources.

7.5 Lord McNally, Minister of State (Ministry of Justice) responded that the government, the courts service and members of the judiciary felt that Courts Boards were no longer necessary to assist in the administration of the courts in this way[3]. He also stated that not abolishing the Courts Boards will cost the Ministry of Justice approximately £450,000 a year.

7.6 Amendment 31 was withdrawn[4].

8. Consultation outcome

8.1 A public consultation covering the bodies the Ministry of Justice proposed to reform through the Public Bodies Bill, including Courts Boards, was launched on 12th July and closed on 11th October. A total of 23 responses were received regarding the proposal to abolish Courts Boards. Responses were analysed for general views on the abolition and suggestions for alternative ways to engage with the public if the abolition of Courts Boards goes ahead.

8.2 Of the 23 responses, 7 were in favour of abolition, 3 were neutral, and 13 were against abolition. A high proportion of responses against abolition came from Courts Boards' members. Their arguments focussed on the loss of an independent body to provide local external

[2] Hansard reference: HoL debates 11 January 2011 Column 1296
http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/110111-0001.htm#11011158000502
[3] See above reference, column 1305 onwards
[4] See above reference, column 1310.

oversight of the administrative performance of HMCTS, particularly from the wider community, resulting in the local voice not being heard and important community issues not being addressed. Those in favour of abolition (including two respondents from Courts Boards) acknowledged the Government's reasons for abolition and felt that HMCTS should be able to manage the gaps left by abolition by internal audit, consultation with other stakeholders, extending the membership and use of court user meetings and the use of customer satisfaction surveys, open days and Inside Justice weeks.

8.3 The Government's decision is that in the face of financial constraints, abolition is the best way forward. This is consistent with the aim of HMCTS to protect front line services and delivery by stripping out unnecessary management layers, bureaucracy and cost. The Lord Chancellor announced his decision to abolish Courts Boards on 15th December 2011.

8.4 The Government's response to the consultation on proposals for reform of its bodies included in the Public Bodies Bill can be found on the Ministry of Justice website at:

http://www.justice.gov.uk/consultations/reform-public-bodies.htm

9. Guidance

9.1. The nature of this order makes it unnecessary to publish guidance in relation to it.

9.2 Ministers have written to the Chairs of all Courts Boards to inform them of the decision to abolish.

10. Impact

10.1 An Impact Assessment was not considered necessary for the abolition of Courts Boards as the proposal does not impact on business, civil society or on regulatory matters. There is no impact on staff and costs/benefits to the public sector will not exceed £5 million per annum.

10.2 There is no evidence to suggest there will be any equality impact. An initial Equality Impact Assessment screening was provided alongside the consultation paper. This has now been updated and is published alongside the Government's response to the consultation response paper.

11. Regulating small businesses

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Cabinet Office will carry out a post legislative scrutiny review after the passage of the Public Bodies Bill and MOJ will monitor the outcome of that.

13. Contact

13.1 Nilou Raman at the Ministry of Justice Tel: 0203 334 6287 or e-mail: Nilou.Raman@hmcourts-service.gsi.gov.uk can answer any queries regarding the instrument.