The Select Committee on the Merits of Statutory Instruments
The Committee has the following terms of reference:

1. The Committee shall, with the exception of those instruments in paragraphs (3) and (4), consider—
   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 the merits of statutory instruments 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.

Members
Rt Hon. Baroness Butler-Sloss GBE    Lord Methuen
Baroness Eaton                        Rt Hon. Baroness Morris of Yardley
Lord Eames OM                        Lord Norton of Louth
Rt Hon. Lord Goodlad (Chairman)     Lord Plant of Highfield
Baroness Hamwee                      Rt Hon. Lord Scott of Foscote
Lord Hart of Chilton

Registered interests
Information about interests of Committee Members can be found in Appendix 2.

Publications
The Committee’s Reports are published on the internet at www.parliament.uk/hlmeritspublications

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 Merits of Statutory Instruments Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020-7219 8821; fax 020-7219 2571; email merits@parliament.uk.

Statutory instruments
Fifty-third Report

PUBLIC BODIES ORDER

Draft Public Bodies (Abolition of Courts Boards) Order 2012

1. The draft Public Bodies (Abolition of Courts Boards) Order 2012 (“the Order”) was laid on 31 January under section 1 of the Public Bodies Act 2011 (“the 2011 Act”). The Order was laid by the Ministry of Justice (MOJ) with an Explanatory Document (ED) and copies of the consultation responses. No Impact Assessment has been provided on the grounds that the costs/benefits to the public sector will not exceed £5m, although savings are estimated at about £450,000 per year. The Committee was concerned about the lack of supporting evidence initially provided in the ED and asked for supplementary material from the Department which is published at Appendix 1.

2. The purpose of the Order is to abolish the 19 Courts Boards in England and Wales on 1 April 2012 or, if the Order is made later, on the day after it is made. The House may wish to note that the 40 day minimum period required by the Act before a Public Bodies Order can be made will expire on 27 March, so it will be the second of these two commencement options that applies.

Overview of the proposal

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

4. In conducting a general review of public bodies, the Ministry of Justice first addressed the overarching question of whether a body needed to exist and its functions needed to be carried out at all. As a result the Courts Boards were included in Schedule 1 to the Act, and this instrument provides for the abolition of Courts Boards with no transfer of functions.

5. During the passage of the 2011 Act through the House, Lord Hunt of Kings Heath tabled an amendment at Committee stage to remove Courts Boards from the Bill. In debate concern was expressed that at a time of a programme of court closures, the abolition of Courts Boards would remove the opportunity for local independent review of this process and a local view on how to ensure the most effective use of resources to meet the community’s needs would be lost. After debate the Amendment was withdrawn. The same debate also raised the proposed abolition of Her Majesty’s Inspectorate of Court Administration which would remove another external commentator on the delivery of courts services within an area.

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1 HoL debates 11 January 2011 Cols 1296 -1311 esp cols 1305 and 1310
Role of the Committee

6. The Committee’s role, as set out in its Terms of Reference, is to “report on draft orders and documents laid before Parliament under section 11(1) of the 2011 Act in accordance with the procedures set out in sections 11(5) and (6)”. A key aspect of this role is the Committee’s power to trigger the enhanced affirmative procedure which would require the Government to have regard to any recommendations made by the Committee during a 60 day period from the date of laying. The Committee may also consider taking oral or written evidence in order to aid its consideration of the orders.

Consultation

7. The Department ran a combined three month public consultation covering all the MOJ bodies included in the Public Bodies Bill.2 The ED says that the consultation document was made widely available to all interested stakeholders and the wider public. MOJ received 23 responses to the section relating to Courts Boards, of which 7 were in favour of abolition, 3 were neutral and 13 were against abolition. A high proportion of responses against abolition came from Courts Boards members although 2 Courts Boards members responded in favour of abolition (ED para 8.2).

8. The consultation arrangements meet the statutory requirements set out in section 10 of the Act. However the summary of representations, required by section 11(2)(d), that was laid with the instrument lacked clear structure, and we were unable to determine which were the 23 relevant responses. At our request the MOJ has now provided the Committee with an improved summary and index. Paragraph 8.2 of the ED sets out the key concerns expressed, which strongly echo the concerns raised in the debate on the Bill: that is, the loss of an independent view of the administrative performance of HMCTS and of the opportunity to ensure the most effective use of resources to meet the community’s needs.

Tests in the Public Bodies Act 2011: assessment of the proposals

9. A Minister may only make an order under sections 1 to 5 of the 2011 Act if he considers that the order serves the purpose of improving the exercise of public functions, having regard to (a) efficiency, (b) effectiveness, (c) economy, and (d) securing appropriate accountability to Ministers (section 8 of the 2011 Act).

Effectiveness

10. It is the Government’s view that the Courts Boards’ activities duplicate other avenue of comment, such as local consultation exercises, customer satisfaction surveys, open days and effective use of court user meetings (ED paragraph 7.1.i). Given that a statutory duty to consult is being replaced by administrative arrangements we would have expected some evidence in the ED to demonstrate why the alternative means are performing better. We sought supplementary material from MOJ which explains:

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2 The consultation exercise also sought views on the reform of the Administrative Justice and Tribunals Council, the Crown Court Rule Committee, Her Majesty’s Inspectorate of Court Administration, the Magistrates’ Courts Rule Committee, the Office of the Chief Coroner, the Public Guardian Board, the Victims’ Advisory Panel and the Youth Justice Board.
“There are other groups at a local level which have had more of a bearing on the improvements which HMCTS has made in relation to efficiency (for example Local Criminal Justice Boards, victims and witnesses subgroups and court user groups). Greater efforts have been made within these other groups to look across the entire justice system, with far closer relationships being forged with other relevant agencies. The limited capacity and remit of Courts Boards, which tend to be focused primarily on the courts, are a drain on limited resources.” (Appendix 1 Q3)

11. In the view of senior operational managers within HMCTS regional offices, the reduction in the number of administrative areas from 42 to 19, and the corresponding decrease in the number of Courts Boards, diminished their ability adequately to represent the whole community of the larger areas. (Appendix 1 Q4 & 5)

“There are other routes than Courts Boards for securing views on the provision of local courts services. For example, the majority of Courts Boards representatives (magistrates, judge and court users) can have their voice heard through other structures such as court user meetings, Justice Issue Groups and Area Judicial forums. Additionally, section 21 of the Courts Act 2003 requires the Lord Chancellor to ascertain the views of magistrates on matters of relevance to them. There are also strong local relationships between HMCTS and local magistrates’ Bench Chairmen. “(Appendix 1 Q6)

12. However in their response to the consultation, the Magistrates Association say that the current avenues that they have for comment are limited and often overruled by HMCTS and that existing liaison arrangements are likely themselves to be reviewed as part of the general restructuring of HMCTS which may result in their remit being changed. On that basis they describe Courts Boards as being flawed but better than nothing. The Law Society describes Court Boards in similar terms.

13. On balance the low number of consultation responses would seem to support the Government’s view, that Courts Boards are not operating particularly effectively, certainly not on a consistent basis throughout the country. The Explanatory Document suggests that other existing avenues may perform the same function better but the Minister will need to articulate that more fully in debate.

Economy and efficiency

14. The Government’s overriding reason for the draft Order is that in the face of financial constraints, abolition of the Courts Boards will save about £450,000 a year (totalling £1.6m over the current spending review period), which can be reallocated to front line services.

15. Although the simple statement of a headline figure for savings claimed may be sufficient to pass the economy test, the ED does not give sufficient information for the Committee to evaluate whether costs that may offset these savings have been taken into account. A more specific breakdown of any transfer and transitional costs would also help the Committee to assess whether the efficiency test has been met.

16. In the Explanatory Notes to the Public Bodies Bill, as introduced in the Lords on 28 October 2010, the Government stated that the Bill itself had no
costs as it was a series of enabling powers but “When Departments use the
powers, they will produce full impact assessments of the change or changes
they are seeking where required.”(para 94) However “when required” is not
defined. The MoJ did not provide an Impact Assessment as part of the
supporting documentation with this Order on the grounds that the normal
threshold used for statutory instruments (of more than £5m per annum costs
or savings) had not been reached. In contrast, the Public Bodies (NESTA)
Order, which we reported on two weeks ago\(^3\), did include a full Impact
Assessment which showed a net benefit over 10 years of £1.84 million (also
well below the “normal” threshold for IAs).

17. In supplementary material provided (See Appendix 1 Qs1 & 7-12) the MOJ
has clarified:

“The £450k per annum represents the administrative savings associated
with closing Courts Boards; the figure is net because there are no costs
associated with closure. The assumptions made in reaching this figure
were as follows:

- Costs saved are administrative and not capital.
- There are no costs in respect of redundancies as Courts Boards
  members do not have employee status - they are public appointees.
  As such their membership ends on abolition.
- There are no associated winding up costs.

We do not have the £450k figure broken down by local area; as the main
cost associated with closing Courts Boards is paying members’
remuneration, the amount each Board will save through closing depends
on its current membership. Chairs of Courts Boards are currently paid
£2000 per year and members £1500 (with the exception of the judge
member who is not paid, although sitting time is lost) in recognition of
the time that they need to devote to their duties. This covers a
commitment of 11 days per year for Chairs and 9 days for members.
There are also other associated costs such as their training, travel and
subsistence and recruitment costs (to replace members whose
appointment come to an end) all of which may vary across the various
Courts Boards areas.”

There are no transfer costs: “The work supporting Courts Boards
constitute a very small part of staff roles. There are no redeployment or
redundancy issues, and there was no HMCTS budget allocated to pay
for staff to support Courts Boards administratively”

18. On the basis of this further explanation we accept the statement in paragraph
7.1.iii of the ED that the abolition of Courts Boards will represent savings to
the public purse.

19. As guidance to those preparing future Orders the Committee expects that,
where Departments judge that a full Impact Assessment would be
disproportionate, in order to demonstrate compliance with the
statutory tests they should, as a minimum, include in the ED a clear
statement of the factors that have been included in their calculation of
net savings. This should include any transitional costs and any costs

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\(^3\) Draft Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order
2012 in our 51st report of session 2010-12 HL Paper 254 [www.parliament.uk/hlmeritspublications](www.parliament.uk/hlmeritspublications)
from transferring duties into the public sector which might offset the initial estimate of money saved.

**Accountability to Ministers**

20. Paragraph 7.1.iv of the ED states that the Minister remains accountable for the use of resources in delivering courts services in the local areas and that this will not change. We accept this explanation.

**Safeguards**

21. Section 8(2) of the 2011 Act requires that a Minister may make an order 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.

22. Under section 5(1) of the Courts Act 2003 the Courts Boards have an explicit duty to scrutinise and make recommendations about the draft and final business plans for the courts in their area. According to the guidance issued by the MOJ this includes considerations such as the location of courts, the provision of facilities and staff and the courts’ performance against indicators. Under section 5(2) the Lord Chancellor must give due consideration to their recommendations.

23. Although HMCTS will be subject to normal government auditing provisions on its general expenditure, the ED does not explain the mechanism that will maintain this high level conduit for the expression of local interests in resource decisions, nor how this move correlates with the Government’s wider Localism agenda. In supplementary material MOJ has said:

“This statutory function is specific to Courts Boards and is being repealed with no transfer on abolition. Under the new HMCTS structure there is no formal obligation to publish regional business plans; however, all regional business plans will be subject to robust internal scrutiny.”(Appendix 1 Q13)

However the low response to consultation does not indicate widespread demand for this particular means for exercising the right to comment. Each Courts Board only included two or three community members to be representative of the people living in the Courts Board area and the organisations’ public profile appears low. So, on balance, the Government’s case is accepted.

24. The MOJ’s response also indicates that (QQ14-15) “Ministers are developing plans which will promote more direct engagement with communities”. Given the wide-ranging restructuring currently taking place in the Courts Service, in the debate on the Order the Minister may wish to give the House more specific reassurances about what provision will remain to monitor and influence how court services are tailored to the needs of the local area.

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Conclusion

25. In its ED the Government has stated its view but did not present evidence to underpin its assertions and we had to request extensive supplementary material. In our consideration of future draft Public Bodies Orders, we will expect the Government to present a properly argued case that the tests in the 2011 Act have been satisfied, supported by objective evidence.

26. The Committee has found no reason to dispute the effect of the proposed Order but we have noted a number of points that the Minister may wish to clarify in the course of the debate. On that basis the Committee is content to clear the Order within the 40 day affirmative procedure.
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

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

OTHER INSTRUMENTS OF INTEREST

Draft Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No. 2) (Amendment) Order 2012

27. To implement provisions of the Pensions Acts 2007 and 2008, from 6 April 2012 contracting-out on defined contribution basis will be abolished. As a consequence all rules and references to “protected rights” in pensions-related legislation will either be repealed or, where appropriate, amended. In July 2011 the Government introduced a draft statutory instrument, the Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No. 2) (Amendment) Order 2011 (made as S.I. 2011/1730), to make these changes. However, immediately before the debate in the House of Commons, a defect was noticed in the way the proposed amendments in article 3 of the 2011 Order would work. This instrument will amend that Order before it comes into force, to remove the exclusion of protected rights payments from what counts as income for the purposes of Income Payments Orders made under section 310 of the Insolvency Act 1986 and from the scope of pension payments which cannot be assigned or charged under section 159 of the Pension Schemes Act 1993. These amendments will bring consistency with changes made to the Bankruptcy (Scotland) Act 1985 by article 2 of SI 2011/1730.

Social Security Pensions (Flat Rate Accrual Amount) Order 2012 (SI 2012/189)

28. The Order provides for the flat rate accrual amount to be introduced from the start of the 2012-13 tax year. This implements measures introduced in the Pensions Act 2007 for a new statutory threshold for calculating entitlement to the additional state pension (formerly called the State Earnings Related Pension Scheme now the State Second Pension), to be increased in line with the rise in national average earnings. The annual flat rate accrual amount is set at £72.80 based on earnings in 2004-05 but the Secretary of State is required to set the rate on introduction by reference to changes in average earnings since 2004-05 which between October 2004 and September 2011 was 21.9%. As a result the instrument sets the flat rate accrual amount for 2012-13 as £88.40. The Department estimates that around 23 million people building additional state pension entitlement in 2009-10, the latest year for which figures are available, will potentially benefit from the changes made by this Order.

5 In contracted-out defined contributions schemes, the amount of an individual’s pension fund derived from the National Insurance rebate, its investment return and any tax relief on the rebate are known as “protected rights”.

Greater London Authority Elections (Amendment) Rules 2012 (SI 2012/198)

29. At the UK Parliamentary General Election in May 2010, it became clear that provisions made in the Electoral Administration Act 2006 had had the unintended effect of preventing candidates standing on behalf of two or more registered political parties from using on the ballot paper a party emblem registered by one of those parties. These provisions had been mirrored in the rules governing the conduct of various other elections. This instrument addresses the problem for the conduct of Greater London Authority elections, allowing candidates who are authorised to stand on behalf of more than one party at a Constituency Members election or Mayoral election to use a registered emblem on the ballot paper if they wish to do so. It also clarifies that an elector may only subscribe one candidate’s nomination paper and makes a number of minor drafting and technical changes to the 2007 Rules\(^6\) (described in paragraph 7.6 of the Explanatory Memorandum).

Reporting of Injuries, Diseases and Dangerous Occurrences (Amendment) Regulations 2012 (SI 2012/199)

30. This instrument amends the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to alter the threshold for reporting an occupational injury to the enforcing authority from any incident resulting in over 3 days’ incapacity to only those causing over 7 days’ incapacity. It also amends the time for submitting the report from within 10 days to within 15. This change is in line with recommendations from Lord Young of Grafham’s review of the operation of health and safety laws “Common Sense, Common Safety”.\(^7\) The 7 day threshold only applies to formal notification to the authorities; to comply with EU legislation an employer will still be required to keep a list of occupational accidents resulting in a worker being unfit for work for more than 3 working days. This instrument also specifies the particulars to be kept in records of such injuries and requires the record to be kept for three years. However this data will no longer be centrally collected and to meet the EU requirement for data on over 3 day injuries occurring in the UK, HSE will supply a “synthetic estimate” based on the Labour Force Survey. HSE Legal advice is that the risk of this method being challenged is low, particularly as other Member States also use this method, but the House may wish to note this approach to implementing the EU requirements.

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\(^6\) Greater London Authority Elections Rules 2007 SI 2007/3541

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**

- Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2012
- Guaranteed Minimum Pensions Increase Order 2012
- Guardian’s Allowance Up-rating Order 2012
- Pensions Act 2008 (Abolition of Protected Rights) (Consequential Amendments) (No. 2) (Amendment) Order 2012
- Social Security Benefits Up-rating Order 2012
- Social Security (Contributions) (Re-rating) Order 2012
- Social Security (Contributions) (Limits and Thresholds) (Amendment) Regulations 2012
- Tax Credits Up-rating Regulations 2012

**Draft Instruments subject to affirmative approval (Northern Ireland)**

- Guardian’s Allowance Up-rating (Northern Ireland) Order 2012

**Draft Instruments subject to annulment**

- Gloucestershire (Electoral Changes) Order 2012
- Staffordshire (Electoral Changes) Order 2012

**Instruments subject to annulment**

- SI 2012/189 Social Security Pensions (Flat Rate Accrual Amount) Order 2012
- SI 2012/199 Reporting of Injuries, Diseases and Dangerous Occurrences (Amendment) Regulations 2012
- SI 2012/213 Transport Levying Bodies (Amendment) Regulations 2012
APPENDIX 1: DRAFT PUBLIC BODIES (ABOLITION OF COURTS BOARDS) ORDER 2012

Further information from the Ministry of Justice

Ministry of Justice officials have provided the following responses to the questions put by the Committee:

Q1. The SI itself revokes all associated legislation that relates to the Courts Boards – it is good to tidy redundant material from the statute book - but Schedule 3 introduces a list of Magistrates Area Training Committees without explanation either in the EN or EM. What are these for? How much will they cost? Para 4.2 of the EM says there is no transfer of functions but the reader has no indication of why Schedule 3 is included and its intended effect. Please explain.

A. Magistrates’ Area Training Committees (MATCs) have been operational since 2006. Their functions are currently set out in rule 47 of the Justices of the Peace (Training and Development Committee) Rules 2007 (SI 2007/1609) (‘the 2007 Rules’): in summary, to consider training needs for magistrates in the area they cover and to formulate a training plan; and to produce an annual report to the Lord Chief Justice on magistrates’ training which has taken place each year in their area.

The reference to Courts Boards in rule 42(1) of the 2007 Rules is now redundant and is accordingly revoked and consequential provision put in its place. The effect of the consequential amendment in paragraphs 19 and 20 of the Order is to specify the MATC areas as they currently stand in practice by inserting a new Schedule 3 into the 2007 Rules. These two paragraphs therefore make no change at all to the current MATC areas or functions, but merely define them without reference to Courts Boards. There is no transfer of functions; nor does the Order set up or change MATCs in any way.

Q2. Composition of Courts Boards – background in para 4.1 of the EM says what the Boards do but not how. How many members do they have, how often do they meet, how much are they paid? What resource is allocated from HMCTS to run the Boards. (We need this information so that we can understand the economies and efficiencies)

A. Courts Boards were set up under section 4 of the Courts Act 2003. Their role is merely advisory – it is not to manage or administer the Courts themselves but to give advice and make constructive recommendations to foster improvement in the administrative services provided.

Each Courts Board must have a minimum of seven members appointed as follows:

- one judge who conducts judicial business in the area
- two magistrates from within the Courts Boards area
- two people with knowledge or experience of the Courts in the local area (Court user member)
- two people who are representative of the people living in the Courts Boards area (community member).
Membership of Courts Boards should not exceed 12. They can operate with a quorum of 4. There are currently 133 members across 19 Boards. Membership has declined over the years as a result of a decline in the number of Courts Boards – for further detail on the reduction in numbers of Courts Boards, please see the answer to question 6) below.

Chairs of Courts Boards are currently paid £2000 per year and members £1500 (with the exception of the judge member who is not paid, although sitting time is lost) in recognition of the time that they need to devote to their duties. This covers a commitment of 11 days per year for Chairs and 9 days for members. They are also paid travel and subsistence expenses where appropriate. Courts Board members are also entitled to claim a carers’ allowance where appropriate.

Boards usually meet four times a year at HMCTS regional offices (previously Area Director’s Offices). Staff in these regional offices give administrative support to the Boards, although this work forms a very small part of their overall work. The sponsorship team based within the Ministry of Justice provides advice to staff in HMCTS regional offices on any questions raised by them about Courts Boards such as appointment issues, and makes recommendations to the Lord Chancellor on appointments of Courts Boards members. Recruitment and training of Courts Boards members as and when required are undertaken by staff in HMCTS regional offices. HMCTS does not hold any budget centrally for Courts Boards. All costs for recruitment, training, travel and subsistence etc. are borne locally by the regions.

Q3. How have the Courts Boards proved inefficient – for example have the majority of their recommendations been rejected by the Lord Chancellor?

A. It was originally envisaged that Courts Boards would work in partnership with the local administration to aid delivery. In reality, however, Boards have proved little more than consultative bodies. There are other groups at a local level which have had more of a bearing on the improvements which HMCTS has made in relation to efficiency (for example Local Criminal Justice Boards, victims and witnesses subgroups and court user groups). Greater efforts have been made within these other groups to look across the entire justice system, with far closer relationships being forged with other relevant agencies. The limited capacity and remit of Courts Boards, which tend to be focused primarily on the courts, are a drain on limited resources.

Q4. You state that the effectiveness of Courts Boards has diminished in recent years – on what basis has this been evaluated?

A. The evaluation was made as a result of having sought the views of senior operational managers within HMCTS regional offices, and based on their operational experience. It was their view that the creation of larger Courts Boards areas, which resulted from amalgamation of HMCS (now HMCTS) areas, has had an impact on the effectiveness of Courts Boards through diminishing their ability to adequately represent the whole community of the larger areas. Equally, they felt that the creation of HMCTS in April 2011 – a new and expanded agency – has made it even more difficult for Courts Boards to operate due to the disparity between the relatively small size of Boards and the new, larger HMCTS areas.
Furthermore, the abolition of Courts Boards was subject to a full public consultation and no compelling evidence of their effectiveness, in contradiction to the views of senior operational managers, was given by respondents.

Q5. When were the 42 Boards amalgamated to 19? (you state that amalgamation that produced HMCTS only occurred in April 2011). What evaluation has been done since the change to lead you to the conclusion that they are now less effective than previously?

A. When they first came into being in 2004 there were 42 Courts Boards, which were aligned with HMCS administrative areas. Their numbers decreased periodically since then as HMCS administrative areas amalgamated with a view to making savings; this was done by means of statutory instrument. As of 2007 there were 23 Courts Boards areas, and the final change to 19 Courts Boards occurred with effect from 1 January 2010.

As mentioned above, there are other effective mechanisms which have been put in place at a local level. While this does not in itself diminish Courts’ Boards effectiveness, most business decisions are now made through these other more productive local forums. It is our view, formed through taking the views of area managers prior to consulting on Courts Boards closure, that Courts Boards’ ability to improve courts’ performance has diminished significantly as a result.

We are of the view that, given both the duplication of these various bodies and the relative ineffectiveness of Courts Boards, the cost and bureaucracy of these Boards can no longer be justified. Our limited resources should be directed towards supporting our front line court services.

Q6. If there is duplication it would be logical to cut the function that is least effective - do you have any evidence to indicate that the alternative methods listed provide a more effective way for the community to comment on the operation of the Courts service?

A. There are other routes than Courts Boards for securing views on the provision of local courts services. For example, the majority of Courts Boards representatives (magistrates, judge and court users) can have their voice heard through other structures such as court user meetings, Justice Issue Groups and Area Judicial forums. Additionally, section 21 of the Courts Act 2003 requires the Lord Chancellor to ascertain the views of magistrates on matters of relevance to them. There are also strong local relationships between HMCTS and local magistrates’ Bench Chairmen. In terms of community engagement, courts use a variety of other methods to engage with their local communities such as open days, mock trials, attending local community meetings, consultation, surveys etc. Under the new agency framework, HMCTS regions will be encouraged further to develop these ideas so as to enhance links with local people and deliver the most efficient and effective service.

The abolition of Courts Boards has been the subject of full public consultation; the Ministry of Justice carefully considered all responses in terms of the views expressed about the Boards’ effectiveness. The department also made informal contact with senior operational management
prior to this to discuss their views of the Boards in relation to the local groups mentioned above. These views, as well as those expressed through the full public consultation, were taken into account in assessing the Boards’ effectiveness.

**Q7.** The saving of approximately £450k per annum is noted but please break this down. Will there be any costs to offset these savings or is this a net figure? The fact that it is below the IA threshold is irrelevant, the Committee still needs adequate information to assess compliance with the test.

A. The £450k per annum represents the administrative savings associated with closing Courts Boards; there are neither capital nor programme savings associated with closure. The figure is net because there are no costs associated with closure. The assumptions made in reaching this figure were as follows:

- Costs saved are administrative and not capital.
- There are no costs in respect of redundancies as Courts Boards members do not have employee status - they are public appointees. As such their membership ends on abolition.
- There are no associated winding up costs.

We do not have the £450k figure broken down by local area; as the main cost associated with closing Courts Boards is paying members’ remuneration, the amount each Board will save through closing depends on its current membership. There are also other associated costs such as their training, travel and subsistence and recruitment costs (to replace members whose appointment come to an end) all of which may vary across the various Courts Boards areas.

**Q8.** You say that Courts Boards Members hold statutory office rather than employee status – what does that mean in terms of redundancy/termination payments?

A. Please see 7b above; there are neither redundancy nor termination payments associated with closing Courts Boards.

**Q9.** Were any HM Courts staff supporting the Courts Boards, if so will they be redeployed to other duties or made redundant?

A. The work supporting Courts Boards constitute a very small part of staff roles. There are no redeployment or redundancy issues, and there was no HMCTS budget allocated to pay for staff to support Courts Boards administratively.

**Q10.** You state that there is no transfer of functions – is that because in your view all the roles of the Courts Boards are already duplicated?

A. As mentioned, there are other structures in place which enable HMCTS to secure the different views of the people currently represented by Courts Boards’ members. Courts Boards no longer provide any unique functions.
Q11. What are the overheads and management layers that are being removed?

A. Abolition of Courts Boards is in line with the Government’s overall objective for passage of the PBA 2011, namely to reduce bureaucracy, overheads and unnecessary management layers. In relation to Courts Boards in particular, the savings made from abolition relate to the remuneration paid to Courts Boards members, their travel and subsistence, training and recruitment costs for when members’ tenure comes to an end. Abolition of Courts Boards will remove unnecessary bureaucracy by stopping the work of the Boards, which is duplicated through other local groups as outlined above.

Q12. Is the current provision the same for all the 19 areas, or will some save more than others?

A. As the main cost associated with closing Courts Boards is paying members’ remuneration, the amount each Board will save through closing depends on its current membership. There are also other associated costs such as their training, travel and subsistence and recruitment costs (to replace members whose appointment come to an end) all of which may vary across the various Courts Boards areas. The quorum for a Board is 4, and membership may not exceed 12. Currently, membership varies between 5 and 10.

Q13. Under sec 5 of the Courts Act 2003 the Board had a statutory duty to consider the business plan relating to the operation of the Courts in their area and the Lord Chancellor must give consideration to recommendations made – how will this function be performed in future?

A. This statutory function is specific to Courts Boards and is being repealed with no transfer on abolition. Under the new HMCTS structure there is no formal obligation to publish regional business plans; however, all regional business plans will be subject to robust internal scrutiny.

Q14. While the views of the community and Court users can still be heard through the various open days and surveys listed, some of the consultation responses state that these are in decline due to financial pressures. You are removing a statutory consultation process and replacing it with more ad hoc method that could be cut administratively if budgets are tight – what guarantee is there that these avenues for the community to influence operational decisions will continue?

A. Ministers are developing plans which will promote more direct engagement with communities, for example in relation to Neighbourhood Justice Panels and the release of court-by-court data (under the transparency agenda). Although funding is limited, we would suggest that resources can be channelled more effectively to community engagement rather than supporting the somewhat bureaucratic and statutorily constrained Courts Boards. Abolition supports the Government’s desire to reduce bureaucracy, overheads and unnecessary management layers and to deliver that which is essential to support courts and tribunals.

The regional structure will enable services to be provided according to local priorities and pressures. Regional delivery directors and jurisdictional leads
covering crime, civil and family justice and tribunals will liaise with the judiciary, stakeholders and other agencies to deliver a joined-up justice system which is responsive to the communities it serves. HMCTS will continue to ensure that link with the community is preserved.

It is important not to overstate the community links which Courts Boards have brought about; they have limited membership and time in which to gain the views of local communities and we believe more flexible, non-statutory, mechanisms have been far more successful and offer significantly better value for money.

Q15. How frequently do they occur? What mechanism would a local person use in between these surveys and events if he wished to comment on the operation of the courts in his area?

A. The various community engagement activities and the regularity of these will vary from regions to regions taking into account local need. A member of the community will always have other ways of getting their voice heard in addition to the avenues already mentioned. For instance they may write directly to the court, to Ministers or to their MPs. They will also be able to let their views be heard through consultation exercises that are run by the department e.g. consultation on court closures. As things stand, Courts Boards members do not provide a full time representative service for the community they represent. Their commitment is restricted to 11 days (Chairs), 9 days (members) and four meetings per year.

Ministry of Justice

February 2012
APPENDIX 2: 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 meeting on 14 February 2012 Members declared no interests.

Attendance:

The meeting was attended by Baroness Butler-Sloss, Baroness Eaton, Lord Goodlad, Baroness Hamwee, Lord Hart of Chilton, Baroness Morris of Yardley, Lord Norton of Louth, Lord Plant of Highfield and Lord Scott of Foscote.