*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

# 2012 No.

# PUBLIC BODIES

# The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012

*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, 6(1), (2)(a) and (5) and 35(2) of the Public Bodies Act 2011(**a**) ("the Act"), having consulted in accordance with section 10 of 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 National Assembly for Wales has been obtained in accordance with section 9(6) of the Act.

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.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012.

(**a**) 2011 c.24

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

(3) The following provisions come into force on the day after that on which the other provisions of this Order come into force—

(a) paragraphs 36 and 37 of Schedule 1; and

(b) paragraphs 3 and 4 of Schedule 2.

(4) Amendments, repeals and revocations in this Order have the same extent as the provisions amended, repealed or revoked.

**Abolition of Her Majesty's Inspectorate of Court Administration**

**2.**—(1) Her Majesty's Inspectorate of Court Administration, established under section 58 of the Courts Act 2003(**a**), is abolished.

(2) The function of inspecting areas of the Crown Court, county courts and magistrates' courts where prisoners are detained in custody is transferred to Her Majesty's Chief Inspector of Prisons.

(3) The function of inspecting any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts is transferred to Her Majesty's Chief Inspector of Prisons.

(4) Any of Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of Probation for England and Wales and Her Majesty's Inspectors of Constabulary may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Courts Administration immediately before its abolition.

(5) Paragraph (4) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(6) Schedule 1 (which makes consequential etc provision) has effect.

**Rights of entry and inspection**

**3.**—(1) An inspector exercising functions under article 2(2), (3) or (4) may enter any place of work occupied by persons provided under a contract made by the Lord Chancellor by virtue of section 2(4) of the Courts Act 2003.

(2) An inspector exercising functions under article 2(2), (3) or (4) may inspect and take copies of any records kept by persons provided under such a contract which the inspector considers relevant to the discharge of the inspector's functions.

(3) Paragraph (1) does not entitle an inspector—

(a) to be present when the Crown Court, a county court or a magistrates' court is hearing proceedings in private; or

(b) to attend any private deliberations of persons having jurisdiction to hear or determine any proceedings.

(4) The records referred to in paragraph (2) include records kept by means of a computer.

(5) An inspector exercising the power under paragraph (2) to inspect records—

(a) is entitled to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records in question, and

(b) may require—

(i) the person by whom or on whose behalf the computer is or has been used, or

(**a**) 2003 c.39. Section 58 has been amended by the Education and Inspections Act 2006 (c.40).

(ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford the inspector such reasonable assistance as the inspector may require.

(6) The powers conferred by paragraphs (1), (2) and (5) may be exercised at reasonable times only.

**Abolition of the Public Guardian Board**

**4.**—(1) The Public Guardian Board, established under section 59 of the Mental Capacity Act 2005(**a**), is abolished.

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

*Name*
Parliamentary Under Secretary of State
Ministry of Justice

Date

# SCHEDULE 1

Article 2(6)

## Amendments consequential etc on the abolition of Her Majesty's Inspectorate of Court Administration

**Prison Act 1952**

**1.** The Prison Act 1952(**b**) is amended as follows.

**2.** In section 5A, after subsection (5B), insert—

"(5C) The Chief Inspector shall also inspect or arrange for the inspection of—

(a) areas of the Crown Court, county courts and magistrates' courts where prisoners are detained in custody; and

(b) any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts,

and shall report to the Secretary of State on them."

**3.** In Schedule A1 (further provision about Her Majesty's Chief Inspector of Prisons)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 6, insert—

(**a**) 2005 c.9. Section 59 has been amended by the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I 2006/1016).

(**b**) 1952 c.52. Section 5A was inserted by the Criminal Justice Act 1982 (c.48) and has been amended by the Immigration, Asylum and Nationality Act 2006 (c.33) and the Police and Justice Act 2006 (c.48). Schedule A1 was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007 (c.28), the Health and Social Care Act 2008 (c.14), the Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I 2008/912), and the Health and Social Care Act 2008 (Consequential Amendments No 2) Order 2010 (S.I 2010/813).

*"Joint inspection of courts*

**7.**—(1) The Chief Inspector may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the Chief Inspector under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

**Police Act 1996**

**4.** The Police Act 1996(**a**) is amended as follows.

**5.** In Schedule 4A (further provision about Her Majesty's Inspectors of Constabulary)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 7, insert—

*"Joint inspection of courts*

**8.**—(1) The inspectors of constabulary may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the inspectors of constabulary under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

**Audit Commission Act 1998**

**6.** The Audit Commission Act 1998(**b**) is amended as follows.

**7.** In Part 1 of Schedule 2A (interaction with other authorities)—

(a) paragraph 1(1)(e) is repealed;

(b) paragraph 1(2)(c) and the preceding "and" are repealed.

**Crown Prosecution Service Inspectorate Act 2000**

**8.** The Crown Prosecution Service Inspectorate Act 2000(**c**) is amended as follows.

**9.** In the Schedule (further provision about Her Majesty's Chief Inspector of the Crown Prosecution Service)—

(a) paragraph 2(2)(d) is repealed;

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(**a**) 1996 c.16. Schedule 4A was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Police Reform and Social Responsibility Act 2011 (c.13) (not yet in force), and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(**b**) 1998 c.18. Schedule 2A was inserted by the Local Government and Public Involvement in Health Act 2007 and has been amended by the Health and Social Care Act 2008, the Housing and Regeneration Act 2008 (c.17), the Offender Management Act 2007 (Consequential Amendments) Order 2008, and the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 (S.I 2010/844).

(**c**) 2000 c.10. The Schedule was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 8, insert—

*"Joint inspection of courts*

**9.**—(1) The Chief Inspector may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the Chief Inspector under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

**Criminal Justice and Court Services Act 2000**

**10.** The Criminal Justice and Court Services Act 2000(**a**) is amended as follows.

**11.** In Schedule 1A (further provision about the inspectorate)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 6, insert—

*"Joint inspection of courts*

**7.**—(1) The inspectorate may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the inspectorate under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

**Courts Act 2003**

**12.** The Courts Act 2003(**b**) is amended as follows.

**13.** Part 5 (inspectors of court administration) is repealed.

**14.** Schedule 3A (further provision about the Inspectors of Court Administration) is repealed.

**15.** In Schedule 9 (transitional provisions and savings), paragraph 14 is repealed.

**Public Audit (Wales) Act 2004**

**16.** The Public Audit (Wales) Act 2004(**c**) is amended as follows.

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(**a**) 2000 c.43. Schedule 1A was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007 and the Health and Social Care Act 2008.

(**b**) Part 5 comprises sections 58-61A of the Courts Act 2003; sections 58-61 have been amended by the Education and Inspections Act 2006 and section 59 has also been amended by the Transfer of Functions (Children, Young People and Families) Order 2005 (S.I 2005/252). Section 61A and Schedule 3A were inserted by the Police and Justice Act 2006; schedule 3A has also been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Coroners and Justice Act 2009 (c.25) and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(**c**) 2004 c.23. Section 67A was inserted by the Police and Justice Act 2006 and has been amended by the Offender Management Act 2007 (Consequential Amendments) Order 2008.

**17.** In section 67A (assistance by Auditor General to inspectorates), subsection (1)(e) and the preceding "and" are repealed.

### Children Act 2004

**18.** The Children Act 2004(**a**) is amended as follows.

**19.** In section 20 (joint area reviews), subsection (4)(h) is repealed.

### Education and Inspections Act 2006

**20.** The Education and Inspections Act 2006(**b**) is amended as follows.

**21.** Section 156 (removal of HMICA's duty to inspect performance of Assembly's functions relating to family proceedings) is repealed.

**22.** In Schedule 13 (interaction with other authorities)—

(a) paragraph 1(2)(e) is repealed;

(b) paragraph 1(3)(e) is repealed.

**23.** In Schedule 14 (minor and consequential amendments relating to Part 8), paragraphs 77 to 81 are repealed.

**24.** In Schedule 15 (transitional provisions and savings relating to Part 8)—

(a) paragraph 4(1)(a) is repealed;

(b) in paragraph 9, the entry for "court administration inspector" is repealed.

### Police and Justice Act 2006

**25.** The Police and Justice Act 2006(**c**) is amended as follows.

**26.** Section 32 (Her Majesty's Inspectorate of Court Administration) is repealed.

### Local Government and Public Involvement in Health Act 2007

**27.** The Local Government and Public Involvement in Health Act 2007(**d**) is amended as follows.

**28.** In Schedule 9, paragraph 1(2)(u) is repealed.

**29.** In Schedule 11 (schedule to be inserted in Audit Commission Act 1998), in the Schedule to be inserted—

(a) paragraph 1(1)(e) is repealed;

(b) paragraph 1(2)(c) and the preceding "and" are repealed.

### Health and Social Care Act 2008

**30.** The Health and Social Care Act 2008(**e**) is amended as follows.

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(**a**) 2004 c.31. Section 20 has been amended by the Education and Inspections Act 2006, the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Offender Management Act 2007 (Consequential Amendments) Order 2008, and the Local Education Authorities and Children's Services Authorities (Integration of Functions) Order 2010 (S.I 2010/1158).

(**b**) 2006 c.40. Schedule 13 has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

(**c**) 2006 c.48.

(**d**) 2007 c.28. Paragraph 1 of Schedule 9 has been amended by the Housing and Regeneration Act 2008 (Consequential Provisions) Order 2010 (S.I 2010/866).

(**e**) 2008 c.14.

**31.** In Part 1 of Schedule 4 (interaction with other authorities)—

(a) paragraph 1(2)(e) is repealed;

(b) paragraph 1(3)(e) is repealed.

**32.** In Part 3 of Schedule 5 (further amendments relating to Part 1), paragraph 75 is repealed.

**Coroners and Justice Act 2009**

**33.** The Coroners and Justice Act 2009(**a**) is amended as follows.

**34.** Section 39 (inspection of coroner system) is repealed.

**35.** In Part 1 of Schedule 21 (minor and consequential amendments), paragraph 46 is repealed.

**Public Bodies Act 2011**

**36.** The Public Bodies Act 2011 is amended as follows.

**37.** In Schedule 1 (power to abolish: bodies and offices), the entry "Her Majesty's Inspectorate of Court Administration." is repealed.

**Children Act 2004 (Joint Area Reviews) Regulations 2005**

**38.** The Children Act 2004 (Joint Area Reviews) Regulations 2005(**b**) are amended as follows.

**39.** Paragraph 9 of the Schedule is revoked.

**Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007**

**40.** The Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007(**c**) are amended as follows.

**41.** Regulation 15(g) is revoked.

**Her Majesty's Inspectorate of Court Administration (Specified Organisations) Order 2007**

**42.** The Her Majesty's Inspectorate of Court Administration (Specified Organisations) Order 2007(**d**) is revoked.

**Offender Management Act 2007 (Consequential Amendments) Order 2008**

**43.** The Offender Management Act 2007 (Consequential Amendments) Order 2008(**e**) is amended as follows.

**44.** In Part 2 of Schedule 1 (amendments of Acts)—

(a) paragraph 26(2)(f) is revoked;

(b) paragraph 27(2)(e) is revoked.

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(**a**) 2009 c.25.
(**b**) S.I 2005/1973. Paragraph 9 of the Schedule has been amended by the Education and Inspections Act 2006 (Consequential Amendments) Regulations 2007 (S.I 2007/603).
(**c**) S.I 2007/603.
(**d**) S.I 2007/1176.
(**e**) S.I 2008/912.

# SCHEDULE 2

Article 4(2)

## Amendments consequential etc on the abolition of the Public Guardian Board

**Mental Capacity Act 2005**

**1.** The Mental Capacity Act 2005 is amended as follows.

**2.** Section 59 (Public Guardian Board) is repealed.

**Public Bodies Act 2011**

**3.** The Public Bodies Act 2011 is amended as follows.

**4.** In Schedule 1 (power to abolish: bodies and offices), the entry "Public Guardian Board." is repealed.

**Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006**

**5.** The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006(**a**) is amended as follows.

**6.** In Schedule 1 (transfer, modification and abolition of functions of the Lord Chancellor – primary legislation), paragraph 36 is revoked.

**Public Guardian Board Regulations 2007**

**7.** The Public Guardian Board Regulations 2007(**b**) are revoked.

(**a**) S.I 2006/1016.
(**b**) S.I 2007/1770.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order abolishes Her Majesty's Inspectorate of Courts Administration (HMICA) and the Public Guardian Board (PGB). Both bodies are listed in Schedule 1 to the Public Bodies Act 2011.

HMICA was established by section 58 of the Courts Act 2003. The PGB was established by section 59 of the Mental Capacity Act 2005.

All of HMICA's functions are abolished by this Order except for those specifically preserved and transferred by article 2(2), (3) and (4). The functions of HMICA being abolished include the general power to inspect the Crown Court, county courts and magistrates' courts, and also the function, which has never been brought into force, of inspecting the operation of the coroner system. Article 2(2) and (3) transfers the power to inspect court custody areas and custody transport respectively in the Crown Court, county courts and magistrates' courts to Her Majesty's Chief Inspector of Prisons.

Articles 2(4) and 2(5) allow the specified criminal justice inspectorates to inspect criminal courts if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

All of the PGB's functions are abolished by this Order.

The Schedules to this Order make legislative amendments which are consequential etc on the abolition of each body.

An impact assessment has not been prepared for this Order as a whole as its effects are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector, and costs/benefits to the public sector will not exceed £5 million per annum. However, an impact assessment was prepared in connection with the abolition of Her Majesty's Inspectorate of Courts Administration 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.

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