



The Scottish Parliament
Pàrlamaid na h-Alba

(For official use only)
PUBLIC PETITION
NO.

PE

PLEASE REFER TO GUIDANCE NOTES AT THE BACK OF THIS FORM.

1. Name of petitioner
Dr John Wallace Hinton on behalf of ACCOUNTABILITY SCOTLAND
2. Petition title
Maintenance of a Scottish Council for 'Administrative Justice'
3. Petition text
Calling on the Scottish Parliament to urge the Scottish Government to preserve an independent Scottish Administrative Justice Council when the UK AJTC system is abolished, ensuring the new body has a critical user-interface to enable base-roots input from the public and that it has complete independence from political or Civil Service influence.
4. Action taken to resolve issues of concern before submitting the petition
Accountability Scotland was formed in the Autumn of 2011 at the time when the Scottish Government consultation on replacement of the AJTC was taking place, so we had no knowledge of this until after the December deadline. We have examined the information from the UK Public Administration Select Committee (8 March 2012... see summary in press release Appendix 4: "PASC CHALLENGES GOVERNMENT OVER PLANS TO ABOLISH ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL (AJTC)") We have studied the Consultation response of CONSUMER FOCUS SCOTLAND (2011; see appendix 3) No action has been possible apart from contacting a number of interested MSPs and legal experts in the field of Administrative Justice. Fiona McLeod MSP had sufficient concern to table a related question to be put to the SPCB. (Due to her illness this has been delayed.) Roseanna Cunningham MSP responded via her officials who outlined the current decision-making delay. Jamie Hepburn MSP stated that he would take into account our concerns in the debate on the issue in Parliament. Support also comes from internationally respected specialists in Administrative Justice: Professor Adler, Professor Mullen and Richard Henderson (Chair of the Scottish Committee of AJTC). Because of the need to ensure that a body exists that has oversight of the administrative justice of the operations of the Scottish Public Services Ombudsman

(SPSO), we have established what existing bodies can ensure accountability of the SPSO. We have discovered that **only** the AJTC has a clear brief to examine the fairness of the SPSO's systems. The AJTC is the **only** independent body that can report to Parliament on this and other matters of Administrative Justice.

Accountability Scotland has been in contact with Prof Adler of Edinburgh University who is a senior AJTC member. Both he and Richard Henderson are hopeful about the outcome of this petition. In particular we have discussed in detail with Professor Tom Mullen of Glasgow University and he strongly supports this petition.

We wrote to Roseanna Cunningham, MSP in March 2012 asking for the retention of a Scottish Administrative Justice body and we await a clear response.

5. Petition background information

The remit of the AJTC, specifies Administrative Justice in these terms: "Administrative Justice' includes the procedures used by public authorities for making decisions in relation to individual people, the law that regulates decision-making, and the systems (such as the various tribunals *and ombudsmen*) that enable people to challenge these decisions. The statutory functions of the AJTC include keeping the system under review and considering ways to make the system accessible, fair and efficient."

The Scottish Committee of the Administrative Justice & Tribunals Council (AJTC) is expecting to be abolished soon. This move by the Scottish Government results from the decision of the UK Government to abolish the whole Council. Oversight of tribunals is catered for by the proposed new Scottish system but it does **not** cover the vast range of areas where oversight of Administrative Justice is required (For some examples of non-tribunal actions of the Scottish Committee of the AJTC see Appendix 1.) We believe that an independent bastion of Scottish Administrative Justice should continue.

So the Scottish Government's proposal to abolish the Scottish Committee of the AJTC is driven from London and it leaves a gap. The question is how to plug it. This Petition focuses on what we in Scotland must not lose in any changes to this independent body which oversees and reports to the Scottish Parliament - not just on the operation of Tribunals but ***the wider Administrative Justice field***.

We have been unable to discover why a Scottish alternative to the AJTC has been proposed in which Administrative Justice in the broad sense is not included. Is the AJTC thought to be too expensive? Is the current system not fit for purpose? If it is fit for purpose, why change it? Are those who are currently in post not doing their job diligently? If they are, then why dismiss them? The separation of the Tribunals oversight aspect seems now to be fixed, so that leaves a general Administrative Justice gap which this Petition addresses.

As Professor Mullen points out to us, there is a serious need for an Administrative Justice oversight policy: it is necessary to maintain an oversight of official administrative systems – to identify weaknesses. Also there is a need to help Government Departments with *policy*. Furthermore, the new Scottish Government proposals have no provision for Administrative Justice oversight of the courts.

Regarding oversight of the SPSO operations, the AJTC can currently report on mal-administration by the Ombudsman in regard to his systems. We currently have examples where the SPSO has decided to exclude the School Inspectorate from his

investigation remit and disallows both teachers and concerned members of the public from complaining about the Inspectorate. If the AJTC goes, who will deal with this?

A new Scottish Administrative Justice Council would and could advise on the set-up and functioning of the proposed New System of Tribunal Supervision.

The creation of a Scottish Council for Administrative Justice would accord with the recommendations of the Crerar Review: The Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland. This gives recommendations on processing citizens' complaints: specification of the oversight policy (not audit & inspection, but including listening to an individual person's complaints).

The proposed new system would result in the loss of sufficient policy development capacity in government. Therefore Scotland would then need an Administrative Justice body to deal with the list of issues concerning policy and implementation. This is in accord with the Government's code of conduct on Consultations, and this body should report to Parliament.

In Professor Mullen's view it is not a problem to implement an Administrative Justice System: the question is, can the Scottish Government spare half a million pounds to operate it?

The arguments for the retention of the AJTC as a whole are summarised in the important document (Appendix 4: Public Administration Select Committee Announcement, 8 March 2012). Our particular concern is with its Scottish Committee and specifically with 'Administrative Justice'. We emphasize the latter because the number of administrative justice hearings in a year so greatly exceeds the number of criminal justice hearings and they affect everybody every day.

The AJTC consists to a large extent of highly qualified academics in the field of Administrative Justice, and most importantly it is **separate** from the Civil Service and **independent** of Government and Civil Service control. It has an important role in overseeing the functioning of other bodies, such as the Scottish Public Services Ombudsman, regulators, quangos, Government and local government bureaucracies. Therefore the number of highly qualified experts in Administrative Justice within an oversight body in Scotland needs to be maintained. (Under the new proposals for a general Scottish Civil Justice Council it would be reduced to only a couple within a larger body which has no guarantee of independence from Civil Service influence. Furthermore this body is exclusively concerned with tribunals.)

We are particularly concerned with the potential loss of direct input from the public to the AJTC. **A user-interface is critical**, but it is not included in the new proposals on oversight of Tribunals. The public input aspect needs to be boosted, not lost, and this applies to the Administrative Justice Council proposed in this Petition.

Acceptance of this Petition now is critical, since the first consideration of proposals on the future of the AJTC in Scotland has just started in the Scottish Parliament, with the current Scottish Civil Justice Council and Criminal Legal Assistance Bill.

This UK PASC report (summarised in Appendix 4) applies to the UK AJTC, but it is crucial to our Scottish case and we ask for the Petitions Committee to read this summary and follow it up as necessary. Please note especially the last paragraph: **"The AJTC should be part of the machinery to help government get decisions**

‘right first time’. Instead, over half a million decisions have to be reviewed each year, at great cost and considerable injustice and inconvenience to citizens. If the AJTC is abolished, what will take its place, and how will Government do better?” While the Scottish government is proposing a system for oversight of Tribunals, the ***General Administrative Justice aspect must be maintained.***

6. Do you wish your petition to be hosted on the Parliament’s website as an e-petition?

NO (Delete as appropriate). If you answer “NO” please proceed to section 9.

7. Closing date for e-petition

8. Comments to stimulate on-line discussion

9. Administrative information (not for publication)

Name	Dr J Wallace Hinton
Address	Convener, Accountability Scotland 19 Maple Avenue Milton of Campsie Glasgow G66 8BB
Telephone nos.	Home: 01360 311 944 Mobile: n/a
E-mail address	convener@accountabilityscotland.co.uk
No. of petition signatures	The 10 members of the Committee of Accountability Scotland
Statement to the committee Should the Public Petitions Committee consider it necessary to broaden its understanding of your petition, it may ask a petitioner to appear before it to speak and answer questions. If asked, would you wish to appear?	
YES (Delete as appropriate).	
Signature of principal petitioner When satisfied that your petition meets all the criteria outlined in How to submit a public petition the principal petitioner should sign and date below.	
SignatureDr J Wallace Hinton	
Date 07.03.12	

Completed forms should be returned to—

The Clerk to the Public Petitions Committee

The Scottish Parliament

Edinburgh, EH99 1SP

petitions@scottish.parliament.uk

Tel: 0131 348 5254

Fax: 0131 348 5600

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29869.aspx>

[Section 100 of the Postal Service Act 2000](#) provides that petitions can be posted to the Parliament free of charge if handed in at a post office. To make use of this service, the envelope should be clearly marked "Petition to the Scottish Parliament" and should use the postal address provided below.

GUIDANCE NOTES

1. Name of petitioner:

If you are presenting the petition as an individual please simply enter your name. If the petition is being presented on behalf of a group such as a community council, please enter the name of the person who is to represent the group and as well as the name of the group e.g. *Mary Brown, on behalf of the somewhere Community Council*.

2. Petition title

This, in as few words as possible, should identify what your petition is about e.g. *Improving school bus safety*.

3. Text of petition

This is really a summary of the petition. You should clearly state what action you want the Parliament to take e.g.

"Calling on the Scottish Parliament to urge the Scottish Government to consider the need for new legislation to tackle anti-social behaviour."

Ideally, this should be **limited to no more than five lines of text**.

4. Action taken to resolve issues of concern before submitting petition

Before submitting your petition, you should have made an attempt to resolve the issues of concern. For example:

- What approaches have you made to your local council or other public body on this matter and what was the response?
- Have you asked an elected representative e.g. councillor, MSP, to look into this matter and, again, what happened?
- Has any recent announcement been made by say the Scottish Government that might have a bearing on your petition?

This information is helpful to the Public Petitions Committee as it can see what issues have been raised and the responses and will help broaden understanding of what your petition is about and why it is now being asked to consider the issue raised.

5. Background information

This is an important part of the template. Here you should insert relevant, factual background information and set out the reasons why you consider the action requested in the petition to be necessary. A copy of your petition is made available to each Committee member and they will have this before them at the meeting at which it is discussed. For example, you might want to think about what has given rise to your petition? Why is it needed? What action do you wish taken and why? What questions would you like the Committee to ask and of whom? (please note these are just a guide to what information you might want to provide). However, what you do provide, **should be limited to no more than three sides of A4.**

There are a number of options available to you in promoting your petition and in sharing further the information about it. These are—

E-petition: If you wish to use the e-petitioner system your additional information will be posted on to the e-petition website (see below for more details). (<http://epetitions.scottish.parliament.uk/>)

Website: If you have a website then why not provide a link from your petition to this. This will allow people to go from your petition to your website.

Video: You may have produced a video about your petition which you have perhaps posted on to the internet e.g. You Tube. The Public Petitions Committee has its own website where it can provide a link to your video. If you have posted a video on to the internet, you may wish to forward the link to it to the Committee's clerking team. They can then add the link to the Committee's webpage.

Photographs: Similarly, you may have posted some photos up on to [Picasa](#), Flickr or your social networking page e.g. Facebook. Again, let the clerking team know.

Social networking sites: Do you have a Bebo page? Or MySpace? Again, why not flag this up in your petition. You can alert people to your petition and direct people to it.

Reports, other literature: Are there reports or other literature you think will be of interest? Why not provide a weblink (if you can) to these so that people can go from your petition to the report.

What the Committee is trying to do is give you options, choices to make information about your petition available in different formats. While the core information goes into the petition template, and that is what the Committee members will have before them at the meeting at which your petition is discussed, it hopes that you find these additional options helpful and

convenient. If you have any questions about this, please get in touch with the Committee clerking team to discuss.

6. Do you wish your petition to be hosted on the parliament's website as an e-petition?

Before your petition goes before the Committee, you may wish to use the Parliament's e-petition system to promote it. This allows your petition to be hosted on our website (<http://epetitions.scottish.parliament.uk/>) for an agreed period, providing an opportunity to attract a wider audience and gather more names in support. Each e-petition has its own discussion forum, where visitors and supporters can discuss and debate your petition and related issues. When the period for hosting the e-petition ends, the clerks arrange for it to then go before the Committee for consideration in the usual way.

Should you wish to use this system please provide the further information requested. The clerks post your petition up on to the website so there is no work for you.

7 & 8. E-petition

If you want to use the e-petition facility, please enter a closing date for gathering signatures on your petition (we usually recommend around six weeks). Please provide a comment to set the scene for the on-line discussion on the petition, not exceeding ten lines of text.

9. Administrative information

Please provide as much of the requested information as possible. In particular, please provide a contact telephone number and e-mail address if you have one which will enable the Committee clerks to contact you quickly and efficiently. **These details will not be published and are not shared with any other party.**

An electronic version of the petition is appreciated as this allows for swift and easy processing. We also appreciate communicating by e-mail as this is quicker and more convenient. However, don't worry, it is not a requirement and if you don't have access to a computer then that is not a problem.

Initially, all communications should go to petitions@scottish.parliament.uk.

MORE INFORMATION

We hope you find these notes helpful in completing your petition template. There are other sources of information—

The main webpage for the Public Petitions Committee—

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29869.aspx>

Information on how and where to access more information (leaflets, video, podcast)—

<http://project.scottish.parliament.uk/visitandlearn/16703.aspx>

The Public Petitions Committee
The Scottish Parliament
T3.40
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petitions@scottish.parliament.uk.

Appendix 1

Some examples of AJTC non-tribunal consultations & reports

AJTC response to Family Migration - A Consultation The AJTC has responded (06 October) to the UK Border Agency's consultation on Family Migration. (12 October 2011) [View](#)

Resolving Workplace Disputes – AJTC Consultation Response The AJTC responded on 19 April 2011 to the above consultation, expressing concern both about the lack of strategic vision underpinning government plans and about proposed legislative tinkering which may have a negative impact on claimants with legitimate grievances. (14 June 2011) [View](#)

AJTC Response to Consultation on DLA Reform The AJTC has responded to the Department for Work and Pensions' public consultation on Disability Living Allowance Reform (17 February 2011) [View](#)

AJTC Response to Consultation - Fitness to Practise Adjudication for Health Professionals AJTC response to Department of Health Consultation. (01 December 2010) [View](#)

Scottish Committee Response - Control of entry arrangements relating to NHS pharmaceutical services The Scottish Committee's response to the Scottish Government consultation. (21 June 2010)

AJTC Response - Work and Pensions Select Committee inquiry into decision making and appeals in the benefits system Response of the AJTC. (18 November 2009)

Scottish Government's consultation on the Review of the Mental Health

(Care and Treatment) (Scotland) Act 2003 Response of the Scottish Committee of the AJTC to the Scottish Government's consultation (05 November 2009) [View](#)

Amendments to the Mental Health Legislation in the Event of a Civil Emergency or Influenza Pandemic The Scottish Committee of the AJTC's response to the Scottish Government consultation. (05 November 2009) [View](#)

The AJTC's response to the consultation on the draft guidance from the Secretary of State for Transport to the Senior Traffic Commissioner Consultation response from the AJTC. (08 October 2009)

The Scottish Committee response to the Scottish Government's consultation on the draft Crofting Reform (Scotland) Bill Consultation response from the Scottish Committee. (13 August 2009) [View](#)

The Scottish Committee response to Scottish Government on the Administrative Justice Steering Group's report 'Options for the Future Administration and Supervision of Tribunals in Scotland' This was the Steering Group's first report and was published in September 2008. (13 July 2009) [View](#)

The Scottish Committee's response to the Interpretation & Legislative Reform (Scotland) Bill Consultation response from the Scottish Committee. (26 May 2009) [View](#)

AJTC response to consultation: Civil Bid Rounds for 2010 Contracts This is the AJTC's response to the Legal Services Commission's (LSC) Consultation 'Civil Bid Rounds for 2010 Contracts'. (29 January 2009) [View](#)

AJTC response to DCSF consultation on proposals for a new way of handling parents' complaints about school issues The Administrative Justice & Tribunals Council has responded to the Department for Children, Schools and Families consultation on proposals to replace the Secretary of State's role in handling parents' complaints. (07 January 2009) [View](#)

AJTC response to Law Commission's Consultation Paper 'Administrative Redress: Public Bodies and the Citizen' The Administrative Justice & Tribunals Council has responded to the Law Commission's consultation paper seeking views on how to create a clear, simple and just system of redress for individuals who have suffered loss as a result of seriously substandard administrative action. (07 January 2009) [View](#)

AJTC response to 'Immigration Appeals: Fair Decisions, Faster Justice' consultation The Administrative Justice & Tribunals Council has responded to the UK Border Agency's consultation paper on proposed reforms to the immigration appeals process. (07 January 2009) [View](#)

Fees in Immigration & Asylum Cases The AJTC has responded to the recent consultation on introducing fees for appeals in the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (25 January 2011) [View](#)

The Scottish Committee response to the Review of Fatal Accident Inquiry legislation Consultation response from the Scottish Committee. (07 April 2009) [View](#)

Appendix 2

Prof Rohr, in his recent book, concludes that **American administrative law**

has structured safeguards to protect the integrity of administrative decision-making while also holding it accountable. The constitutional role of American civil servants comes not only from specific American experiences but also from the very nature of civil service. Rohr definitively shows how and why public administration is inevitably and strongly bound up with constitution-making and constitutional governance. He states: "nothing is more fundamental to governance than a constitution; and therefore to stress the constitutional character of administration is to establish the proper role of administration as governance that includes management but transcends it as well."

JOHN A. ROHR is professor of public administration at the Center for Public Administration and Policy at Virginia Polytechnic Institute. A recipient of the ASPA Distinguished Research Award, he is the author of six other books, including [*Public Service, Ethics, and Constitutional Practice*](#), [*Founding Republics in France and America: A Study in Constitutional Governance*](#), and [*To Run a Constitution: The Legitimacy of the Administrative State*](#).

Appendix 3

CONSUMER FOCUS SCOTLAND (Oct 2011) concludes:

We believe a risk of abolishing the AJTC and its Scottish Committee is that ***its wider function to examine the full range of issues relevant to administrative justice may be lost, together with the associated ability to ensure the effectiveness of the system as a whole.*** Should the functions of the SCAJTC pass to the proposed Civil Justice Council or another organisation, it is essential that the focus for these bodies ***should include the ability to consider and examine earlier decision making by a wide range of public sector organisations, including those outwith the justice sector,*** as well as ensuring the effective operation of the tribunals system.

Appendix 4

Public Administration Select Committee Announcement. Released: 8 March 2012

PASC CHALLENGES GOVERNMENT OVER PLANS TO ABOLISH ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL (AJTC)

In a report released several months ago, the Public Administration Select Committee (PASC) has found that there is a "fundamental difference of view" between the Government and others over whether there is a continuing need for the functions

performed by the Administrative Justice and Tribunals Council (AJTC). PASC also doubted the level of cost savings that the Government estimates will be achieved by the abolition of the AJTC, and called for Ministers to provide further details to support its estimate.

“Administrative justice” includes the procedures used by public authorities for making decisions in relation to individual people, the law that regulates decision-making, and the systems (such as the various tribunals and ombudsmen) that enable people to challenge these decisions.

There are around 650,000 administrative justice hearings each year—more than **three times** the number of criminal justice hearings—and it is estimated that resolving citizen’s complaints costs central government over £500 million per year.

The functions of the AJTC include keeping the whole administrative system under review and considering ways to make the system accessible, fair and efficient.

The Government proposes to abolish the AJTC using powers in the Public Bodies Act 2011, and to give its functions to the Ministry of Justice. It is expected to bring forward the necessary secondary legislation later this year.

The Committee found that the Government’s rationale for winding up the AJTC was questionable, and that the Ministry of Justice may not have either the resources or the expertise to take on its functions. PASC also recommended that the House of Commons Justice Committee take its findings from this inquiry into account when it considers the Government’s proposed legislation.

Bernard Jenkin MP, Chair of the Committee said:

“The AJTC should be part of the machinery to help government get decisions ‘right first time’. Instead, over half a million decisions have to be reviewed each year, at great cost and considerable injustice and inconvenience to citizens. If the AJTC is abolished, what will take its place, and how will Government do better?”