

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

32nd Report of Session 2012-13

Government Response: Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

Also includes 6 Information Paragraphs on 7 Instruments

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Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

The Committee has the following terms of reference:

- (1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
 - (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
 - (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,
 with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).
- (2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
 - (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
 - (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
 - (c) that it may inappropriately implement European Union legislation;
 - (d) that it may imperfectly achieve its policy objectives.
- (3) The exceptions are—
 - (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
 - (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
 - (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.
- (4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.
- (5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

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Registered interests

Information about interests of Committee Members can be found in Appendix 5.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts

If you have a query about the Committee or its work, including concerns or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email seclegscrutiny@parliament.uk.

Statutory instruments

The National Archives publishes statutory instruments on the internet at <http://www.legislation.gov.uk/>, together with a plain English explanatory memorandum.

Thirty-Second Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

No new instruments are drawn to the special attention of the House in this Report.

GOVERNMENT RESPONSE: DRAFT PUBLIC BODIES (ABOLITION OF ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL) ORDER 2013

1. The Ministry of Justice (MOJ) laid this Public Bodies Order which proposes the abolition of the Administrative Justice and Tribunals Council (AJTC), on 13 December 2012. This Committee reported on it in its 25th report¹, invoking the “enhanced” 60 day procedure because of uncertainties about the way the instrument would operate. We recommended that the MOJ should publish a mapping exercise, clearly stating how all the organisations currently under the aegis of the AJTC would be treated after its abolition in relation to the unified Tribunal System, the Advisory Group and the MOJ. The Minister has now responded providing:
 - a letter about the MoJ’s longer term plans (see Appendix 1 to this Report);
 - a “map” of each body and where oversight will fall after the AJTC’s abolition (see Annex A to the letter);
 - a “map” of how the AJTC’s functions will be covered after its abolition (see Annex B to the letter).

Work in progress

2. The Annex A “map” demonstrates that not every organisation currently covered by the AJTC will have a place in the new arrangements immediately after abolition of the AJTC. Some, those listed from page 21 onwards, will be considered for transfer into the unified Courts and Tribunal Service (HMCTS) progressively over the next few years under the MOJ’s published Work Programme.² There is no guarantee that all of them will be transferred.
3. Eight other tribunals, listed under the heading “Miscellaneous” on page 23, seem to be left in a vacuum (although one of these is itself due for abolition).
4. **The House may therefore wish to consider whether there are grounds to state that the provisions of the Public Bodies Act 2011 may not be satisfied because the succession arrangements are not yet fully decided.**

¹ See 25th Report, Session 2012-13, HL Paper 109

² Administrative Justice and Tribunals Strategic Work Programme – <http://www.justice.gov.uk/downloads/publications/policy/moj/admin-justice-tribs-strategic-work-programme.pdf>

Necessary Protections and Freedoms

5. In our 25th Report, we questioned whether the proposal contained in the Order satisfied the conditions under section 8(2) of the 2011 Act but did not, at that time, have sufficient information to advise the House. The conditions are:

“A Minister may make an order under those sections only if the Minister considers that —

 - a) the order does not remove any necessary protection, and
 - b) the order does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.”
6. Annex A clarifies that up till now the organisations in the sections on pages 21-23 have received “advice on tribunal performance and policy from the AJTC”. Will the removal of this service mean the public may lose a protection because there is the potential for these tribunals to act inconsistently without the AJTC to provide performance benchmarking and advice on best practice? The Minister’s letter states that the Department intends to develop the role of the Administrative Justice Advisory Group “to provide user focus on the policy development process led by MOJ” but the letter admits that the Advisory Group is not fully operational and its membership and structure incomplete.
7. Many of the bodies which responded to the consultation exercise, for example the Ombudsmen, stated that they would regret the loss of the forum provided by the AJTC to exchange best practice. So does that remove a freedom from them? Will the Advisory Group provide a sufficient substitute, once it is up and running? As mentioned in our previous report, the intention is for it to meet far less frequently than the AJTC did.
8. The wording of the legislation requires the Minister to be satisfied on these points. Paragraph 7.17 of the original Explanatory Document (ED) confirms that the Minister believes that the tests are met. The declaration states: “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.” Rather oddly it continues “... 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.” However this does not address the position of those who operate the various courts and tribunals.

Complete coverage?

9. In our 25th Report, we suggested that the House may wish to press the Minister to confirm that no part of the administrative justice system, currently included under the AJTC, will be left out of the new arrangements. The additional information provided by the Minister indicates that, at the date of abolition, that will not be the case.
10. The House may wish to consider if the MOJ’s future plans for reform are an acceptable undertaking. The ED, at paragraphs 7.8-7.10, refers to MOJ’s plans with regard to those tribunals outside HMCTS, to strengthen bilateral arrangements. But that is part of a three-year programme and furthermore the coverage may not be comprehensive. Paragraphs 45 onwards of the

Strategic Work Programme introduce an element of cost/benefit analysis into the consideration of which other tribunals will be brought into the unified Tribunal structure. We deduce from this that some smaller ones may be left out.

11. There is also the issue of the “Miscellaneous” tribunals listed in Annex A. Their future is literally blank.

Conclusion

12. We remind the House that our 25th Report criticised the process followed in the preparation of this Order because it appeared to pre-judge the outcome. We found the documentation presented with the Order unconvincing and have had to seek additional information to obtain a better understanding of the proposal contained in it (this is included in our previous report). The intended abolition date is 31 March 2013 and it is clear from Annex A that a considerable proportion of tribunals currently under the umbrella of the AJTC will not be covered by the new arrangements by 1 April 2013. Furthermore, even under the progressive review provisions set out in the Strategic Work Plan, some tribunals are likely to remain permanently outside the scope of the HMCTS. The Minister’s letter also admits that the Administrative Justice Advisory Group is not yet fully operational and its scope and membership are not yet decided.
13. In their ED, the Government have stated their view that the AJTC should be abolished but, given the strength of opposition expressed and the very minor financial gains anticipated, the Committee was surprised that MOJ did not present its case more robustly. The Minister’s letter makes a more persuasive case for this change to take place at a future date but we remain unconvinced that the abolition of the AJTC is not premature. **In debate the House may wish to press the Minister to articulate the perceived advantages more strongly and present a well-argued case to counter the objections made. In particular, the House will wish the Minister to explain the basis for concluding that the conditions under section 8(2) of the 2011 Act are fully met.**

OTHER INSTRUMENTS OF INTEREST

Draft Neighbourhood Planning (Referendums) (Amendment) Regulations 2013

14. The Department for Communities and Local Government (DCLG) has laid these draft Regulations. In the accompanying Explanatory Memorandum, DCLG states that the Localism Act 2011 created a new neighbourhood planning regime in England.³ A referendum must be held on a neighbourhood development plan before it can come into force. Where a neighbourhood area is designated as a business area,⁴ the relevant council must hold both a referendum and a business referendum.
15. In amending an earlier instrument,⁵ these Regulations make provision in respect of business referendums, at which non-domestic ratepayers in the referendum area on the prescribed date are entitled to vote on the neighbourhood plan. In particular, the Regulations provide for the compilation of a register of business voters: the business registration officer of the relevant local authority will invite non-domestic rate payers in the referendum area to register to vote. Each non-domestic rate-payer on the business voting register in that area will have one vote, regardless of the number of properties on which he or she pays rates in the area. When the rate-payer registers to vote, he or she needs to assign a person - the “named voter” - to vote on their behalf.

Teachers’ Pensions (Amendment) Regulations 2013 (SI 2013/275)

16. In amending an earlier instrument,⁶ these Regulations, laid by the Department for Education (DfE), make changes to the Teachers’ Pension Scheme. These include the removal of provisions for an actuarial review, and for “cap and share” arrangements to determine the split of contributions between members and employers; and also the insertion of a revised tiered structure of salary bands, used to determine employee pension contributions, which have increased.
17. In the Explanatory Memorandum (EM) to the Regulations, DfE states that between October and December 2012 it consulted on these changes; that 41 responses were received; and that “those responding to the consultation did not propose modifications to the Department’s proposals”. An analysis of the responses is available on DfE’s website. This shows that this one-sentence summary fails to convey the tone of the responses, the majority of which voiced opposition to the policy of increasing pension contributions and the proposed amendments to the earlier Regulations.
18. We asked the Department to explain why it considered that the EM was satisfactory in the account that it gave of the outcome of the consultation process. We publish DfE’s response in Appendix 2. We are not persuaded

³ The new regime was introduced mainly by inserting new provisions into the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004.

⁴ Under section 61H of the Town and Country Planning Act 1990.

⁵ The Neighbourhood Planning (Referendums) Regulations 2012 (SI 2012/2031).

⁶ The Teachers’ Pensions Regulations 2010 (SI 2010/990).

that the EM gave an adequate account of consultation responses, and we have put our concern to the Minister.

Water Fluoridation (Proposals and Consultation) (England) Regulations 2013 (SI 2013/301)

19. The Health and Social Care Act 2012 amends the Water Industry Act 1991 with the effect that responsibility for conducting public consultations on fluoridation is transferred from Strategic Health Authorities to first tier local authorities with effect from 1 April 2013. This instrument sets conditions for the conduct of consultations and decision—making on proposals for either new fluoridation schemes or variations, maintenance or the termination of existing fluoridation schemes. In particular this instrument requires the proposing local authority or joint committee (where more than one local authority is affected) to take account of the extent of support for the proposal and the strength of any scientific or ethical arguments advanced during the course of a public consultation on a fluoridation proposal. In addition, they must also consider the extent of need among the population (for protection against tooth decay), the potential capital and operating costs and any evidence of benefits to the health and wellbeing of the individuals who would be affected by the proposal. The instrument requires that, for a decision to proceed, there must be a majority of votes of 67 per cent in favour⁷ with votes allocated to each authority based on the proportion of people in its area who would be affected by the proposal. Recognising that the conduct of consultations and the procurement and installation of the plant required to fluoridate the water are costly and that the effects of fluoridation are only evident over time, the instrument sets a minimum term of twenty years between consultations on a fluoridation scheme.

Controlled Drugs (Supervision of Management and Use) Regulations 2013 (SI 2013/373)

20. To reflect the restructuring of the NHS this instrument updates the 2006 Regulations⁸ that underpinned the arrangements, in England and Scotland, for securing the safe management and use of controlled drugs, such as opiates, in hospitals and in the wider community. Certain NHS and independent sector healthcare bodies are required to appoint controlled drugs accountable officers (“CDAOs”), and these Regulations describe CDAOs’ responsibilities. They also require specified bodies to co-operate with each other in local intelligence networks, and deal with ancillary matters such as powers of entry.
21. The need for a revision of the Regulations was stimulated by the abolition of Primary Care Trusts from 1 April 2013 but the Department took the opportunity to gather a multidisciplinary Working Group together to review how effectively the 2006 Regulations were working and how they could be simplified. This was followed by public consultation to which they received 93 comments. We regard this as good practice. As part of the simplification

⁷ As fluoridation can be controversial the Department wanted to use more than a simple majority of the local authorities affected by the decision. There is an existing precedent for a two-thirds (67%) majority: section 48 of the Local Government Act 1985 requires a two-thirds majority of London boroughs for approval of grants to be made to voluntary organisations which are to be funded by contributions from all London boroughs.

⁸ Controlled Drugs (Supervision of Management and Use) Regulations 2006 (S.I. 2006/3148, as amended)

proposals, smaller hospitals will be exempt from the need to appoint a CDAO but as the system was set up to deal with the recommendations of the Shipman Review, the Committee has sought additional information from the Department of Health on how proper oversight will be maintained. That information is published in Appendix 3.

Child Poverty Act 2012 (Extension of Publication Deadline) Order 2013 (SI 2013/411)

22. The Social Mobility and Child Poverty Commission is required by the Child Poverty Act 2010 to publish its first report before 8 May 2013. The Department for Education (DfE) has laid this Order, to extend the publication deadline for the report until any time before 26 September 2013. A key element of the evidence on which the Commission will base its report are the Households Below Average Income (HBAI) statistics; given the announcement that these statistics will be released in May or June 2013, the Commission has requested this extension. We put questions to DfE about the Order; the answers are printed in Appendix 4.

Civil Legal Aid (Remuneration) Regulations 2013 (SI 2013/422)

Criminal Legal Aid (Remuneration) Regulations 2013 (SI 2013/435)

23. These two instruments restate the provisions for the payment of fees to those who provide services under the Legal Aid scheme, using powers under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The **Criminal Legal Aid (Remuneration) Regulations 2013** substantially replicate the Criminal Defence Service (Funding) Order 2007 (SI 2007/1174 as amended). The only substantive change is that the rates for certain types of work that were previously contained in the 2010 Standard Crime Contract between the Legal Services Commission and providers are now contained in a new Schedule 4 to this instrument. The **Civil Legal Aid (Remuneration) Regulations 2013** broadly provide that payment for civil legal services will continue to be paid at the current applicable rate. There are, however, a few new elements, these include: new fees for mediation work; harmonised rates for psychologists and psychiatrists; discrimination work that has not been subject to competitive tender will be remunerated at the relevant rate for the category of law in which the matter first arose; and the rates currently paid in relation to inquests, previously included in guidance, are now set out in these Regulations. The payment rates set out in these Regulations do not apply if the contract for the provision of civil legal services in a case has been awarded after price competitive tendering has taken place.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft Instruments subject to affirmative approval

Neighbourhood Planning (Referendums) (Amendment) Regulations 2013

Official Statistics Order 2013

Instruments subject to annulment

- SI 2013/275 Teachers' Pensions (Amendment) Regulations 2013
- SI 2013/294 Competition Act 1998 (Consequential Provisions) Order 2013
- SI 2013/295 National Health Service Litigation Authority (Establishment and Constitution) Amendment Order 2013
- SI 2013/301 Water Fluoridation (Proposals and Consultation) (England) Regulations 2013
- SI 2013/335 National Health Service (Performers Lists) (England) Regulations 2013
- SI 2013/336 Transmissible Spongiform Encephalopathies (England) (Amendment) Regulations 2013
- SI 2013/340 Export Control (Iran Sanctions) (Amendment) Order 2013
- SI 2013/349 National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013
- SI 2013/362 Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013
- SI 2013/363 National Health Service (Primary Medical Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013
- SI 2013/365 National Health Service (Primary Ophthalmic Services) (Miscellaneous Amendments and Transitional Provisions) Regulations 2013
- SI 2013/373 Controlled Drugs (Supervision of Management and Use) Regulations 2013
- SI 2013/391 Medical Profession (Responsible Officers) (Amendment) Regulations 2013
- SI 2013/407 Channel Tunnel (Safety) (Amendment) Order 2013
- SI 2013/408 Central Rating List (England) (Amendment) Regulations 2013
- SI 2013/410 Local Government Pension Scheme (Management and Investment of Funds) (Amendment) Regulations 2013

SI 2013/411	Child Poverty Act 2010 (Extension of Publication Deadline) Order 2013
SI 2013/416	National Savings Stock Register (Amendment) Regulations 2013
SI 2013/418	Payment to Treasury of Penalties (Enforcement Costs) Order 2013
SI 2013/419	Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013
SI 2013/422	Civil Legal Aid (Remuneration) Regulations 2013
SI 2013/425	Merchant Shipping (Passengers' Rights) Regulations 2013
SI 2013/426	Electricity (Exemption from the Requirement for a Generation Licence) (Middlemoor) (England and Wales) Order 2013
SI 2013/427	Regional Strategy for the South East (Partial Revocation) Order 2013
SI 2013/428	Export Control (Amendment) Order 2013
SI 2013/432	Licensing Act 2003 (Forms) (Amendment) Regulations 2013
SI 2013/435	Criminal Legal Aid (Remuneration) Regulations 2013
SI 2013/444	Trade Marks and Registered Designs (Amendment) Rules 2013
SI 2013/445	Trade Marks (International Registration) (Amendment) Order 2013

APPENDIX 1: GOVERNMENT RESPONSE: DRAFT PUBLIC BODIES (ABOLITION OF ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL) ORDER 2013

Ministry of Justice memo to the Secondary Legislation Scrutiny Committee

I would like to thank the Committee for its recent scrutiny of the above Order and the report that was issued on 31 January. The responsibility placed on the Committee in relation to Public Bodies Orders is a considerable one and I appreciate the full and frank nature of the report.

The decision to abolish the AJTC was not taken lightly. I am sorry that the Committee found the explanatory document to the draft Order insufficient in its level of detail to fully articulate the case for this reform. I understand that there is anxiety in some quarters over the consequences of change. I had hoped that, by setting out the Government's priorities and objectives, the publication of the Administrative Justice and Tribunals Strategic Work Programme would go some way to demonstrating the seriousness with which the Government takes its role in this area. However, I recognise that this publication is pitched at a strategic level and that there are some points of detail on which the Committee has sought clarity. I am happy to expand further on the evidence I provided.

The Committee recommended that a mapping exercise for the administrative justice and tribunals system should be published by the Government in order to better set out the position, before and after abolition. I am pleased to be able to provide that now, as well as a table setting out the AJTC's statutory functions as established in the Tribunals, Courts and Enforcement Act 2007 and whether and how these functions would be carried out post-abolition. The enclosed documents have also recently been used in the Department's response to the Justice Committee's call for evidence to aid that committee in its scrutiny of the draft order.

In addition to the mapping exercise, which will be published on the MoJ's website, I hope it will be helpful to explain here in further detail how the parts of the administrative justice system currently within the AJTC's overview remit will be covered under the new arrangements and my aspirations for improvements in this area.

Oversight of the unified tribunal system and administrative justice

Over the last few years, as the unified tribunal system has developed, oversight of the tribunal system independent from the central Government departments and agencies making initial decisions has been provided by Her Majesty's Courts and Tribunals Service (HMCTS) – previously the Tribunal Service. The independence of the tribunals system administered by HMCTS ensures that tribunal members and their administrative support systems are sufficiently removed from decision makers to diminish the need for a standing body to oversee tribunals. The Government therefore considers the role of the AJTC in this context to be a partial duplication of effort.

In December 2012, the Government took the step of publishing its priorities and objectives in this area in the Administrative Justice and Tribunals Strategic Work Programme. The MoJ will resource these priorities, with policy and operational leads drawing upon necessary expertise from legal, analytical, financial colleagues.

In addition the MoJ is able to draw upon academic expertise and the views of individuals or external delivery bodies operating in the field.

The Government believes that its proposed model for delivering the published priorities in administrative justice and tribunals is the most cost-effective option available. These priorities include effective oversight of the system as a whole – not just the parts of the system currently administered by HMCTS – and are focused on driving improvements for users and taxpayers.

UK oversight

The Government recognises that there are challenges in relation to the devolved administrations, especially concerning the interplay between fully devolved and reserved matters. The structure of the AJTC is split on border lines, relying on close working between the different committees to understand cross-border issues. MoJ proposals are not radically different from this – officials and advisory bodies focused on the different administrations will need to work closely to identify and remedy issues.

The MoJ Administrative Justice and Tribunals Strategic Work Programme includes a commitment to strengthen governance arrangements with Government Departments and other public bodies to oversee the development of policy in this area. The MoJ has already started dialogues with counterparts in the Welsh Government, Scottish Government and the Northern Ireland Executive. It is planned that these discussions will result in formal protocols between the UK Government and each of the administrations to oversee the administrative justice and tribunals system. These will include examining and addressing issues for users in Wales, Scotland and Northern Ireland accessing reserved tribunals. Formal protocols are likely to include a programme of meetings both bilaterally and between all four administrations to identify issues and share experiences and good practice

Whilst this is a clear commitment, the Government recognises that there is more detail to be added and acknowledges concerns expressed by the Scottish and Welsh Committees of the AJTC that changes in this area will disadvantage users. The MoJ has agreed to continue supporting the governments in Wales and Scotland to complete their reform programmes in order to bring tribunals systems across the three administrations to parity. The Government believes that the changes proposed will, in fact, benefit users of the system by, for instance, encouraging: closer working arrangements between the administrations; better sharing of good practice; and a solution-focused approach to cross-border issues. Our view is that more progress will be made through closer working by those who are themselves responsible for the development of relevant policies and their delivery, rather than by those working at arms length.

Oversight of the wider administrative justice and tribunals system

The Government is mindful that not all parts of the administrative justice and tribunals system falls under the administrative responsibility of HMCTS. The Government believes that strengthened governance arrangements with other parts of Government will address the concerns raised about the parts of the administrative justice and tribunals system currently not in the unified tribunal structure. While the MoJ may not necessarily be the ‘owning’ department for some of these bodies, it has a clear remit for the system as a whole.

Under its governance arrangements with other parts of Government the MoJ will: scrutinise the functioning of tribunals or other bodies not currently under HMCTS using the data available; carry out visits to those bodies of particular concern or which may offer good practice for other parts of the system; and keep under review the case for transferring administrative responsibility for the body into HMCTS.

As part of this governance work the MoJ will strengthen links with the Parliamentary and Health Service Ombudsman to seek to address systemic issues within Government that are leading to maladministration or unfairness for users. This will include looking at complaints and how the issues they relate to may be causing impacts on the wider administrative justice and tribunals system (for instance, by leading to applications for judicial review).

The proportionality strand of the Strategic Work Programme will explore options for using ombudsmen to achieve redress earlier for users accessing the administrative justice system. This is closely linked to the work being progressed by the MoJ to improve signposting and digital guidance so that those with a complaint or grievance can access the most appropriate services to achieve redress.

The Administrative Justice Advisory Group

The role of the Administrative Justice Advisory Group (“the Group”) is to provide a user focus to the policy development process led by the MoJ. It has already played an important role in helping the MoJ to work up advice to Ministers on priorities for the strategic work programme. However, it is fair to say that the Group is not yet fully operational. Whilst there has been a degree of uncertainty over the future of the AJTC and arrangements in Wales and Scotland, the MoJ has decided to delay confirming membership representing users in those administrations. Whilst the AJTC has continued to carry out its functions, the MoJ has been mindful not to draw too heavily upon the time of those who have volunteered to sit on the Group, many of whom will also have connections with the AJTC.

If Parliament is content to pass the Order abolishing the AJTC then the MoJ plans to extend both the membership and the activity of the Group. These plans will need to be agreed by the Group, but are likely to include:

- extension of membership to representatives operating in Scotland and Wales, and an invitation to relevant parties in Northern Ireland;
- the formation of sub-groups, led from within the Group rather than by MoJ, to provide more detailed advice on selected priorities and objectives within the Strategic Work Programme;
- an explicit expectation that activity of and feedback from the Group will form part of the standing agenda in governance arrangements with other parts of Government, including any concerns over parts of the system not currently administered by HMCTS; and
- an expectation that the Group will provide contribution to annual reporting arrangements.

I hope this additional information is helpful and once again I thank the Committee for its close scrutiny of the order.

Helen Grant MP

26 February 2013

Map of the administrative justice and tribunals system and its oversight

Summary:

The table below maps out the main constituent parts of the administrative justice and tribunals system and states how they are currently overseen and how the Government intends to oversee them following the proposed closure of the Administrative Justice and Tribunals Council (AJTC).

In its report on the draft Order that seeks to abolish the AJTC, the Secondary Legislation Scrutiny Committee recommended that "...as a minimum, the Minister publishes a mapping exercise illustrating all the bodies currently under the aegis of the AJTC and showing their status in relation to the unified Tribunal System, the Advisory Group and the MOJ now and at 31 March 2013, the date proposed for the abolition of the AJTC." This document responds to that recommendation and should give greater clarity to the Justice Committee in its scrutiny of the draft Order.

The AJTC currently:

- keeps the administrative justice system under review;
- considers ways to make the system accessible, fair and efficient;
- advises the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals on the development of the system;
- refers proposals for changes in the system to those persons; and
- makes proposals for research into the system.

A full list of AJTC functions from Schedule 7 of the Tribunals, Courts and Enforcement Act 2007 and how they will be taken forward is also enclosed for the Justice Committee's consideration.

Her Majesty's Courts and Tribunals Service (HMCTS) provides the system of support, including infrastructure and resources, for the administration of the business of the courts in England and Wales and those tribunals throughout the United Kingdom, for which the Lord Chancellor is responsible. The agency provides the support necessary to enable the judiciary, tribunal members and magistracy to exercise their judicial functions independently. As such, it is responsible for ensuring that its administration of the tribunals under its responsibility (including its support for an independent judiciary) supports a fair, efficient and accessible system. Accordingly, HMCTS takes steps to keep the system within its ambit under review.

The Ministry of Justice (MoJ) has responsibility for a number of different parts of the justice system, including most tribunals and the administrative justice system as a whole (although individual parts still remain outside of its remit). There has always been a need for the Department to maintain capability to implement policy changes. However, under the reform programme initiated by the review of tribunals carried out by Sir Andrew Leggatt in 2001 and given a legislative footing by the Tribunals, Courts and Enforcement Act 2007, the extent of the MoJ's direct policy responsibility has grown and the case for an independent arms length body to keep a disparate system under review has diminished. Given the new challenges of driving improvements in the now-reformed system, the Government believes that more benefit will be drawn from taking a systems-wide overview of

administrative justice and tribunals from within the Department, which will also implement improvements. The Government's priorities for improving the system have been published in the Administrative Justice and Tribunals Strategic Work Programme (December 2012)

Civil servants within the MoJ are expected to act with integrity, honesty, impartiality and objectivity when assisting Ministers to formulate policies and administer public services. To support open policy making, the MoJ has established the Administrative Justice Advisory Group. This Group will provide user-focused advice on issues within the system and policy options that seek to address them, supporting the MoJ in its oversight of individual tribunals and the administrative justice system as a whole.

(See attached Table A)

Body	Appeals or Cases Heard/Decided	Current Oversight	Oversight from April 2013 (assuming abolition of AJTC)
Administered by HMCTS			
Upper Tribunal / Superior Courts of Record			
Administrative Court	Judicial reviews on: • Immigration and Asylum • Police employment decisions • Parking and Traffic Appeals Service decisions • Road user charging adjudications • Schools Exclusion Panel decisions • Family Health Services Appeals Unit decisions • Reserve Forces Appeal decisions • Gangmasters Licensing decisions	• HMCTS (oversees administration of the court) • MoJ (implements policy relating to the appeal systems, judicial review rights and the administration of the court) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice to the Government on how to make the administrative justice and tribunal system accessible, fair and efficient)	• HMCTS (oversees administration of the court) • MoJ (develops and implements policy relating to appeal rights and the operation of the court), drawing upon the advice of the Administrative Justice Advisory Group¹
Administrative Appeals Chamber (UT)	• Some judicial review functions allocated from Administrative Court by order of the Lord Chief Justice • Onward appeals from: • General Regulatory Chamber (First-tier Tribunal) • War Pensions & Armed Forces Compensation Chamber (First-tier Tribunal) • Social Entitlement Chamber (not Criminal Injuries Compensation and NHS)	• HMCTS (oversees the administration of the tribunal) • MoJ (develops and implements policy relating to appeal rights and the administration of the tribunal) drawing upon the advice of the Administrative Justice Advisory Group • Scottish Government (policy)² • Welsh Government (policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (develops and implements policy relating to appeal rights and the operation of the tribunal), drawing upon the advice of the Administrative Justice Advisory Group • Scottish Government (policy) • Welsh Government (policy)

¹ The Advisory Group provides user focused advice to the MoJ on policy options through formal meetings (twice yearly), targeted workshops and written consultations

² The devolved administrations will have a policy role in any superior Court of Record where devolved issues are decided

	charges in Scotland) • Health, Education & Social Care Chamber (First-tier Tribunal) • Traffic Commissioners Tribunals • Transport (Scotland) • Pension Appeals (Scotland) • Mental Health Tribunal (Wales) • Special Educational Needs Tribunal (Wales) • Pension Appeals Tribunal (Northern Ireland (NI))	• Northern Ireland Executive (policy) • AJTC (provides advice on tribunal performance and policy)	• Northern Ireland Executive (policy)
Tax & Chancery Chamber (UT)	• Some judicial review functions allocated from Administrative Court by order of the Lord Chief Justice • Financial Services and Markets (excluding NI) • Pensions Regulator • Onward appeals from: • Tax Chamber • General Regulatory Chamber (Charity jurisdictions only)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
Immigration and Asylum Chamber (UT)	• Some judicial review functions allocated from Administrative Court by order of the Lord Chief Justice ('fresh claims' only at present, although the Crime & Courts Bill includes provision to remove restrictions on further transfer of cases) • Onward appeals from: • First-tier Tribunal (Immigration & Asylum Chamber)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy– as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provide advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy– as above) drawing upon the advice of the Administrative Justice Advisory Group
Lands Chamber	• Disputed compensation in compulsory	• HMCTS (oversees the	• HMCTS (oversees the

(UT)	purchase and certain other types of land compensation cases • applications to discharge or modify restrictions on the use of land • To hear onward appeals from: • Valuation Tribunals England (Non-domestic (Business) rates) • Leasehold Valuation Tribunals • Residential Property Tribunals	administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
- High Court (England & Wales) - Court of Session Outer House (Scotland) - High Court (NI)	• Onward appeals from statutory tribunals & panels etc.	• HMCTS (oversees the administration of the court) • Scottish Court Service (oversees administration of the court) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
First-tier Tribunal (FtT) Chamber Structure			
General Regulatory Chamber (FtT)	Including appeals on the following subjects: • Information Rights • Consumer Credit • Estate Agents • Immigration Services • Charity Tribunal • Environment • Claims Management Services	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group

	• Alternative Business Structures • Transport (Driving Standards Agency Appeals) • Gambling • Examination Board • Food • Local Government Standards in England		
Social Entitlement Chamber (FtT)	• Social Security & Child Support (except NHS charges in Scotland) • Criminal Injuries Compensation • Asylum Support	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
Immigration & Asylum (FtT)	• Immigration & Asylum	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
Health, Education & Social Care Chamber (FtT)	• Mental Health • Special Educational Needs & Disability • Care Standards • Primary Health Lists	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group

		• Department of Health (Policy) • Department of Education (Policy)	
War Pensions & Armed Forces Compensation (FtT)	• War Pensions & Armed Forces Compensation	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
MoD tribunals	• Reinstatement Committees	• HMCTS (oversees the administration of the tribunal) • MoD (tribunal/appeals policy) • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoD (tribunal/appeals policy) • MoJ (liaises with MoD on tribunal/appeals policy)
Other HMCTS-administered appeal mechanisms	• Gender Recognition Panel • Proscribed Organisations Appeal Commission • Special Immigration Appeals Commission • Pathogens Access Appeals Commission • Reserve Forces Appeal Tribunals	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
Property Chamber	• Adjudicator to HM Land Registry • Agricultural Land Tribunal • Residential Property Tribunal Service	• DCLG (tribunal/appeals policy) • HMCTS (oversees the administration of the tribunal) • AJTC (provides advice on tribunal performance and policy)	• MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • HMCTS (oversees the administration of the tribunal) • (Chamber due to be created from existing jurisdictions within

			the unified tribunal system in July 2013)
Employment Tribunals (party vs. party tribunals administered by HMCTS)			
- Employment Appeal Tribunal (England & Wales) - Employment Appeal Tribunal (Scotland)	• Umpires and Deputy Umpires (appeals from outside HMCTS reinstatement committee) • Onward appeals from: • Employment Tribunals	• HMCTS (oversees the administration of the tribunal) • BIS (tribunal/appeals policy) • MoJ (liaises with BIS on tribunal/appeals policy) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • BIS (tribunal/appeals policy) • MoJ (liaises with BIS on tribunal/appeals policy) drawing upon the advice of the Administrative Justice Advisory Group
Employment Tribunal	• Employment Tribunal (England & Wales) • Employment Tribunal (Scotland) • Gangmasters Licensing (legislation owned by DEFRA) • Reserve Forces Appeal Tribunals (legislation owned by MoD)	• HMCTS (oversees the administration of the tribunal) • BIS (tribunal/appeals policy) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group • AJTC (provides advice on tribunal performance and policy)	• HMCTS (oversees the administration of the tribunal) • BIS (tribunal/appeals policy) • MoJ (tribunal/appeals policy – as above) drawing upon the advice of the Administrative Justice Advisory Group
Other UK Central Government Tribunals (not currently administered by HMCTS)			
Traffic tribunals	• Parking and Traffic Appeals Service (Parking Adjudicators) • Road User Charging Adjudicator Tribunal • Traffic Commissioners • Penalty Charge Adjudicators (under Traffic Management Act 2004)	• DCLG (tribunal/appeals policy) • Local Authorities (policy/performance) • AJTC (provides advice on tribunal performance and policy) • MoJ (policy - where appealed onwards to the Administrative Court) drawing upon the advice of	• MoJ will take a light touch oversight role for these tribunals, liaising with the relevant administrators and ‘owning’ Departments. Live issues will be discussed with the Administrative Justice Advisory Group.

		the Administrative Justice Advisory Group	• All will be considered as part of the ongoing review of tribunals to be transferred into the HMCTS-administered system.
Employment solicitors –	• Solicitors Disciplinary Tribunal	• Law Society • AJTC (provides advice on tribunal performance and policy) • MoJ (policy - where appealed onwards to the Administrative Court) drawing upon the advice of the Administrative Justice Advisory Group	
Employment Police -	• Police Appeals Tribunal • Police Pensions Regulations Appeals Tribunal	• Home Office (tribunal/appeals policy) • AJTC (provides advice on tribunal performance and policy) - MoJ (policy - where appealed onwards to the Administrative Court) drawing upon the advice of the Administrative Justice Advisory Group	
Schools	• Office of the School Adjudicator • School Admission Appeals Panels • School Exclusion Appeal Panels	• AJTC (provides advice on tribunal performance and policy) • MoJ (policy - where appealed onwards to the Administrative Court) drawing upon the advice of the Administrative Justice Advisory Group	
Business	• Copyright Tribunal • Company Names Tribunal • Competitions Appeal Tribunal	• BIS (policy) • Office of Fair Trading (policy) - Intellectual Property Office (performance) • AJTC (provides advice on tribunal performance and policy)	

		• MoJ (policy - where cases are appealed onwards to the Administrative Court) drawing upon the advice of the Administrative Justice Advisory Group	
Health Services	• NHS Litigation Authority Family Health Services Appeal Unit	• Department of Health (tribunal/appeals policy) • AJTC (performance and policy)	
Miscellaneous	• Abolition of Aircraft & Shipbuilding Industries Arbitration Tribunal (to be abolished) • Firefighters pension scheme tribunals • Bus Lane Adjudicators • Case Tribunals – Local Government Act 2000 • Health and Safety Licence Appeals (DWP) • Mines and Quarries Tribunal (DWP) • Health Service Medicines (Price Control Appeals) Tribunal (Department of Health) • Foreign Compensation Commission (Foreign & Commonwealth Office)	• BIS (tribunal/appeals policy) • DWP (tribunal/appeals policy) • AJTC (provides advice on tribunal performance and policy) • Foreign & Commonwealth Office (policy)	
Devolved Appeals			
Scottish Tribunals	<u>Administrative operational support provided by the Scottish Tribunals Service (STS):</u> • Additional Support Needs Tribunals for Scotland • Lands Tribunal for Scotland	• The Scottish Tribunal Service (STS) operationally supports the tribunals noted. The STS is currently a delivery unit of the Justice Directorate of the Scottish Government.	• The Scottish Government will continue to develop and implement policy relating to devolved jurisdictions. • The Tribunals (Scotland) Bill is due to be introduced to the Scottish

	• Mental Health Tribunal for Scotland • Private Rented Housing Panel / Home Owner Housing Panel • Scottish Charity Appeals Panel <u>Other Devolved Jurisdictions:</u> • Children's Hearings • Crofting Commission • Education Appeal Committees • Horse Racing Betting Levy Appeals Tribunal • NHS Discipline Committee • NHS National Appeal Panel for entry to the Pharmaceutical Lists • NHS Tribunal for Scotland • Police Appeal Tribunal • Police Pensions Appeal Tribunal • Scottish Parking Appeals Panel • Valuation Appeals Committee • Parole Board for Scotland	• The Scottish Government develops and implements policy relating to devolved jurisdictions and has responsibility for the majority of the tribunal rules, however some rules are under the Lord President. • The AJTC Scottish Committee currently must be consulted on any changes to the tribunal rules as listed on its schedule.	Parliament in this parliamentary session which will give the Lord President judicial leadership of tribunals judiciary (once they are transferred into the new system); will create a two tiered tribunals structure for Scotland; and will create the roles of President of Scottish Tribunals and Chamber Presidents who will have operational responsibility for tribunals within the new structure. • The Bill will also allow for the making of tribunal rules to be transferred to the newly created Civil Justice Council, which is under the leadership of the Lord President. • The Scottish Government has committed to creating an interim non-statutory advisory committee on administrative justice in Scotland; which will continue some of the functions of the AJTC Scottish Committee.
Welsh Tribunals	• Mental Health Review Tribunal for Wales • Valuation Tribunal for Wales (Ratings appeals heard in the Lands Chamber administered by HMCTS) • Special Educational Needs Tribunal for Wales • Adjudication Panel for Wales • Agricultural Land Tribunal (Wales) • Forestry Committees for Wales	• Welsh Government (tribunal/appeals policy) • AJTC Welsh Committee (provides advice on court performance and appeal policy) (The Lord Chancellor makes rules for some of tribunals operating in Wales without having policy responsibility)	• Non-statutory Welsh Administrative Justice and Tribunals Committee (to oversee tribunal reform in Wales until 2015)

	• Independent Review of Determination Panels • Independent Social Services Complaints Panels • Local Health Boards in Wales • Registered Nursery Education Inspectors Appeal Panels • Registered School Inspectors Appeal Panels • Residential Property Tribunal • School Admission Appeal Panels • School Exclusion Appeal Panels • Traffic Penalty Tribunal adjudicators		
Northern Ireland	• The Appeals Service • The Care Tribunal • The Charity Tribunal • Criminal Injuries Compensation Appeals Panel (NI) • The Lands Tribunal • Mental Health Review Tribunal • NI Health and Safety Tribunal • Northern Ireland Traffic Penalty Tribunal • Northern Ireland Valuation Tribunal • Office of Social Security Commissioners and Child Support Commissioners • Pensions Appeal Commissioners • Rent Assessment Panel • Pensions Appeal Tribunals	• Northern Ireland Executive (policy) • Courts Service and Tribunals Service (NI)	• Northern Ireland Executive (policy) • Courts Service and Tribunals Service (NI)

	• Special Educational Needs and Disability Tribunal		
Ombudsmen / Inquiries			
Parliamentary & Health Service Ombudsman (PHSO)	• Covers UK Government Departments and other public organisations in the UK and the NHS in England only.	• Cabinet Office (policy - Parliamentary) • Department of Health (policy – health services) • AJTC oversees the ombudsman landscape as a whole and its role within the wider administrative justice system	• Cabinet Office (policy - Parliamentary) • Department of Health (policy – health services) • MoJ will continue to work closely with the PHSO, the • Cabinet Office, and DoH to ensure coherence between ombudsmen and wider administrative justice policy • MoJ / HMCTS sits on the Cross-Government Complaints Forum
Local Government Ombudsman	• Covers principal councils and certain other bodies in England	• AJTC oversees the ombudsman landscape as a whole and its role within the wider administrative justice system • The Ombudsman Association – which is a professional association for ombudsmen and complaint handlers, their staff and others interested in the work of independent complaint resolution.	• MoJ will oversee the ombudsman landscape as a whole and its role within the wider administrative justice system • The Ombudsman Association is represented on the Administrative Justice Advisory Group, which provides advice on how the system as a whole can work more effectively for its users.
Northern Ireland Ombudsman	• Covers NI Government Departments and other public organisations		
Public Services Ombudsman for Wales	• Covers public bodies and local authority members.		
Scottish Public Services Ombudsman	• Covers councils, housing associations, the NHS, the Scottish Executive and its agencies and departments, colleges and universities, and most public authorities		
Other Ombudsmen	Including: • Prisons and Probation Ombudsman • Children’s commissioners		

	• Financial Ombudsman Service • Housing Ombudsman Service (HOS) • Judicial Appointments and Conduct Ombudsman • Legal Services Ombudsman • Office of the Independent Adjudicator • Police Ombudsman for Northern Ireland • Pensions Ombudsman • Prisoner Ombudsman for Northern Ireland • Scottish Legal Services Ombudsman • Information Commissioners • Public Standards Commissioners		
Statutory Inquiries	• Any inquiry or hearing held by or on behalf of a Minister of the Crown, the Scottish Ministers or the Welsh Ministers in pursuance of a statutory duty	• AJTC - keeps under review, and reports on, the constitution and working of statutory inquiries. In practice AJTC's role has been limited to planning inquiries • Planning Inspectorate (quality assurance for land use inquiries)	• Planning Inspectorate (The Quality Assurance Unit operates across all functions of the Planning Inspectorate to ensure appropriate standards and procedures are upheld. Recommends changes to the Planning Inspectorate's Audit Committee, or the Inspectorate's main board. Non-Executive Directors ensure external scrutiny.)

ANNEX B

LIST OF AJTC FUNCTIONS IN SCHEDULE 7 OF THE TRIBUNALS COURTS AND ENFORCEMENT ACT 2007 AND IF/HOW THESE WILL BE COVERED FOLLOWING ABOLITION

Para in Schedule 7, TCE Act 2007	Description of AJTC function	How the function will be undertaken by MoJ following abolition of the AJTC
13	Functions with respect to the administrative justice system: (1) The Council is to— • Keep the administrative justice system under review • Consider ways to make the system accessible, fair and efficient • Advise the persons mentioned in sub-paragraph (2) on the development of the system [these are • the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals] • Refer proposals for changes in the system to those persons • Make proposals for research into the system (3) The Council may make such reports as it considers appropriate on any of the matters mentioned in sub-paragraph (1).	MoJ will keep the administrative justice system under review. As with the AJTC's duty to consider the system, we believe that administrative justice should be underpinned by three key principles: fairness, accessibility and efficiency. The success of the improvements we make across the system will be measured against these principles. MoJ's objectives (as established in MoJ's strategic work programme for administrative justice and tribunals for 2013-2016) for the governance of the administrative justice and tribunals system are: Objective 1: To strengthen arrangements with other departments and public bodies to oversee the development and delivery of administrative justice and tribunals policy. Objective 2: To establish, encourage and maintain a user focus that supports open policy making. We will achieve objective 1 by building on existing bi-lateral arrangements with the departments that use the tribunal system, refreshing formal protocols where they exist to: • set clear expectations that inefficient use of the system will be managed down; • develop performance measures that encourage this; and • share good practice across the system.

		We will further strengthen these bi-lateral arrangements by working closely with other key parties in the administrative justice and tribunals system – such as the judiciary, HMCTS, various public sector ombudsmen including the Parliamentary and Health Service Ombudsman (PHSO) and the devolved administrations – to support our consideration of performance issues and help spread good practice across jurisdictions. We have already gone some way towards achieving objective 2 by establishing the Administrative Justice Advisory Group, which met for the first time in May 2012. The Group is made up of representatives from organisations that work closely with users from across a range of interests in the administrative justice and tribunals system. This expert group will provide a vital perspective on the performance of and issues within the system to help the MoJ to develop policies for improving the system and delivery options that meet the needs of users. It will draw upon information captured by the MoJ from across the system, including jurisdictional user groups. To support the development of specific proposals we will hold targeted policy sessions with academics, representative groups and a wide network of interested parties on priority issues. Government departments, public authorities and agencies have a responsibility to ensure that as many decisions as possible are right first time. As a dispute proceeds through the process from the original decision maker through to resolution there will be an increase in the cost to and time required from both Government and users of the system. Our objectives on improving initial decision making are: Objective 6: To establish improved end-to-end performance data to drive better decision making. Objective 7: To ensure information is made available to enable improvements in the quality of initial decision making. We will achieve objective 6 by working with other departments,
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		starting with the Department for Work and Pensions, the Home Office, Department for Business, Innovation and Skills and Department for Education, to establish baseline data for larger jurisdictional areas. This information will provide a fuller picture of where the stresses are in high volume appeals processes and identify priority areas for action with partners across Government. We will build on this in other jurisdictions. We will achieve objective 7 by building on recent achievements, particularly in the Social Security and Child Support jurisdiction, to identify new approaches for providing enhanced feedback from tribunals to decision makers. We will pilot approaches in 2013/14 and evaluate how useful different feedback sources are to improving decision making. This will inform our discussions with other parts of Government and allow us to target new feedback approaches where is most effective and will improve performance.
14(1)	General functions with respect to tribunals: The Council is to— (a)keep under review, and report on, the constitution and working— • of listed tribunals in general, and • of each listed tribunal, (b)consider, and report on, any other matter— • that relates to listed tribunals in general or to a particular listed tribunal, and • (that the Council determines to be of special importance, and (c)consider, and report on, any particular matter referred to the Council— • that relates to tribunals in general or to any particular tribunal, and • whose referral to the Council falls within paragraph 16.	The independence of the tribunals system administered by HMCTS ensures that tribunal members and their administrative support systems are sufficiently removed from decision makers to diminish the case for a standing body to oversee tribunals. We believe that policy development and oversight of tribunals, and the wider administrative justice system, should be led from within the MoJ. A number of tribunals still exist outside the unified HMCTS structure. Government policy has been to bring all central tribunals into this structure in order to ensure a separation between the tribunal and the sponsoring department or public authority. However, transferring tribunal administration and judiciary into the HMCTS system can be resource intensive. With the majority of the restructuring work complete, we want to look more carefully at the case for transferring in those tribunals that remain outside of the unified system and commit resource only where there are clear benefits to doing so. Our objectives for non-HMCTS tribunals and new appeal rights

		are: Objective 3: To prioritise tribunal transfers into the unified structure on a cost/benefit basis and to maintain oversight of those that remain outside of the system. Objective 4: To ensure new appeal rights proposed by Government are fair, efficient and accessible. We will achieve objective 3 by monitoring the performance of tribunals outside the unified structure, drawing on available performance data; annual reports; business or development plans; parliamentary, user and judicial feedback. We will use this to work with sponsoring departments to review and improve performance against the principles of administrative justice. We will consider the case for transferring specific tribunals into the unified structure where there are arguments for improving efficiency, proportionality or access to justice. Where there is a case we will include transfer work streams in our business plans. We will achieve objective 4 by developing a new framework for reviewing and handling appeal rights as they are proposed by policy makers in Government. We will work closely with other departments to streamline the process of considering proposals for new appeal rights before they are more fully developed. This will mean that we are involved at an early stage to ensure that, where an appeal right is required, it is designed with the rest of the system in mind so that it is proportionate, drives the right incentives and is coherent with the rules and regulations of the wider tribunal system. We will develop this process – which we will call the appeal rights gateway – in consultation with other key delivery partners, such as the Tribunal Procedure Committee – in 2013/14.
14(2)	The Council may scrutinise and comment on legislation, existing or proposed, relating to tribunals or to any particular tribunal.	MoJ believes this AJTC function is no longer required. We are now reaching the end of a period of significant structural reform in the area of administrative justice. Legislative change, enacted by the Tribunals, Courts and Enforcement Act 2007, put in

		train many of the ambitions of the Leggatt review leading to the much healthier system we now have in place today. An independent tribunal system has been created with two tiers, administered by HMCTS, and covering most of the key areas that attract appeals. Our intention is now to move beyond structural reform, and the legislation required to bring about structural reform, and separation of decision-making from redress mechanisms, to making the independent administrative justice and tribunals system work more effectively and efficiently for its users and for the taxpayers who fund it. There is a requirement in section 42(5) of the Tribunals, Courts and Enforcement Act 2007 for the Lord Chancellor to consult the AJTC before making an order prescribing fees in relation to tribunal proceedings. MoJ believes that this consultative function can be sufficiently fulfilled by the Senior President of Tribunals, who must also be consulted as per section 42(5), and that this is commensurate to the statutory requirement in the Family Courts to consult the President of the Family Division before making an order regarding court fees, as per section 92 of the Courts Act 2003.
15	General functions with respect to statutory inquiries: The Council is to— (a) keep under review, and report on, the constitution and working of statutory inquiries, both in general and by reference to statutory provisions under which statutory inquiries of different descriptions may be held, (b) consider, and report on, any other matter— • that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and • that the Council determines to be of special importance, and	Functions in relation to statutory inquiries include considering and reporting on any matter relating to statutory inquiries that the AJTC determines as being of special importance. In practice, the AJTC has focused on inquiries relating to land use. the AJTC's role in relation to statutory inquiries is no longer considered necessary because the Planning Inspectorate, an Executive Agency of the Department for Communities and Local Government, has now established a robust Quality Assurance Unit, which operates across all functions of the Planning Inspectorate to ensure appropriate standards and procedures are upheld. This unit is able, as necessary, to recommend changes to the Planning Inspectorate's Audit Committee, or the Inspectorate's main board. The board also includes non-Executive Directors which ensures external

	(c)consider, and report on, any particular matter referred to the Council— • that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and • whose referral to the Council falls within paragraph 16.	scrutiny.
17	Reports by the Council under paragraphs 14 and 15: (1)A report by the Council on a matter referred to it under paragraph 14(1)(c) or 15(c) must be made to the authority or authorities who referred the matter. (2)Any other report by the Council under paragraph 14 or 15— • must be made to the Lord Chancellor, • if it relates to Wales, must be made also to the Welsh Ministers, and • if it relates to Scotland, must be made also to the Scottish Ministers. (3)The Lord Chancellor must lay before each House of Parliament every report made by the Council to him under this paragraph, other than a report that relates only to matters within sub-paragraph (4).	MoJ will report annually to Parliament on the administrative justice system and how we are meeting the objectives set out in the strategic work programme. In its March 2012 report on the future oversight of the administrative justice system, the Public Administration Select Committee recommended that, in the interests of continuing transparency, the MoJ report annually to Parliament on the operation of the administrative justice system, including: • Details of the resourcing of the Department’s administrative justice function • Actions taken by Ministers and officials to improve the operation of the system • Details of how the views of users of the administrative justice system have been sought and addressed • Details of work undertaken with other Departments, devolved administrations and local government, to improve administrative justice for the citizen. Arrangements will be made to report to Parliament on the issues suggested by the Committee, building on the annual report and statistics already published by HMCTS.
18	Referral of matters to, and reports by, the Scottish Committee	HMCTS is responsible for the administration of tribunals in England and non-devolved tribunals. Certain elements of the administrative justice and tribunals system are devolved to Scotland, Wales and Northern Ireland. The picture is different in each case, meaning that the challenge to decide where processes need to be aligned and where they can be handled
19	Referral of matters to, and reports by, the Welsh Committee	

		differently varies across each administration. The MoJ will work closely with each of these administrations to identify the best approach to overseeing the system and how it operates and coheres across borders. Programmes are underway across the devolved administrations to improve tribunal services. Some jurisdictions are devolved – for example war pensions in Scotland have their own tribunal – while others – such as immigration and asylum – are reserved, meaning they are managed by a UK-wide administration. • In Scotland, as part of the Making Justice Work Programme, the Scottish Government intend to bolster the Scottish Tribunal Service with a view to reducing complexity for users of the system and increasing efficiency/economies of scale. The Scottish Tribunals Bill is expected to be introduced in 2013. • In Wales, a programme of reform is underway in response to the recommendations of the 2010 review of Welsh tribunals conducted by the Welsh Committee of the AJTC. Each of the devolved administrations is looking to build systems that separate appeal routes from initial decision makers, in line with the principles that led to the establishment of the First-tier and Upper Tribunal in the UK. We recognise there is still work to be done both to realise the benefits of independent, two-tier tribunals in each of the assemblies and to ensure cohesion across the UK. We will continue to work closely with each administration to support their reform programmes, drawing up formal protocols where necessary.
20	The Council's programme of work: 1) The Council must formulate, in general terms, a programme of the work that the Council plans to undertake in carrying out its functions. (2) The Council must— • keep the programme under review, and	The MoJ's strategic work programme for administrative justice and tribunals for 2013-2016 was published in December and was placed in the libraries of both Houses of Parliament. As with the AJTC's programme of work, this will be kept under review and revised when appropriate. The three other advisory bodies listed at 20(3) will continue to exist and MoJ will consult and work with these bodies as appropriate according to the

	• revise it when appropriate. (3) In discharging its duties under sub-paragraphs (1) and (2), the Council must have regard to— • the work of the Civil Justice Council, • the work of the Social Security Advisory Committee, and • the work of the Industrial Injuries Advisory Council.	objectives set out in the strategic work programme.
21	Annual reports: 1) The Council must make an annual report on the proceedings of the Council to— • the Lord Chancellor, • the Scottish Ministers, and • the Welsh Ministers. (2) The Scottish Committee must make an annual report to the Scottish Ministers on the proceedings of the Scottish Committee. (3) The Welsh Committee must make an annual report to the Welsh Ministers on the proceedings of the Welsh Committee. (4) The Lord Chancellor must lay before each House of Parliament a copy of any report made under sub-paragraph (1). (5) The Scottish Ministers must lay before the Scottish Parliament a copy of any report made under sub-paragraph (1) or (2). (6) The Welsh Ministers must lay before the National Assembly for Wales a copy of any report made under sub-paragraph (1) or (3).	MoJ will report annually to Parliament on the administrative justice system and how we are meeting the objectives set out in the strategic work programme. In its March 2012 report on the future oversight of the administrative justice system, the Public Administration Select Committee recommended that, in the interests of continuing transparency, the MoJ report annually to Parliament on the operation of the administrative justice system, including: • Details of the resourcing of the Department’s administrative justice function • Actions taken by Ministers and officials to improve the operation of the system • Details of how the views of users of the administrative justice system have been sought and addressed • Details of work undertaken with other Departments, devolved administrations and local government, to improve administrative justice for the citizen. Arrangements will be made to report to Parliament on the issues suggested by the Committee, building on the annual report and statistics already published by HMCTS. Following the abolition of the AJTC, the interim non-statutory bodies to be established in Scotland and Wales will make their own arrangements for reporting to Scottish and Welsh Ministers.

22	Right to attend proceedings:(1)A member of any of— • the Council, • the Scottish Committee, and • the Welsh Committee, may attend (as observer) proceedings of a listed tribunal or of a statutory inquiry.	The AJTC’s tribunal oversight functions including attendance at proceedings 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 will provide an expert and critical forum to examine the issues raised and explore options to address them. The 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).
24	Council to be consulted on rules for listed tribunals: 1) The power of a Minister of the Crown, the Welsh Ministers or the Scottish Ministers to make, approve, confirm or concur in procedural rules for any listed tribunal is exercisable only after consultation with the Council. (2)Sub-paragraph (1) does not apply with respect to any procedural rules made or to be made for a listed tribunal by the Tribunal Procedure Committee.	The vast majority of rules for listed tribunals are made by the Tribunal Procedure Committee and as such the MoJ believes that this function performed by the AJTC is no longer necessary. Schedule 5 of the Tribunals, Courts and Enforcement Act 2007 contains provisions for appointments to the Tribunal Procedure Committee and which ensure that members have experience in practice in tribunals, or in advising persons involved in tribunal proceedings. This provides a sufficient and systematic way of bringing relevant expertise into the rule making body without the need for the AJTC to nominate a member.

APPENDIX 2: TEACHERS' PENSIONS (AMENDMENT) REGULATIONS 2013 – FURTHER INFORMATION

Information from Department for Education

The Department for Education considers that its explanation of the outcome of the consultation process is satisfactory.

The consultation document, issued on 26 October 2012, was on proposed increases in contributions for members of the Teachers' Pension Scheme in 2013-14; and the removal of provisions governing scheme valuations and cap and share arrangements. In relation to proposed contribution increases the document made clear that the scope of the consultation was limited to the way in which contribution increases might be implemented, rather than the Government's decision to increase contributions, which was taken in response to Lord Hutton's interim report, 'Independent Public Service Pensions Commission: Interim Report' ("IPSPC Report").

In his interim report of 7 October 2010, Lord Hutton recommended that increased longevity and the imbalance between employer and employee contributions are strong reasons to make short-term changes to pension contributions pending a more fundamental redesign of the schemes. The Government announced in the 2010 Spending Review that it accepted the findings of the interim IPSPC Report. As a result each public sector pension scheme is to increase member contributions by an average of 3.2 percentage points by 2015. The increases are to be introduced incrementally on a 40%; 80%; 100% basis over three years.

The first year increase took effect from 1 April 2012. This followed Departmental engagement with the eight teacher trade unions, other public service schemes and HM Treasury to ensure that the design of contribution increases reflects the particular circumstances of the membership of the teachers' pensions scheme, and consideration was given to the impact on different areas of the membership. Plus there was a consultation in 2011 setting out how we proposed to implement a member contribution tier structure to deliver the first year increase.

On 26 October 2012, the Department launched its consultation on the introduction of contribution increases to deliver the savings required for year two (2013-14). The consultation included proposals for an additional tier to the existing employee contribution structure, changes to contribution rates and removal of the actuarial review and cap and share provisions. The consultation closed on 21 December 2012, with 41 responses having been received including responses from three of the eight teacher unions (ASCL, ATL and NASUWT).

Those responding to the consultation did not propose modifications to the Department's proposals contained in the consultation. The majority of respondents, including unions and employers, disagreed that any amendments to the Teachers Pensions Regulations 2010 were appropriate. Many felt that until the Government carried out a valuation of the scheme that demonstrated the need to increase member contributions, the proposals are unjustified. Respondents also stated their opposition to the overall policy of increasing pension contributions and the proposed amendments to the Teachers' Pensions Scheme Regulations.

As the objections raised by the respondents were in respect of the government's decision to increase member contributions and were not related to the proposals

for implementing the increase, the explanatory memorandum appropriately states that no suggested modifications were received as part of the consultation process.

6 March 2013

APPENDIX 3: CONTROLLED DRUGS (SUPERVISION AND MANAGEMENT OF USE) REGULATIONS 2013 (SI 2013/373): ADDITIONAL INFORMATION

Additional information from the Department of Health on how exempt hospitals will monitored.

“Basically, the same governance arrangements that were in place when the original Regulations came into force in January 2007 continue under these new Regulations.

Organisations that are not required to appoint a Controlled Drugs Accountable Officer (CDAO) may be asked to confirm, by way of periodic declarations or self-assessments, whether they use controlled drugs (CDs) on their premises, and, if so, how these CDs are managed and used.

For example, for England, these declarations can be requested:

- by the local lead CDAO of the NHS Commissioning Board from medical, dental, nursing or midwifery services;
- by the Care Quality Commission (CQC) from organisations registered with it that provide health care or are a care home; and
- by the General Pharmaceutical Council from pharmacies.

In addition, we expect commissioners of NHS services will want to be assured through their contracting mechanisms that, if appropriate, providers have adequate governance arrangements in place, whether those providers are required to appoint a CDAO or not. Equivalent measures apply in Scotland.

The ten person limit

The exemptions in regulations 3 and 4 from the requirement to appoint an Accountable Officer only apply to the independent hospital sector.

The exemptions in regulations 3(1)(a) and 4(1)(a) will be based on the physical count of the number of staff working at the facility, and not, for example, the number of whole-time equivalents. We would expect the CQC, and its equivalent Health Improvement Scotland (HIS), to consider the average number of staff over a period of time rather than a snapshot on one day.

The people who work at the facility not only include ordinary employees and volunteers but could also include others: for example, it may apply to partners with unlimited liability who run the business; students on extended work placements as part of a course; or people on regular contracts for services at the facility, such as healthcare locums, maintenance and ground workers, caterers or cleaners.

We would not expect contractors who provide less regular or ad hoc services (e.g. one-off building or decorating services, library services, entertainment or social events) to be counted.

However, this will essentially be a matter for pragmatic interpretation and decision by the CQC and HIS based on the particular facts of an individual case.

Department of Health

March 2013

APPENDIX 4: CHILD POVERTY ACT 2010 (EXTENSION OF PUBLICATION DEADLINE) ORDER 2013 – FURTHER INFORMATION

Information from Department for Education

Q1: If “the most relevant statistics are the Households Below Average Income (HBAI) statistics”, and these are generally published in May or June, why was the Child Poverty Commission required by the Child Poverty Act 2010 to publish its first report before 8 May 2013? Is this a lack of forethought by those responsible for the Act?

A1: When drafting the legislation, the working assumption was that the Act would receive Royal Assent in late 2011, which would have meant the first report was due in early 2013, approximately 6 or 7 months after the statistics’ publication. However, unexpected delays in the progress of the Bill meant that Royal Assent was not in fact granted until 8 March 2012, which meant that the first report from the Commission was due before 8 May 2013, unless an order extending the publication deadline was made. Given the delays already incurred in the progress of the Bill, we did not seek to make amendments to the publication date for the report.

Q2: If the publication deadline for the report is extended to late-September 2013, a delay of some 5 months, is there concern among those outside Government concerned with child poverty that key information is being withheld over a significant period?

A2: The Social Mobility and Child Poverty Commission wrote to Ministers requesting an extension to the deadline of their 2013 annual report, which is currently due before 8 May 2013. The extension would allow the Commission to use the latest Households Below Average Income statistics, which will be published in May or June 2013. This first report will be more effective in reporting on government progress if the Commission can use these most up to date child poverty statistics.

Alan Milburn (the Chair of the Commission) has written to the All Party Parliamentary Group on Social Mobility and the End Child Poverty Group advising them that the Commission requested the extension of the report and the reasons for it. We understand from the Commission their feedback has been positive and the groups are likely to welcome a more robust report.

5 March 2013

APPENDIX 5: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 12 March 2013 Members declared the following interests:

Teachers' Pensions (Amendment) Regulations 2013 (SI 2013/275)

Baroness Eaton, as recipient of a teachers' pension.

National Savings Stock Register (Amendment) Regulations 2013 (SI 2013/416)

Baroness Eaton and Baroness Hamwee as holders of bonds.

Attendance:

The meeting was attended by Lord Bichard, Lord Eames, Baroness Eaton, Lord Goodlad, Baroness Hamwee, Lord Hart of Chilton, Lord Methuen, Lord Norton of Louth, Lord Plant of Highfield and Lord Scott of Foscote.