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Public Bodies (Abolition of the Administrative Justice and Tribunals Council) Order 2013

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Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

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Also includes 7 Information Paragraphs on 8 Instruments

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HL Paper 8
Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note

In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012-3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

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.

Members

Lord Bichard    Baroness Hamwee    Lord Plant of Highfield
Lord Blackwell    Lord Methuen    Rt Hon. Lord Scott of Foscote
Lord Eames    Rt Hon. Baroness Morris of Yardley    Lord Woolmer of Leeds
Rt Hon. Lord Goodlad (Chairman)    Lord Norton of Louth

Registered interests

Information about interests of Committee Members can be found in Appendix 4.

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’s work, 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

Public Bodies Orders

A. Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013

1. This is the fourth occasion on which the Committee has considered this draft Order. It has been necessary for us to keep returning to it because we have had repeated difficulty in obtaining from the Ministry of Justice (MOJ) a clear picture of the consequences of abolishing the Administrative Justice and Tribunals Council (AJTC). Finally, we felt we had no choice but to ask Helen Grant MP, Parliamentary Under-Secretary of State at the MOJ, to attend the Committee to give evidence. Ms Grant was accompanied by Alison Wedge, Deputy Director and Head of Arm’s Length Body Governance Division, and Angela van der Lem, Deputy Director for Administrative Justice, Court and Tribunal Fees and Coroners and Inquiries Policy. The full transcript of the evidence session is published on our website and this report references it using question numbers (Q). We also make reference to the original Explanatory Document (ED) laid with the Order which is published on our website with all the relevant reports.¹

Background

2. The draft Order would abolish the AJTC which was established in 2007 by the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") to:
   - keep the administrative justice system under review;
   - consider ways to make the system accessible, fair and efficient;
   - advise [Ministers] on the development of the system;
   - refer proposals for changes in the system to those persons; and
   - make proposals for research into the system.

3. The Government argue that the abolition of the AJTC would remove duplication of function because the courts can now be administered “in-house” by Her Majesty’s Court and Tribunals Service (HMCTS) (ED paragraph 4.5). The Government also state they do not believe “that the independence of the AJTC in challenging policy proposals is of sufficient value in and of itself to merit its ongoing funding” (ED paragraph 7.3).

4. This Committee’s function is to assess the proposal against tests set out in the Public Bodies Act 2011 ("the 2011 Act") and report its view to the House. In our 25⁰ Report of session 2012-13,² we concluded:

   “Although it has been supplemented by a number of documents since it was laid, the Explanatory Document was unsuitably vague. We have recommended that the MOJ produce an unequivocal statement about how each of the tribunals, ombudsmen and alternative dispute resolution fora currently included in the AJTC’s remit of disseminating

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¹ See SLSC website page Public Bodies Orders Considered.
good practice and coherence across the whole of the administrative justice system will be covered after abolition ... Had the Commons not already done so, this Committee would have requested the enhanced 60-day procedure to ensure that this is done”.

5. The Minister responded on 26 February 2013 and her letter was published in our 32nd Report, along with a chart setting out the position (as of 31 March 2013 – the intended date of abolition) of each of the organisations under the AJTC umbrella. We drew to the attention of the House the fact that MOJ plans were part of a three-year “Strategic Work Programme” (up to 2016) which also introduced an element of cost/benefit analysis into the consideration of which tribunals would be brought into the unified Tribunal Service. The chart was very broad brush but we deduced that “some smaller ones may be left out”.

6. We also commented that for eight “Miscellaneous” tribunals listed in the chart the future was “literally blank”. In a letter dated 15 April 2013 and published in our 35th Report, the Minister explained that this was a result of a formatting error in the chart: the eight tribunals would be subject to the same process of review and potential incorporation into HMCTS as all the others listed.

7. Given the difficult and unsatisfactory path of this draft Order through Parliament so far, we were considerably surprised that the Minister took the view that the draft Order had been “handled effectively, properly, openly and honestly”. We were also disappointed that the Minister was unable to answer our questions during the evidence session with the Committee. Responses were subsequently provided in a letter dated 16 May 2013, published in Appendix 1 to this Report (“the supplementary evidence”).

Timing

8. One of the issues to which the Committee had struggled to obtain a clear answer was when, and if, all the bodies currently under the umbrella of the AJTC would be taken into HMCTS. The defective chart published in our 32nd Report was intended to resolve the matter. The 2011 Act is silent on whether the transition to new arrangements has to be completed before abolition of the public body in question. However, we believe that such information is an important factor in determining whether abolishing the AJTC will improve the exercise of public functions, in accordance with the tests set out in section 8(1) of the 2011 Act.

9. The defective chart indicated that 21 English tribunals were still being considered for inclusion in the HMCTS-administered system at an unspecified future date. We asked the Minister for a clear statement, in respect of each of those tribunals, whether a decision had been made and when it was going to be implemented. Although decisions had been made

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5 Q14
6 This does not include the Aircraft and Shipbuilding Industries Arbitration Tribunal, also listed, but whose abolition had already been agreed by both Houses by early February 2013.
7 QQ 4-5
about a few of those bodies and talks were ongoing with others and we were left with the impression that this was a longer-term programme, which would not be completed before the intended abolition of the AJTC.

10. The supplementary evidence (see Appendix 1) includes a table setting out more clearly the intended destination of some of these tribunals and the approximate timetable. We were surprised to learn from it that the Case Tribunals had already been transferred to the unified Tribunal Service in 2010. Some of these tribunals have been in abeyance for some time. Broadly, two tribunals have already been transferred into the HMCTS, another is in transition, 12 will not be transferred but subject to interdepartmental monitoring arrangements, four have been (or will be) abolished and no decision has been made for a further five. We note however that the revised chart mentions decisions being made in 2014, after the intended date of the abolition of the AJTC.

11. The HMCTS was established in April 2011 and its structural reform is not yet complete. We therefore asked why the draft Order was being laid now rather than waiting until the reforms were embedded and their effect was clear. The Minister said: “HMCTS is expected to run a very efficient and effective system to uphold the rule of law ... as far as governance is concerned, and as far as organisation, efficiency and effectiveness and proper operation for end users are concerned I think we are in a pretty good place.”

Accountability

12. Those of the 21 English tribunals included in the HMCTS by the date of abolition will be subject to the standards and accountability mechanisms applied by the Tribunal Service. We asked the Minister what would happen to those bodies which remained outside HMCTS. We were told that the MOJ would be developing its relationships with the various Government departments that have lead responsibility for the tribunal concerned to establish “how the system is working and whether it is doing the job we need it to do for our service users”. We were also told that these interdepartmental arrangements and the protocols with the Devolved Administrations were the “governance strand” referred to in the Minister’s letter of 15 April 2013 and that these were ready to take effect as soon as the Order was approved. The supplementary evidence indicates that this will apply to 12 of the previously unallocated bodies. We are not clear whether reports on the performance of tribunals treated in this way will be published.

Independent advice?

13. All but four of the 41 respondents to the public consultation opposed the abolition of the AJTC on the grounds that it is an independent organisation and exercises a UK-wide overview of the administrative justice system. The ED suggests that the Administrative Justice Advisory Group provides an effective substitute. However, the Minister’s letter of 26 February 2013 conceded that “it was fair to say that the Advisory Group is not yet operational”. In the evidence session, we asked about its current status and

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8 Q5
9 Q3
10 Q4
11 Q2
what influence the views of the Advisory Group will have in comparison with a monolithic Tribunal Service, particularly if the Group is only to meet twice a year.\footnote{12 QQ8-10}

14. We were told that the Advisory Group had had its third meeting on 7 May 2013 and that, although it met formally only twice a year, other activities would be taking place, such as workshops, sub-groups and virtual work (by e-mail). Mrs van der Lem said: “We are keen to have a flexible approach to this group. It is not meant to replicate how the AJTC currently operates in any way, other than its focus on user experiences of the system and ... act as an expert forum for testing ideas and policy initiatives”; and “We will convene meetings where they are useful, but just not on an AJTC-style monthly basis. We want to be quite targeted about how we develop our policy”.\footnote{13 Q9}

15. The language used in the oral evidence prompted the Committee to ask the Minister how the Advisory Group would operate, particularly about its degree of independence and, for example, whether Advisory Group members could commission research or propose items for the agenda.\footnote{14 Q11-12} We believe these issues to be important in assessing whether the safeguards in section 8(2) will be preserved and whether the Advisory Group will be “a pawn of the department” or whether it will exercise some independent review, albeit in a different way from the AJTC.\footnote{15 Q12} The Minister was unable to answer our questions at the time but included her answers in the supplementary evidence.

16. We asked who controlled the agenda. We were told: “we expressly invited the committee [Advisory Group] members to raise proactively with us areas of concern that they have on any issues in relation to tribunals sitting outside as a standing agenda item”.\footnote{16 Q15} When asked whether the department would veto an item from the agenda, Mrs van der Lem answered: “No, I cannot see us wanting to do that”. But the Minister qualified the answer: “I would like to write to you on that point and to take advice on it. I do not want to guess.”\footnote{17 Q14} The Committee was astounded that such fundamental points had not been considered in setting out the terms of reference of the Advisory Group and could only agree with one of the witnesses to the Commons’ Justice Select Committee, who described the Advisory Group as a “poorly planned afterthought”.\footnote{18 Commons’ Justice Select Committee 8th Report (2010-12) (HC Paper 965).}

\textit{Other views on the role of the AJTC}

17. We note that the Commons’ Public Administration Select Committee (PASC) concluded that “there is a fundamental difference of view between the Government and others about the need for independent oversight of the administrative justice system but we are clear that the MOJ, as part of
Government, cannot replace the AJTC’s functions in that respect and does not cover the full breadth of the AJTC’s remit”.

18. The evidence received by the Commons’ Justice Committee, which reported on 15 March 2013, supported that view. The Social Fund Commissioner, for example, stated that: “The oversight of the complex administrative justice landscape is quite different to that of policy development. Here it is necessary to demonstrate independence, both in reality and perception.” The Justice Committee concluded that “in general, respondents lacked confidence in the Administrative Justice Advisory Group”. MIND’s representative on the Advisory Group submitted the organisation’s view of their experience so far:

“We consider the Advisory Group a helpful forum for exchange of views and for learning of Ministry of Justice’s initiatives. However, the Group is dependent for its existence on the Ministry of Justice. We do not know whether it has a separate budget or whether it could provide reports or carry out public consultation. Therefore we do not consider that the group provides a replacement for the AJTC.”

19. In contrast, the Minister described the AJTC as just “an advisory body”, not an inspectorate or a watchdog, and with “no powers whatever to enforce any of its recommendations on the Government”. The Committee challenged the Minister on her view.

The safeguards

20. With that in mind, we asked the Minister to articulate her reasons for concluding that the draft Order satisfies the tests in section 8(2) of the 2011 Act (that is, that the draft Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom). The Minister simply reiterated her view that those sections of the 2011 Act would be satisfied by the majority of the administrative justice cases being dealt with by the HMCTS. The Committee put to the Minister that there were a number of advisory organisations which exercised considerable influence by making recommendations, and the publicity they attracted often put, sometimes unwelcome, pressure on Government. The Committee also suggested to the Minister that by abolishing the AJTC the Government might be seen as removing a source of unwelcome pressure.

Costs

21. Section 8(1) of the 2011 Act requires the proposed change to improve the economy of the public function. As with so many other aspects of this Order, the MOJ’s presentation of the costs has been messy. The Impact Assessment laid with the draft Order was out of date and had already been criticised by the PASC. A replacement Impact Assessment was laid six weeks later. In our evidence session, we heard that the AJTC’s running cost is currently £0.7m per year and the net saving from the change is estimated at £0.8m over the

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20 Commons’ Justice Select Committee 8th Report (2010-12) (HC Paper 965).
21 Q2
22 Q6
23 Q7
spending review period.\textsuperscript{24} That figure is further revised in the supplementary evidence to a net saving of \pounds 0.7m over the spending review period.

22. The Committee asked if the calculation included any honorarium or expenses for members of the Advisory Group. We were told that members were paid nothing.\textsuperscript{25} The Committee suggested that this was not good practice since it limited the people who would be available to take part in the exercise\textsuperscript{26} and MOJ officials undertook to consider that point further.\textsuperscript{27}

23. The Committee also pointed out that in describing the activities of the Advisory Group with all its workshops and subgroups it would appear that the Group had moved from a body only meeting twice a year to one that would meet almost as frequently as the body it is replacing. Although there would be no increased costs to the MOJ in respect of the participants there would appear to be an additional cost to the Department in staff time to run the activities and process the data acquired that should be reflected in the cost assessment.\textsuperscript{28} In the supplementary evidence, the Minister acknowledges that the creation of subgroups would require some additional level of support from MOJ but treats this as an opportunity cost, which seems to us to ignores the need for the Ministry to prove that the replacement arrangements for the AJTC are making economic and efficiency savings to demonstrate compliance with the Act. The projected savings are already fairly slim, and this increased activity may reduce the savings further. \textbf{We therefore question whether a very minor financial saving is sufficient justification for replacing a respected Council with rather more ad hoc arrangements.}

\textit{The Minister’s rebuttal}

24. Given the strength of opposition expressed by consultees and in the House during the passage of the 2011 Act and given the very minor financial gains anticipated, we were surprised that MOJ had not presented its case for abolition of the AJTC more robustly. At the end of our evidence session, we offered the Minister the opportunity to make any additional comments that might persuade the House of the advantages of abolishing the AJTC or to counter the objections made. She said she would write.\textsuperscript{29} An annex to the supplementary evidence revisits the specific tests set out in the 2011 Act, and makes some better arguments – for example that protections are maintained because in his response to the PASC’s report on the future oversight of administrative justice the Lord Chancellor agreed to report annually to that Committee on:

\begin{itemize}
  \item Actions taken by Ministers and officials to improve the operation of the system
  \item Details of how the view of users of the administrative justice system have been sought and addressed
\end{itemize}
• Details of work undertaken with other Departments etc to improve administrative justice for the citizen.

This is useful information and we wonder again why it was not offered in the original ED presented to the House.

Conclusion

25. Based on the evidence that has been gradually obtained after persistent enquiry, the Committee can only conclude that the proposed abolition of the AJTC has been poorly thought through. We take the view that the constitution of the AJTC, as set out in the 2007 Act (Schedule 7, Part 2) has two aspects:

• to keep under review and report on the constitution and working of individual tribunals and tribunals in general (paragraph 14); and

• to make such reports as it considers appropriate on the administrative justice system, to consider ways to make it more accessible, fair and efficient and to make proposals for research into the system (paragraph 13).

Review of tribunals

26. The Government’s argument for abolition is that the removal of the AJTC would cut out duplication because administrative oversight can now be conducted by HMCTS (ED Paragraph 4.5). The MOJ has made a valid case that, in regard to the monitoring of the day-to-day performance of tribunals, there are functions of the AJTC that have been overtaken by events and that could more appropriately be delivered in-house by MOJ or HMCTS.

27. The third version of the list about the transfer of the 21 bodies currently outside the tribunal service provided in an Annex to the supplementary evidence clarifies that the programme will not be complete before the intended date of the abolition of the AJTC. The House will need to consider the timing of the proposed change and decide whether a hiatus between removing the oversight function of the AJTC and replacing it with oversight by HMCTS, or the substitution of some internal inter-departmental protocol, serves the purpose of improving the exercise of public functions.

Independent observer

28. The other reason given by the Government for abolishing the AJTC is that they do not believe “that the independence of the AJTC in challenging policy proposals is of sufficient value in and of itself to merit its ongoing funding”(ED paragraph 7.3). The Committee has noted that the projected savings are small and may be further reduced if the impact of the revised activity levels of the Advisory Group are properly considered. If the AJTC were reformed so as to remove its duty of oversight of tribunals but to retain its independent advisory role, we wonder how the comparative cost assessment would then look.

29. We found unconvincing the Minister’s arguments why the Advisory Group represented equivalent protection to that of the AJTC. The AJTC has rights set out in statute “to scrutinise and comment on legislation, existing or
proposed, relating to tribunals or any particular tribunal” (2007 Act, Schedule 7, Part 2, paragraph 14 (2)) which do not seem to be replicated. Nor does the Advisory Group appear to have a budget to commission consultation or research. Such decisions are at the discretion of the MOJ. We were told that the minutes of the Advisory Group will be published but not whether the Group could publish a report on any matter.

30. We take the MOJ’s point that the Advisory Group will have a flexible membership and that this breadth of view may be beneficial, but the Minister’s supplement to the ED makes clear that the Advisory Group is a “dedicated resource in the MOJ which can act directly on ministerial priorities”.31

31. Under the new arrangements MOJ might acquire broader-based advice on the subjects it wishes to raise or publicise, but there is a clear risk that there may be no mechanism for the Advisory Group to raise unpalatable messages that they feel MOJ or other departments need to hear. We place rather more value than the Government on the independent challenge function that AJTC has performed and are unconvinced by the MOJ’s argument that this protection will be retained under the proposed successor arrangements. We therefore conclude that the tests in the 2011 Act are not fully satisfied and the case for the complete abolition of the AJTC is not made.

B. Draft Public Bodies (Abolition of the Registrar of Public Lending Right) Order 2013

Introduction

32. The draft Public Bodies (Abolition of the Registrar of Public Lending Right) Order 2013 has been laid by the Department for Culture, Media and Sport (DCMS) under sections 1(1) and (2), 6(1), (2) and (5), 23(1)(a) and (6), 24(1) and 35(2) of the Public Bodies Act 2011 (“the 2011 Act”). The draft Order has been laid with an Explanatory Document (ED) and impact assessment (IA).

Overview of the proposals

33. The draft Order abolishes the Registrar of Public Lending Right (“the Registrar”) and transfers its functions to the British Library Board (“the BL”). Both the Registrar and the British Library are non-departmental public bodies of DCMS.

34. The Registrar is a Corporation Sole, appointed by the Secretary of State for Culture, Media and Sport to maintain a register of eligible authors and books, and to supervise the administration of the Public Lending Right (PLR) scheme. The Registrar receives grant-in-aid from DCMS to fund both administration costs and payments to authors. In October 2010, the Government decided to reduce the resource grant-in-aid budget for PLR by

30See for example the AJTC letter of 11 April 2013 to DWP about tribunal volumes and the letter of 22 February 2013 to DfE on school admissions appeal arrangements on the AJTC website. http://ajtc.justice.gov.uk/

31 Emphasis added.
15% in real terms over the spending period (2011-15), and the proportion of grant-in-aid used to administer the scheme was capped at £756k a year.

35. In the ED, DCMS states that the Registrar currently operates at near maximum efficiency. The Registrar is supported by 8.74 full-time equivalent staff, in an office in Stockton-on-Tees. DCMS comments that, given the limitations in efficiency savings that a body of the size of the Registrar’s office could make, the decision to cut the PLR grant-in-aid budget by 15% necessitated “radical thinking in order for the PLR scheme to operate within its new budget while minimising the effect of the reduction in funding on authors” (paragraph 7.7). The Department considers that transferring the PLR functions to the BL, a larger body, will present further opportunities for efficiencies, and will allow the proportion of available grant-in-aid to be distributed as PLR payments to authors to be maximised. The transfer will also allow a more solid infrastructure for PLR to be developed, within the larger organisation of the BL.

Consultation

36. DCMS carried out consultation on the proposal between 8 May and 30 July 2012. There were 1,015 responses: 740 from rights holders (authors, illustrators, translators, editors, and literary executors); 238 from other individuals; and the remainder from professional bodies and other organisations and interested parties. The Department states that 948 of the 1,015 respondents were of the view that the PLR functions should not be transferred to another body; and that, of those respondents, 85% commented on the PLR office’s service to authors, which was widely held to be “excellent”, “effective” and “efficient”.

37. In the ED, DCMS states that, while it was unable in the consultation paper to say how and where the BL would operate PLR, it has now said in the Government response to consultation[32] that all PLR staff would transfer to the BL at the transfer date (on TUPE terms), and that the PLR operation would continue to be carried out from the Stockton-on-Tees office for at least the next five years. DCMS has also now confirmed that the postholder of the current Registrar appointment would be contracted from the transfer date for an appropriate period of time (likely to be until March 2015), to ensure a smooth transition and successful knowledge transfer.

38. In commenting on responses, DCMS states that it shares the view that the Registrar and his staff provide an effective and efficient service. It re-affirms that the proposal to transfer the PLR functions to the BL was motivated by the increasing demand for the Registrar to deliver efficiency savings and the limitations of doing so in a small organisation. It says that it has considered all the issues raised during the consultation and, through discussions with the Registrar and the BL, has ensured that the issues have been addressed.

Role of the Committee

39. 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

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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 take oral or written evidence in order to aid its consideration of the orders.

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

40. 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). Section 8(2) of the 2011 Act specifies two conditions: that an Order does not remove any necessary protection, and does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.

41. The ED deals with the statutory tests in section 8. While agreeing with consultation respondents that the Registrar’s office shows both efficiency and effectiveness in its current operations, DCMS states that transfer to a larger NDPB will enable the public function of running the PLR scheme to be undertaken more efficiently (paragraph 8.1(i)).

42. DCMS roots the case for the transfer most firmly in the ground of economy (paragraph 8.1(iii)). It states that the Registrar has kept operating costs below the cap of £756k set for this Spending Review period, and has identified a number of potential savings to bring the running costs to £687k from 2014-15 onwards, representing a 9% saving from the £756k cap. However, DCMS states that the transfer to the BL would achieve a saving of a further 24% (that is, a 33% reduction in all on the £756k cap) by bringing the running costs down to £504k from 2018-19 onwards. This means that, in real terms, the additional savings to be made by the transfer would be approximately £750k over the ten-year appraisal period.

43. Further information about the projected cost savings is given in the IA, in the table headed PLR COSTS (page 9). We asked DCMS for a more detailed breakdown of these calculations, and we enclose in Appendix 2 the information provided by the Department. The breakdown confirms the figure of some £750k as the additional savings over ten years of the transfer, and shows that this is in essence attributable to net staff savings.

44. DCMS also states (at paragraph 8.1(iv)) that transfer of the PLR functions to the BL will maintain accountability to Ministers, as the functions will be transferred to another NDPB of the Department. It adds that the BL will carry out the PLR functions with the same impartiality and independence enjoyed by the Registrar, and that reporting requirements will be maintained since the BL’s obligations to produce annual reports and accounts for its activities will include PLR after the transfer, ensuring that there will be no loss of transparency to public scrutiny.

45. At paragraph 8.2, DCMS confirms that the Minister considers that the conditions in section 8(2) of the 2011 Act are satisfied. It states that abolition of the Registrar does not affect the exercise of any legal rights or freedoms either directly or indirectly, and that the legal rights and protections of PLR rights holders are not affected, and further protection is provided by European law.
Conclusion

46. The Department has acknowledged that the overwhelming majority of respondents to its 2012 consultation process (948 of a total of 1,015) opposed the transfer of the PLR functions to another body. It seems likely that much of the concern underlying these responses has been assuaged by the detailed arrangements which DCMS has subsequently announced, namely that all PLR staff would transfer to the BL at the transfer date, and that the PLR operation would continue at the Stockton-on-Tees office for at least the next five years.

47. The Department states that the British Library has modelled its costs on retaining the operation at Stockton-on-Tees for the next ten years, and that the effectiveness of this arrangement will be reviewed after five years (paragraph 8(ii) of the ED). This seems an unnecessarily long delay, in view of the extent of concern that was expressed by consultation respondents. Given that DCMS foresees a transition period ending in March 2015 (after which date the current postholder of the Registrar role is likely to leave the organisation), we recommend that DCMS / BL carry out a review of the effectiveness of the post-transfer arrangements in spring 2016 (that is, within a year of the end of the transition period).

48. On balance, we consider that the Government have demonstrated that the draft Order serves the purpose of improving the exercise of public functions as set out in the 2011 Act, in line with the considerations contained in it. We are content to clear it within the 40-day affirmative procedure.
INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the grounds specified.

C. Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (SI 2013/1101)

Town and Country Planning (Compensation) (England) Regulations 2013 (SI 2013/1102)

   Date laid: 9 May  
   Parliamentary Procedure: negative

Summary: The Government have laid these instruments to implement a number of important changes to planning controls, which have attracted a good deal of interest, in the House and in society more widely. Consideration by this House of the Growth and Infrastructure Bill, notably at Third Reading in March of this year,\(^\text{33}\) focused particularly on the change which will allow householder rear extensions of double the previous limit without the need for a planning application.

The Government consider that the changes are needed to promote sustainable development. It is clear, however, that most respondents to the various consultation exercises which have preceded the finalisation of the instruments do not share that view. The changes are being taken forward in support of central priorities for economic and educational policy which override concerns expressed locally.

We draw these instruments to the special attention of the House on the grounds that they give rise to issues of public policy likely to be of interest to the House and may imperfectly achieve their policy objective.

49. The Department for Communities and Local Government (DCLG) has laid these instruments before Parliament with an Explanatory Memorandum (EM). On 9 May, the Secretary of State for Communities and Local Government made a Written Statement,\(^\text{34}\) in which he mentioned the laying of the secondary legislation. He referred to the Government’s belief that “a swift and responsive planning system is vital for delivering sustainable development”, and summarised the changes being made by these instruments as follows:

- bringing empty and underused buildings back into productive use;
- making it easier to bring forward suitable buildings for state-funded schools;
- allowing business and families to extend and improve their premises and homes without the expense of moving; and
- facilitating delivery of superfast broadband.

50. The Town and Country Planning Act 1990 gives the Secretary of State the power to grant planning permission for categories of development specified

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\(^{33}\) HL Hansard, 26 March 2013: Column 979 et seq.

\(^{34}\) HC Hansard, 9 May 2013: Column 4WS.
in a development order. This power has been exercised to make the General Permitted Development Order (GPDO):\textsuperscript{35} development granted planning permission under the GPDO is known as “permitted development”, and the effect is that no application needs to be made to the local planning authority to obtain planning permission, although in some cases the permitted development right will require the local planning authority to give “prior approval” of certain matters.

Empty and underused buildings

51. In amending the 1995 GPDO, SI 2013/1101 provides for a range of new permitted development rights, by reference to different “use classes”. Premises currently in office use will be able to change to residential use, subject to prior approval covering flooding, highways and transport issues and contamination.

52. Agricultural buildings of less than 500 square metres will be able to change to a number of other uses (including shops, restaurants, hotels, business and storage). For agricultural buildings between 150 square metres and 500 square metres, prior approval (covering flooding, highways and transport impacts, and noise) is required, to ensure that the change of use does not create unacceptable impacts. Other buildings with existing uses in the catering and commercial sectors will be permitted to change use for a period of up two years to function as shops, professional services, restaurants and business units, and there will be increased thresholds for permitted development for change of use within different types of business.

Buildings for state-funded schools

53. Premises currently used for business, hotels, residential and non-residential institutions, and assembly and leisure purposes will be able to change use permanently to a state-funded school, subject to prior approval covering highways and transport impacts and noise. In the EM, DCLG states that a temporary permitted development right which allows a building in any use class to change use to a state-funded school for one academic year will help to ensure that the opening of new schools is not delayed by the planning system.

Extensions and improvements to premises and homes

54. For a period of three years there will be increased limits for home and business extensions, outside of Sites of Special Scientific Interest (SSSIs) and so-called “Article 1(5) land” (that is, land within a National Park, the Broads, an area of outstanding natural beauty, an area designated as a conservation area, and land within World Heritage Sites). This will apply to householder rear extensions, where the size limits will double, and to offices, industrial and warehouse development, shops and establishments providing catering, financial or professional services, where the size limits and allowable percentage increases will double. A neighbour consultation scheme will operate in respect of the new larger home extensions, for which there will be no fee.

\textsuperscript{35} See the Town and Country (General Permitted Development) Order 1995 (SI 1995/418), which has been frequently amended.
55. Where planning permission granted by a development order is withdrawn, land owners may have a right to compensation under the 1990 Act. SI 2013/1102 provides that no compensation right arises when a time-limited permitted development right granted in an order made by the Secretary of State (such as the increased limits for home and business extensions which will apply for three years) comes to an end.

Superfast broadband

56. Prior approval, covering siting and appearance, is currently required when installation of specific broadband infrastructure is carried out on Article 1(5) land or SSSIs. Another change made by SI 2013/1101 is to remove this requirement as it applies to Article 1(5) land, but not SSSIs, for a period of five years.

Consultation on these changes

57. There have been several different consultation exercises which have preceded the finalisation of these instruments.

58. On the proposal to allow offices to be turned into residential accommodation, DCLG carried out consultation from 8 April to 30 June 2011. The summary, published in July 2012, states that, in all, 714 responses were received during the consultation period. It notes that 36% of respondents supported the principle of making it easier for business premises to be converted to residential accommodation, and 31% supported this change for general industrial and storage premises. The remainder of respondents (i.e., 64% and 69% respectively) did not support the proposal. A range of concerns were raised, relating more or less closely to the view that the impacts of such changes of use vary widely depending on local circumstances, and are best considered alongside a planning application.

59. As regards empty and underused buildings, the exercise ran from 3 July to 11 September 2012. DCLG published a summary of responses at the same time as laying the instruments. On the proposal to allow permitted change of use from an agricultural building to other uses as described above, the summary states that 275 people responded: 109 agreed with the proposal, while 166 disagreed with allowing agricultural buildings unrestricted ability to convert to other uses. There were 281 responses to the proposal to allow a two-year, temporary use of buildings currently with existing uses in the catering and commercial sectors for other specified uses: 107 respondents agreed and 174 disagreed. As regards the proposal to double the existing size threshold for change of use within different types of business, there were 249 responses: 141 agreed with increasing the size thresholds, while 108 disagreed.

60. The consultation process on buildings for state-funded schools ran from 14 October to 10 December 2010. The summary, published in August 2011, states that 120 respondents did not support a change to the existing planning framework; 47 favoured reform; 25 respondents gave no preference. It cites the following concerns raised by those who opposed the change: the potential

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36 See: https://www.gov.uk/government/consultations/changing-land-use-from-commercial-to-residential
38 See: https://www.gov.uk/government/consultations/planning-for-schools-development
unsuitability of the location, with attendant safety risks; adverse traffic
impacts such as an intensification of traffic flow during the morning rush
hour; access, highway capacity and public transport provision; noise
nuisance; the impact on neighbouring properties and residential amenity; and
the risk that the absence of a planning application, by denying local people
involvement in the process, might lead to community hostility against the
school. In August 2011, there was a Joint Statement by the Secretaries of
State for DCLG and the Department for Education, in the form of a letter to
Parliamentarians.39 The Statement committed the Government to continue
to explore the scope and need for the planning system to do more to support
state-funded schools, and in particular, free schools in the future. In the EM,
DCLG says that the latest proposals “follow on from the Statement to
support the provision for new state-funded schools”.

61. DCLG carried out a consultation process on extending permitted development
rights for homeowners and businesses from 12 November to 24 December 2012.
Here, too, it published a summary of responses at the same time as laying the
instruments.40 The proposal put to consultation was to increase the limits
allowed under permitted development rights for single-storey rear extensions
and conservatories in non-protected areas: for detached houses, limits would
increase from 4 metres to 8 metres, and for any other type of house from 3
metres to 6 metres. Of the 1,136 responses, only 166 agreed with the
proposal. Issues which the summary takes from responses opposed to the
proposals included potential impacts on neighbouring properties (including
blocking light and views) and on the character of the area, about which
neighbours would have no opportunity to comment on or influence; and the
possibility that increasing the size of extensions would allow property owners
to create larger houses in multiple occupation without obtaining planning
permission. In the EM, DCLG states that the consultation proposals are all
being brought forward (with the exception of the conversion of garages for
family use), but that a neighbour consultation scheme in respect of home
extensions has been introduced in response to concerns on the impact on the
amenity of neighbours.

62. In the EM, DCLG explains that the changes to permitted development
rights for homeowners are achieved by amendments to Part 1 of Schedule 2
of the GDPO; and that these amendments themselves are made possible by
changes to the Town and Country Planning Act 1990 which were made by
the Growth and Infrastructure Act 2013.41 DCLG recalls that, during the
passage of the Growth and Infrastructure Act 2013 through Parliament,
Ministers undertook that guidance would be issued on the neighbour
consultation scheme which will operate in respect of the increased permitted
development rights for householder rear extensions, and also undertook that
adjoining neighbours would have 21 days in which to make representations
on a proposal for development. We note that draft guidance42 has now been
issued on the Government’s planning portal website, to provide initial
information on how the scheme will work, with an indication that the

40 See: https://www.gov.uk/government/consultations/extending-permitted-development-rights-for-
homeowners-and-businesses-technical-consultation
41 Specifically, new subsections (2B) and (2C) inserted into section 60 of the Town and Country Planning Act
1990 by section 4 of the Growth and Infrastructure Act 2013.
42 See: http://www.planningportal.gov.uk/permission/commonprojects/extensions/extensions
relevant technical guidance will be fully updated once the secondary legislation has been approved by Parliament and has come into force.

63. The proposal to remove the need for prior approval for the installation of specific broadband infrastructure on Article 1(5) land was also canvassed in the consultation on extending permitted development rights for homeowners. The May 2013 summary\(^\text{43}\) states that 22% of responses which commented agreed with the proposal.

**Conclusion**

64. It is striking that, in relation to almost all the proposals embodied in these instruments, consultation carried out by the Government has shown that significant majorities of respondents oppose the changes which are now being made. A concern voiced on a number of occasions is that the impact of changes to permitted development – be they extensions to houses, or conversions of offices into dwellings or other buildings into schools – needs to be assessed at a local level, and that the established planning application regime allows such an assessment to be made. It may be that, in practice, the broader impacts of these changes prove manageable, and that the widespread opposition to them is dissipated. Conversely, the implementation of a number of important changes to the established planning regime may pose practical difficulties to local authorities and others involved in the development process. If this proves to be the case, the instruments may imperfectly achieve their objective of sustainable development.

OTHER INSTRUMENTS OF INTEREST

Draft Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013

65. At present, the immigration position of Croatian nationals is regulated as “a third country” under the Immigration Act 1971. When Croatia accedes to the EU, Croatian nationals will, instead, be able to rely on EU rights of free movement as set out in the Immigration (European Economic Area) Regulations 2006 (SI 2006/1003, as amended) except where their rights are restricted by these draft Regulations. These draft Regulations establish a worker authorisation scheme restricting access to the UK labour market by certain Croatian nationals during a five-year transitional period (from 1 July 2013 to 30 June 2018). Regulation 8 provides that a Croatian national may only work or reside in the UK as a worker if he or she holds an accession worker authorisation document and is working in accordance with the conditions set out in the document. There are various penalties and offences set out in the draft Regulations for employers and employees who breach the authorisation requirements. Regulations 9 and 10 set out the procedure for applying for and issuing worker authorisation registration certificates. These draft Regulations are supplemented by the Statement of relevant requirements published by the Home Office and appended to the Explanatory Memorandum which accompanies this instrument.


66. Sections 1 to 9 of the Justice and Security (Northern Ireland) Act 2007 (“the 2007 Act”) provide for a system of non-jury trial for Northern Ireland to be extended, as needed, by order. The 2007 Act system, which replaced the “Diplock” courts which had existed since 1972, is risk-based: it enables the Director of Public Prosecutions to issue a certificate for non-jury trial if one or more of four conditions set out in the 2007 Act apply, and he is satisfied that, as a result, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. The four conditions relate to connections between the offence or the defendant and proscribed organisations, or connections between the offence and religious or political hostility. The Order currently in force, SI 2011/1720, expires on 31 July 2013. This latest Order is the third extension and proposes the continuation of the 2007 Act non-jury trial system for another two years, until 31 July 2015, in line with the Government’s commitment to return to jury trial for all cases as soon as the security situation allows.

Draft Modifications to the Standard Conditions of Electricity and Gas Supply Licences, Electricity Distribution Licences and Gas Transporter Licences (No 1 of 2013)

67. On 10 May, the Secretary of State for Energy and Climate Change made a Written Statement about smart metering. He said that, reflecting the extended period to build and test the systems required by industry, the Government had decided to move the completion date for the mass rollout

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44 HC Hansard, 10 May 2013 : Column 15WS
of smart meters for gas and electricity from end-2019 to end-2020. He also referred to the laying before Parliament of licence modifications to require energy suppliers and network operators to comply with the Smart Energy Code, and energy suppliers to ensure that smart meters provide domestic and micro-business consumers with access to key data, and that key smart meter functions are switched on.

68. These are the licence modifications mentioned by the Secretary of State. In the Explanatory Memorandum (EM), the Department for Energy and Climate Change (DECC) states that the communications and data transfer and management required to support smart metering are to be organised by a new Data and Communications Company (DCC). The Smart Energy Code (SEC) will form the contractual relationship between the DCC and the users of its systems (energy suppliers, networks and others), and will set out the detailed provisions to ensure that the arrangements for smart metering are managed consistently across the gas and electricity sectors. Since the SEC will be a key part of the smart metering regulatory framework, it is important that licensed users of the DCC services comply with it.

69. In the EM, DECC explains that, while the Smart Metering Technical Specifications (SMETS) will ensure that smart meters have the capability to provide consumers with their own energy consumption data, the operational licence conditions will help to ensure that consumers will be able to access this data easily. For smart meters in domestic premises, energy suppliers will be required to ensure that consumers can access the full range of “In-Home Display functionality”, as set out in SMETS. For smart meters in both domestic and micro-business premises, energy suppliers will also be required to ensure that all consumption, export and tariff information that is held on the meter can be accessed by compatible Consumer Devices which are connected to the smart meter. Data must be made available free of charge to domestic consumers.

**Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (SI 2013/971)**

70. These Regulations, laid by the Department for Energy and Climate Change (DECC), transpose the appropriate provisions of Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control), which is commonly referred to as the Industrial Emissions Directive, in relation to combustion installations on offshore platforms undertaking activities involving oil and gas production and gas and carbon dioxide unloading and storage.

71. We obtained further information from DECC about two aspects of the drafting of the Regulations: the use, and difference in impact, of the terms “significant pollution” and “serious pollution”; and whether Rules of Court should be made specifically in relation to the Regulations. We enclose DECC’s answers as Appendix 3; they clarify the links between these Regulations and previous primary and secondary legislation.

**Mobile Homes (Selling and Gifting) (England) Regulations 2013 (SI 2013/981)**

72. In the Explanatory Memorandum (EM) to these Regulations, laid by the Department for Communities and Local Government (DCLG), DCLG explains that, hitherto, provisions in the Mobile Homes Act 1983 (“the 1983
Act”) have governed the selling and gifting of mobile homes. An owner of a mobile home could sell the home in situ in the open market, but any purchaser needed to be approved by the owner of the site. Approval was not to be unreasonably withheld and there was a right of appeal to a tribunal if it was. Home-owners could also gift a home to members of their own family, but the site-owner had to approve the person to whom the home was gifted. DCLG states that there is evidence of widespread abuse of the approval process: some site owners exploit it to prevent residents from selling their homes, so that they can acquire the home for a fraction of its true value, to sell it themselves at the full market value or replace it with a new home and sell that in the open market.

73. The Mobile Homes Act 2013 (“the 2013 Act”) amends the 1983 Act so that a site-owner’s approval of a purchaser, or of a person to whom a mobile home is to be gifted, is no longer required; and the site-owner is also no longer involved in the assignment of the pitch agreement, where a mobile home is sold or gifted under an agreement made or assigned on or after 26 May 2013 (the date the relevant provisions in the 2013 Act come into force). However, where the home is being sold or gifted for the first time under an agreement which was made before 26 May 2013, the site-owner must be notified of the proposed sale or gift.

74. These Regulations detail the new procedures for the selling and gifting of mobile homes. DCLG states that they are designed to make it easier for mobile home owners to sell or gift their homes without interference from the site-owner, and also to help potential purchasers of a mobile home to acquire all the information needed to make an informed purchasing decision. The Regulations are the first of a number of instruments being brought forward to implement changes made by the 2013 Act. Others, in relation to site rules and pitch fees, are to follow.

Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013 (SI 2013/984) and the Adoption Agencies (Miscellaneous Amendments) Regulations 2013 (SI 2013/985)

75. The Department for Education (DfE) has laid both these sets of Regulations, in each case with an Explanatory Memorandum (EM) and impact assessment.

SI 2013/984

76. In amending Regulations from 2010,45 SI 2013/984 provides that people who are approved as prospective adopters under the Adoption Agencies Regulations 2005 may be temporarily approved as foster parents for a named child; and makes changes to the requirements relating to a looked after child’s placement plan.46 Moreover, in amending Regulations from 2011,47 SI 2013/984 introduces a two-part process for assessing and reviewing a person’s suitability to be a foster parent; and enables the fostering service

46 The plan prepared by the responsible local authority setting out how the child’s placement, for example with a local authority foster parent or in a children’s home, will contribute to meeting the child’s needs.
provider and an approved foster parent to agree a change in the foster parent’s terms of approval without delay.

77. In the EM to SI 2013/984, DfE refers to the Government’s “Action Plan for Adoption” which set out the plan to consult on changes to legislation to enable a more streamlined process for prospective adopters to be approved as temporary foster carers in appropriate cases. The Department says that, while it is already possible under the Children Act 1989 for local authorities to approve adopters as foster carers, the process is quite lengthy.

78. We note that the ED explains that, in introducing a two-part assessment process, SI 2013/984 removes the right of an applicant to seek a review of a decision that they are unsuitable to foster made at Stage 1 of the process, though an applicant who is unhappy about the way their case is handled may complain via the fostering service’s complaints process. While we understand that the Stage 1 assessment relates mainly to health and CRB (Criminal Records Bureau) checks, not more widely to the skill-set needed by foster parents, we question whether the removal of a right of review is justified by a wish to speed up the process.

SI 2013/985

79. SI 2013/985 amends provisions in Regulations from 2005 which relate to the assessment of prospective adopters and is changed to introduce a new two-stage approval process. There are time-limits for the adopter approval process with Stage 1 (the pre-assessment process) being limited to two months and Stage 2 (the assessment decision) taking four months. Provision is made to enable both timescales to be extended in certain circumstances. All prescribed checks (including criminal records checks, references etc.) are conducted during Stage 1. SI 2013/985 also introduces a fast-track process to allow certain previous adopters or foster parents to proceed straight to Stage 2 and receive a tailored assessment.

Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013 (SI 2013/1037)

80. The Department for Energy and Climate Change (DECC) has laid these Regulations to transpose an EU Decision to “stop the clock” on implementing the extra-EEA aspects of the aviation emissions trading scheme.

81. In 2005, the EU greenhouse gas emissions trading scheme (“the EU ETS”) was established under the EU ETS Directive in order to promote cost-effective reductions in greenhouse gas emissions. After the adoption of a further Directive, aviation was included in the EU ETS for the first time in 2012.

82. Under the aviation ETS, all aircraft operators who fly into or out of aerodromes in the European Economic Area (EEA) are required to monitor their carbon emissions each calendar year from 1 January 2010. Those operators are required to submit an independently verified report of their carbon emissions for these flights, to their respective regulator, by 31 March of the following year. Subsequently, from 30 April 2013, aircraft operators must surrender the corresponding number of carbon dioxide (CO₂) allowances and project credits to the Registry, to account for their annual verified emissions in the preceding year.

83. In November 2012, the European Commission published a proposal to “stop the clock” on the implementation of the extra-EEA aspects of the aviation ETS. The EU Commissioner for Climate Action set this proposal in the context of discussions at the International Civil Aviation Organisation (ICAO). Ms Hedegaard said that the EU was convinced that a global solution for addressing the fast growing emissions from international aviation was within reach at the ICAO Assembly in 2013: as a gesture of good faith, the EU would “stop the clock” on implementing the international aspects of its aviation ETS.52

84. The “Stop the Clock” Decision53 temporarily suspends the enforcement of the obligations of aircraft operators operating flights to or from aerodromes located in the European Economic Area (EEA) and third party countries under the aviation ETS. It came into force on 25 April 2013. The EU ETS Directive is implemented in the UK by the Greenhouse Gas Emissions Trading Scheme Regulations 2012 (SI 2012/3038 (“the 2012 Regulations”). In amending the 2012 Regulations, this instrument gives effect to that temporary suspension of obligations.

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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

- Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013
- Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2013
- National Assembly for Wales (Representation of the People) (Fresh Signatures for Absent Voters) Order 2013
- Representation of the People (Northern Ireland) (Amendment) Regulations 2013

Draft Instruments subject to annulment

- Modifications to the Standard Conditions of Electricity and Gas Supply Licences, Electricity Distribution Licences and Gas Transporter Licences (No 1 of 2013)
- Modifications to the Standard Conditions of Electricity Supply Licences 2013

Instruments subject to annulment

SI 2013/815 General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules Order of Council 2013
SI 2013/971 Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013
SI 2013/973 Greater London Authority (Specified Activities) Order 2013
SI 2013/981 Mobile Homes (Selling and Gifting) (England) Regulations 2013
SI 2013/984 Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013
SI 2013/985 Adoption Agencies (Miscellaneous Amendments) Regulations 2013
SI 2013/992 Bus Lane Contraventions (Approved Local Authorities) (England) (Amendment) and Civil Enforcement of Parking Contraventions Designation Order 2013
SI 2013/1001 Nitrate Pollution Prevention (Amendment) and Water Resources (Control of Pollution) (Sludge, Slurry and Agricultural Fuel Oil) (England) (Amendment) Regulations 2013
SI 2013/1011 Electricity (Exemption from the Requirement for a Generation Licence) (Baillie) Order 2013
SI 2013/1013 Motor Vehicles (Driving Licences) (Amendment) (No.2) Regulations 2013
SI 2013/1031 Electricity (Exemption from the Requirement for a Generation Licence) (Markinch) Order 2013
SI 2013/1037 Greenhouse Gas Emissions Trading Scheme (Amendment) Regulations 2013
SI 2013/1096 Burma/Myanmar (Financial Restrictions) (Revocation) Regulations 2013
SI 2013/1098 New Parks for People (England) Joint Scheme (Authorisation) Order 2013
SI 2013/1099 Feed-in Tariffs (Amendment) Order 2013
SI 2013/1123 M4 Motorway (Junctions 19 to 20) and the M5 Motorway (Junctions 15 to 17) (Actively Managed Shoulder and Variable Speed Limits) Regulations 2013
SI 2013/1125 Prospectus Regulations 2013
Letter from Helen Grant MP, Parliamentary Under-Secretary of State for Justice, to Lord Goodlad, Chair of the Secondary Legislation Scrutiny Committee

Thank you very much for the opportunity to further clarify the Government’s proposal to abolish the Administrative Justice and Tribunals Council by Order under the Public Bodies Act for the Secondary Legislation Scrutiny Committee on 14 May. I promised to send further information, which I provide below.

I recognise that the Committee has spent a great deal of time on this Order and I am sorry that you have considered the evidence provided by the Ministry of Justice (MoJ) as below standard. I and my officials have striven to provide full and transparent evidence to assist scrutiny of the Order by Committees in both Houses.

The field of administrative justice and tribunals is complex and the detailed examination given to the matter by the Committee has clearly begged further questions. We have sought to strike the right balance between clarity and detail in our evidence. Where Committee members have required more detail on the MoJ’s position and plans I feel that we have responded promptly and comprehensively. Nonetheless, I can quite understand, having sat on Committees myself, the frustration of not having all the information at one’s fingertips. To aid the Committee I have provided a recap of the Government’s judgement of how the Order meets the statutory tests set out in the Public Bodies Act 2011 at annex A to this letter.

You asked me for the precise current status of each of the tribunals listed as outside of the Unified Tribunal System in the “map” we provided in evidence to the Justice Committee. My officials provided examples of how we were engaging with some of these tribunals in session, but the table attached at annex B provides detail on the MoJ’s work with each of the 21 tribunals referenced by Lord Bichard and when decisions on their future status are expected.

The Committee asked a number of questions about the role of the Administrative Justice Advisory Group which I will answer in turn below. I would like point out that independence is not an end in itself and that the Government, in making difficult decisions on how to spend public funds, must pay close regard to the impact of that spending on citizens. The Chair of the AJTC, in his open letter of 22 November 2012, recognised that there may be ‘considerable benefit in bringing the AJTC resource closer to the development and implementation of the all the work that needs to be done’. Similarly, I believe the Advisory Group will offer most benefit to the users of the administrative justice and tribunals system by working closely with the MoJ to assess issues, develop practical solutions and spread good practice.

- Remuneration: Members of the Administrative Justice Advisory Group are not paid and nor do they receive expenses. The only direct costs attributable to the formal meetings of the Group are minor catering costs of around £35 per meeting.

- Other costs: The Advisory Group is not intended to replicate the AJTC and its formal programme of meetings. The Group is run using existing
resources within the Justice Policy Group within the MoJ. The resource required to properly develop policies relating to the reforms set out in the Administrative Justice Strategic Work Programme (December 2012) is required regardless of the existence of the AJTC. The Advisory Group plays a vital role in this work. The time spent on organising, managing and chairing the Group is an opportunity cost rather than a cost that would appear on the MoJ’s budget. Increased activity of the Advisory Group – for instance, through the creation of sub-groups - would require some additional level of support from MoJ, although how much will depend on the nature of the meetings. We anticipate that such additional support would be minimal and would continue to be absorbed from within current resource. Meetings to date have all taken place in the MoJ Headquarters at 102 Petty France, London, SW1H 9AJ. The cost of doing so are minimal and cannot be disaggregated from existing MoJ expenditure.

- Speaking with Authority: The Advisory Group is formed of members that speak with the authority of their own organisations. The purpose of the Group is not to speak with consensus on particular issues but to gauge and comment on the workings of the administrative justice and tribunals system and to provide early comment on policies as they are developed. If consensus was required then a vote on the matter would be offered, but it is unlikely that such an eventuality would occur.

- Meeting without the MoJ: While the MoJ would not – and could not – object to the Advisory Group or some of its constituents meeting outside of its formal schedule without MoJ present, it is difficult to see what value doing so would offer. The Group already has the freedom to voice concerns about any aspect of policy in the administrative justice and tribunals area. Minutes of the Group are made available on request to the public, so any dissent/differences of view are captured transparently.

- Setting the agenda: To date the agenda for the Group’s meetings has been largely set by MoJ. In every meeting held there has been a call for members to suggest agenda items and this call has been repeated between meetings. There is no explicit right of veto held by any member of the Group – including the MoJ – over topics that can be discussed in meetings.

- Research: The Group has no budget with which to commission research. However, the Group may make suggestions for areas of research and offer input to internal business cases required to commission research in this area. MoJ has a research budget and the ability to commission external, independent research, so a group member could make a suggestion for a research project which would be on record.

I hope that the further information provided in session, in the letter above and in the annexes attached provide greater clarity to the Committee on why I believe that abolishing the AJTC is in the best interests of users of the administrative justice and tribunals system and taxpayers. I will or my officials will, of course, be happy to provide answers to any further questions should they occur to the Committee.

16 May 2013
ANNEX A: Public Bodies Act 2011 - statutory tests

I can confirm that I am satisfied that the tests in section 8 of the Act have been met by the draft Order to abolish the Administrative Justice & Tribunals Council (AJTC). I reiterate my considerations below, as originally set out in the Explanatory Document, and provide further explanation where the Committee has suggested it would be helpful.

Efficiency:

The decision to abolish the AJTC is consistent with the elimination of duplication of functions and the need to provide just that which is necessary to support the administrative justice and tribunals system. The oversight role offered by AJTC and its consideration of potential improvements to the system are duplicated by Her Majesty’s Court and Tribunals Service (HMCTS) and policy officials within the Ministry of Justice (MoJ).

The vast majority of the system is now administered by HMCTS, and so is independent of the Departments whose decisions are being challenged. HMCTS has an independent non-executive chair and has two judicial representatives on its board. It also has a dual reporting line to both the Lord Chancellor and the Lord Chief Justice. It is my view that it can, and does, provide for effective independent oversight of tribunals. For those limited number of bodies that are outwith the oversight of HMCTS, my officials will continue to work with the relevant Departments, the bodies themselves and other interested stakeholders to identify and share good practice as well as any areas of concern. The MoJ will review the performance of these bodies by drawing on available performance data, annual reports, business and development plans, parliamentary, user and judicial feedback (users of non-HMCTS services can raise concerns with ministers and MPs which are fed back to MOJ for action). We will be looking at performance against our stated principles of fairness, accessibility and efficiency.

It is absolutely in the interests of Government to secure improvements to the system. Annex B provides details of the non-devolved tribunals that are not currently covered by HMCTS and sets out the work being undertaken with them. We have draft protocols agreed with each of the devolved administrations.

Having now completed the vast majority of the structural reforms to the administrative justice system, the impetus for a real step change in the delivery for users of that system needs to come from within Government. It is more efficient and practical for policy development to be carried out by the team responsible for delivering necessary improvements. These improvements will not occur without a policy team in place, regardless of whether the AJTC exists to offer advice. The Administrative Justice Advisory Group will provide an expert and critical forum to examine the issues raised, explore options to address them and provide advice on our progress against the Strategic Work Programme, published in December.

Effectiveness:

The AJTC is not a tribunal, a watchdog or a regulator and has no powers to enforce its recommendations. It provides independent advice which the Government is not bound to accept. Even where the Government does accept AJTC recommendations on policy changes, the MoJ still needs to resource their implementation. An advice-giving body such as the AJTC cannot implement the action it recommends - only Government can. In the past this has created a disconnection between advice and action. I firmly believe that it is more effective
to develop and implement policy using dedicated resource in the MoJ which can act directly on ministerial priorities and deliver improvements. MoJ is in a much better position to work directly with other Departments and other users of the system to implement change.

By publishing a Strategic Work Programme that sets out our plans over the next three years I hope to see real improvements in areas that in the past have been identified but not tackled. Areas such as initial decision making within Government and ensuring systems are as proportionate and efficient as they can be.

The Administrative Justice Advisory Group will meet twice a year to provide a user focus to policy development. Other events involving this Group or a subset of the Group may also be arranged as required to focus on particular issues, such as improving user guidance. There will be ongoing, two-way communication between meetings and a dedicated email address has been set up for this purpose.

Economy:

I feel strongly that, in a period of austerity when it is impossible to avoid cuts, it is important to reduce expenditure on things which may be helpful to have but are not vital. A purely advisory body such as AJTC is not vital and there is a more economical way of keeping the operation of the administrative justice system under review.

Estimates of costs and savings from abolition have been updated over time to reflect both the later than anticipated date for closure, as well as the lower running cost of the AJTC in recent months.

Based on a revised closure date of 30 June 2013, we now estimate gross cumulative savings of around £1.3m across the remainder of 2013/14 and 2014/15. These estimates take into account that the AJTC has been required to reduce its expenditure in 2011/12 and 2012/13 - and is now operating at a cost of around £0.7m pa (rather than £1.2m as it was at the start of the SR period).

Costs of closure are estimated to be around £0.6m over the SR period. This includes £0.3m for possible redundancies at the AJTC and £0.15m in each of 2013/14 and 2014/15 which is for reimbursements to the Scottish and Welsh governments for the creation of interim non-statutory bodies to replace the AJTC in Scotland and Wales.

This means net savings of around £0.7m over the rest of this SR period. However, MoJ would continue to make savings beyond this from no longer funding the AJTC. The 10 year Net Present Value of closure of the AJTC is estimated to be around £5m (which reflects the real discounted stream of costs and benefits over 10 years rather than the cash value of savings).

Members of the Administrative Justice Advisory Group are not paid and nor do they receive expenses. The only direct costs attributable to the formal meetings of the Group are minor catering costs of around £35 per meeting.

The Advisory Group is not intended to replicate the AJTC and its formal programme of meetings. The Group is run using existing resources within the Justice Policy Group within the MoJ. The time spent on organising, managing and chairing the Group is an opportunity cost rather than a cost that would appear on the MoJ's budget. Increased activity of the Advisory Group – for instance, through the creation of sub-groups - would require some additional level of support from MoJ, although how much will depend on the nature of the meetings. We anticipate
that such additional support would be minimal and would continue to be absorbed from within current resource. Meetings to date have all taken place in the MoJ Headquarters at 102 Petty France, London, SW1H 9AJ. The costs of doing so are minimal and cannot be disaggregated from existing MoJ expenditure.

Similarly, we do not disaggregate the cost of resourcing sponsorship and administrative support (such as running recruitment campaigns for new appointees) currently given to the AJTC from existing total expenditure on managing the Department’s portfolio of arm’s length bodies. We have not sought to claim any savings in this area as a result of abolition. It would be reasonable to conclude that no longer resourcing this support for the AJTC will off-set the support that will now be required for the Advisory Group to some extent.

Securing appropriate accountability to Ministers:

The abolition of the AJTC will not result in any loss of accountability to Ministers. Ministers are, and will remain, ultimately accountable for the administrative justice system and for HMCTS as an executive agency of MoJ.

HMCTS is responsible for the performance of the tribunals in the unified system, through their regional and central management. A minority of tribunals sit outside of HMCTS and which remain accountable to Ministers through their respective departmental channels. MoJ will examine the case for bringing these remaining existing tribunals into the unified tribunal system where appropriate. Where they are not brought into the unified system, MoJ will still keep their administration and performance under review.

Removal or loss of protections, rights and freedoms:

I also consider that the order serves the purpose in section 8(2) of the Act. The abolition of the AJTC will not result in the removal of any necessary protection and no person will be prevented from exercising a right or freedom which they might reasonably expect to continue to exercise.

The AJTC is a purely advisory body – it does not hold anyone to account and does not have the power to enforce any advice or reforms. Abolition does not prevent anyone from knowing how to access a tribunal or an ombudsman to vindicate their rights or freedoms. It does not affect the exercise of any legal rights or freedoms either directly or indirectly. Tribunal users can still make their voice heard by raising concerns with their elected representatives or through the user groups that exist in most HMCTS tribunal jurisdictions. I can confirm that no part of the administrative justice system currently included under the AJTC’s overview remit will be left out under the new arrangements, including those tribunals and bodies currently outside of the unified tribunal system.

HMCTS administers the unified tribunal system and is expected to run an efficient and effective courts and tribunals system that upholds the rule of law and provides access to justice for all. HMCTS has robust governance arrangements (as set out above). I consider that HMCTS and its governance structure provide a clear level of protection to the public in respect of its oversight of the unified tribunal system. Any oversight role the AJTC may have performed is a duplication of effort in this context.

It is worthwhile also noting here that, in his response to the Public Administration Select Committee report on the future oversight of administrative justice, the Lord Chancellor agreed to report annually to the PASC on the following:
• 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.

Parliament will therefore have means of ensuring Government is held to account for oversight in this area and provide a further layer of protection for the public.

The MoJ and HMCTS will benchmark performance and advocate and share best practice, as it does currently. Furthermore, anyone who has concerns regarding performance of tribunals can also raise such concerns with the sponsoring policy department or with the relevant devolved administration department, or via an elected representative with the Parliamentary and Health Service Ombudsman (formerly the Parliamentary Commissioner for Administration) if the defective performance is thought to amount to maladministration.
Tribunals or Appeal Routes Outside of the Unified Tribunal System

The Committee is concerned to understand the current status of the tribunals listed in the map as ‘under review’ (i.e. outside the unified tribunal system) and at what date a decision about each of them was or will be made.

As stated in the MoJ’s oral evidence and the map previously provided on the entire administrative justice and tribunal system, the MoJ has policy responsibility for tribunals within the unified system and for the system as a whole. As set out in Chapter 2 of the Administrative Justice and Tribunals Strategic Work Programme, published in December 2012, non-HMCTS tribunals will be prioritised for transfer into the unified structure on a cost/benefit basis and MoJ will maintain oversight of those that remain outside of the system.

In overseeing the system and tribunals in question, the MoJ will work with other Government departments, the tribunals themselves, the bodies that administrate the tribunals, interested stakeholders and the Administrative Justice Advisory Group to keep under review the performance of these tribunals. This will also inform assessments of whether to transfer the tribunals into the unified system.

The Government has committed to transfer the Valuation Tribunal England (VTE) into the unified system and did so as part of its announcement on public bodies reforms in October 2010. This is a tribunal with a significant volume of appeals. The Government has also committed to abolish some tribunals. These tend to relate to much lower volumes appeal routes, with some having heard no cases in many years or at all. Where there are no current plans to transfer tribunals or appeal routes into the unified system this is stated. However, the MoJ – in partnership with other parts of Government – will continue to keep under review the case for transferring these and new appeal rights into the unified system in line with the objective in Chapter 2 of the Strategic Work Programme.

In May 2012 the Government committed to report annually to the Public Administration Select Committee on items including ‘actions taken by Ministers and officials to improve the operation of the system’. The MoJ will be providing information on progress against objectives in the Strategic Work Programme, which will include reporting against the position of those tribunals outside of the unified system.

The Government does not anticipate that all of the tribunals listed below will need to be brought into the unified system. Some have already been abolished due to lack of appeals over a number of years, while others are functioning effectively and meeting MoJ’s principles for administrative justice - fairness, efficiency and accessibility. Where a body is not brought into the unified system, MoJ will continue to maintain oversight as stated.
<table>
<thead>
<tr>
<th>Tribunal</th>
<th>Status of tribunal and planned oversight arrangements (assuming abolition of AJTC)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valuation Tribunal England</td>
<td>Transferring the Valuation Tribunal England (VTE) into the unified tribunals system is a Coalition commitment. The MoJ is working with the Department of Communities and Local Government to resolve the matter of pension liabilities for Valuation Tribunals Service (VTS) staff and to agree a mechanism to transfer VTE in the most cost effective way.</td>
</tr>
<tr>
<td>(Administered by the Valuation Tribunal Service)</td>
<td></td>
</tr>
<tr>
<td>Parking and Bus Lane Adjudicators</td>
<td>There are no plans to transfer these tribunals into the unified tribunal system. MoJ will review the performance of these tribunals by drawing on available information such as performance data, annual reports, business and development plans, parliamentary, user, local authority and judicial feedback. We will be looking at performance against our stated principles of fairness, accessibility and efficiency. Consideration of the performance of these tribunals will be included in the governance arrangements agreed with the Department of Transport (i.e. performance will be discussed in regular meetings as a standing item) including sharing good practice.</td>
</tr>
<tr>
<td>(Administered by the Parking and Traffic Appeals Service)</td>
<td></td>
</tr>
<tr>
<td>Road User Charging Adjudicator Tribunal</td>
<td></td>
</tr>
<tr>
<td>(Administered by the Parking and Traffic Appeals Service)</td>
<td></td>
</tr>
<tr>
<td>Traffic Commissioners</td>
<td></td>
</tr>
<tr>
<td>(Administered by the Parking and Traffic Appeals Service)</td>
<td></td>
</tr>
<tr>
<td>Penalty Charge Adjudicators under Traffic Management Act 2004</td>
<td></td>
</tr>
<tr>
<td>(Administered by the Parking and Traffic Appeals Service)</td>
<td></td>
</tr>
<tr>
<td>Solicitors Disciplinary Tribunal</td>
<td>There are no plans to transfer this tribunal into the unified tribunal system. MoJ will review the performance of this tribunal by drawing on information such as: performance data; annual reports; business and development plans; and parliamentary, user or judicial feedback. Performance will be measured against MoJ's stated principles of fairness, accessibility and efficiency. Consideration of the performance of this tribunal will be included in the governance arrangements agreed with the Legal Service Board (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.</td>
</tr>
<tr>
<td>(Administered by the Parking and Traffic Appeals Service)</td>
<td></td>
</tr>
<tr>
<td>Tribunal Name</td>
<td>Details</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Police Discipline Appeals Tribunal</td>
<td>MoJ is currently in discussion with the Home Office on the future of this tribunal, including possible transfer of its functions into the unified tribunal structure, or - as an alternative - the deployment of judges from the Employment Tribunal to sit in this tribunal. While the tribunal remains outside the unified system, the MoJ will review the performance of this tribunal by drawing on available information such as performance data, annual reports, business and development plans, parliamentary, user, police authorities and judicial feedback. Performance will be measured against MoJ’s stated principles of fairness, accessibility and efficiency. Consideration of the performance of this tribunal will be included in the governance arrangements agreed with the Home Office (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.</td>
</tr>
<tr>
<td>Police Pensions Regulations Appeals Tribunal</td>
<td>The Tribunal has not sat in the last three years but is not being considered for abolition. The MoJ will carry out further work with the Home Office on the costs and benefits of transferring its functions.</td>
</tr>
<tr>
<td>Office of the School Adjudicator</td>
<td>There are no plans to transfer the Office of the School Adjudicator into the unified tribunal system. MoJ will review the performance of the Adjudicator by drawing on available information such as performance data, annual reports, business and development plans, parliamentary, user and local authority feedback. Performance will be measured against stated principles of fairness, accessibility, and efficiency. Consideration of the performance of the Adjudicator will be included in the governance arrangements agreed with the Department of Education (i.e. performance will be discussed in regular meetings as a standing item), including the sharing of good practice.</td>
</tr>
<tr>
<td>School Admission Appeals Panels</td>
<td>There are no plans to transfer the School Admission Appeals Panels into the unified tribunal system. The MoJ will review the performance of these local admissions panels by drawing on available information such as performance data, annual reports, business and development plans, parliamentary, user and local authority feedback. Performance will be measured</td>
</tr>
</tbody>
</table>
against MoJ’s stated principles of fairness, accessibility and efficiency.

Consideration of the performance will be included in the governance arrangements agreed with the Department of Education (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.

In the case of school admission panels, Government policy is to devolve power to service providers and the communities they serve, and the appeals process should also be locally driven. The MoJ will work with the Department of Education to ensure guidance facilitates access to justice, in line with the stated principles of administrative justice.

| School Exclusion Appeal Panels | There are no plans to transfer the School Exclusion Appeal Panels into the unified tribunal system.

The MoJ will review the performance of these local school exclusion panels by drawing on available information such as performance data, annual reports, business, and development plans, parliamentary, user and local authority feedback. Performance will be measured against MoJ’s stated principles of fairness, accessibility and efficiency.

Consideration of the performance of school exclusion panels will be included in the governance arrangements agreed with the Department of Education (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.

In the case of school exclusion panels, Government policy is to devolve power to service providers and the communities they serve, and we believe the appeals process should also be locally driven. The MoJ will work with the Department of Education to ensure guidance facilitates access to justice, in line with the stated principles of administrative justice. |
| Competition Appeals Tribunal (CAT) | There are no plans to transfer this tribunal into the unified tribunal system.

The MoJ took part in a review in 2011 and the Government reached the conclusion that transfer was not necessary at that time. More recently the MoJ inputted into Government’s wider review of regulatory appeals with a particular emphasis on mechanisms to reduce timescales for appeals.

The MoJ will continue to review the performance of this tribunal by drawing on available
<table>
<thead>
<tr>
<th>Tribunal</th>
<th>Information and Performance Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Copyright Tribunal</td>
<td>Information such as performance data, annual reports, business and development plans, parliamentary, regulators, user and judicial feedback. Performance will be measured against MoJ’s stated principles of fairness, accessibility and efficiency. Consideration of the performance of this tribunal will be included in the governance arrangements agreed with the Department of Business, Innovation and Skills (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.</td>
</tr>
<tr>
<td>Company Names Tribunal</td>
<td>There are no plans to transfer this tribunal into the unified tribunal system. The MoJ will review the performance of this tribunal by drawing on available information such as performance data, annual reports, business and development plans, parliamentary, user, and judicial feedback. Performance will be measured against MoJ’s stated principles of fairness, accessibility and efficiency. Consideration of the performance of this tribunal will be included in the governance arrangements agreed with the Department of Business, Innovation and Skills (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.</td>
</tr>
<tr>
<td>Tribunal Name</td>
<td>Details</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>NHS Litigation Authority Family Health Services Appeal Unit</td>
<td>There are no plans to transfer the Family Health Services Appeal Unit into the unified tribunal system. The MoJ will review the performance of this Appeal Unit by drawing on available information such as performance data, annual reports, business and development plans, parliamentary, user, health authority and judicial feedback. Performance will be measured against MoJ’s stated principles of fairness, accessibility and efficiency. Consideration of the performance of the Family Health Services Unit will be included in the governance arrangements agreed with the Department of Health (i.e. performance will be discussed in regular meetings as a standing item), including sharing good practice.</td>
</tr>
<tr>
<td>Aircraft &amp; Shipbuilding Industries Arbitration Tribunal</td>
<td><strong>ABOLISHED</strong></td>
</tr>
<tr>
<td></td>
<td>The Aircraft and Shipbuilding Industries Arbitration Tribunal was abolished on 22 March 2013. The Tribunal had not met for 30 years.</td>
</tr>
<tr>
<td>Fire-fighters’ Pension Scheme Tribunals</td>
<td>These appeals are now heard in the Employment Tribunal.</td>
</tr>
<tr>
<td>Plant Varieties &amp; Seeds Tribunal</td>
<td>This tribunal is listed in Schedule 1 of the Public Bodies Act for abolition in its current form. MoJ anticipates transferring its jurisdiction into the unified tribunal service and are discussing timescales with DEFRA. No appeals are forecast for the next 5 years.</td>
</tr>
<tr>
<td>Chemical Weapons Tribunal</td>
<td>The Department of Energy and Climate Chance (DECC) have submitted an Order to their Minister for approval to abolish the Chemical Weapons Tribunal. Abolition of the tribunal is planned to complete by July 2013. DECC is proposing to set up an internal appeals process which we will wish to review.</td>
</tr>
<tr>
<td>Mines and Quarries Tribunal (Health and Safety Executive (HSE))</td>
<td>HSE is currently carrying out a review of all mining legislation and the issuing of certificates of qualification by HSE (the suspension/cancellation of which has a right of appeal) may cease, in which case the tribunal will become obsolete. This is still under discussion and no decision has yet been made. There have been no appeals for over 20 years.</td>
</tr>
<tr>
<td>Tribunal Name</td>
<td>Status/Description</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Health Service Medicines (Price Control Appeals) Tribunal (Department of Health)</td>
<td>There have been no appeals heard by this tribunal. The Department of Health and the MoJ will review the business case for transfer into the unified tribunal system and make a recommendation to Ministers by March 2014.</td>
</tr>
<tr>
<td>Foreign Compensation Commission (Foreign &amp; Commonwealth Office)</td>
<td>ABOLISHED</td>
</tr>
<tr>
<td></td>
<td>The FCC was formerly abolished by Order in Council on 29th March 2013.</td>
</tr>
<tr>
<td>Insolvency Practitioners Tribunal</td>
<td>TO BE ABOLISHED – The Department of Business, Innovation and Skills is committed to withdrawing from the direct authorisation of Insolvency Practitioners. This will remove the need for the Insolvency Practitioners Tribunal. Work is currently underway to get the necessary legislation for the cessation of direct authorisation into a 3rd session Bill to abolish the tribunal.</td>
</tr>
<tr>
<td>Case Tribunals</td>
<td>These appeals are heard by the Adjudication Panel for England, which transferred into the General Regulatory Chamber of the unified tribunal service in 2010.</td>
</tr>
</tbody>
</table>
APPENDIX 2: PUBLIC BODIES (ABOLITION OF THE REGISTRAR IF PUBLIC LENDING RIGHT) ORDER 2013

Further Information from DCMS

**PLR administration costs 2014-23**

<table>
<thead>
<tr>
<th>PLR administration costs over 10 year appraisal period 2014-2023 (Net Present Value £ million in 2013 prices)</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current admin of PLR</td>
<td>Retain current arrangements and make identified savings</td>
<td>Transfer to British Library; in addition to making identified savings</td>
<td></td>
</tr>
<tr>
<td>Total real terms PLR admin costs over 2014-2023 (£million)</td>
<td>6.57</td>
<td>5.97</td>
<td>5.21</td>
</tr>
</tbody>
</table>

**Current PLR administration costs (£ million)** 6.57

*Identified savings*

Rent Reduction -0.21
Library Sample Changes -0.07
Income Generation -0.32

**PLR admin costs if retain current arrangements under Registrar and make identified savings** 5.97

**PLR admin costs net of planned savings (£million)** 5.966499134

*Costs:*

<table>
<thead>
<tr>
<th></th>
<th>Cost (£ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>IT</td>
<td>0.103991107</td>
</tr>
<tr>
<td>Communications</td>
<td>0.038742533</td>
</tr>
<tr>
<td>Legal Costs</td>
<td>0.019371267</td>
</tr>
<tr>
<td>Audit</td>
<td>0.229473038</td>
</tr>
<tr>
<td>Loss Book Data</td>
<td>0.026061923</td>
</tr>
</tbody>
</table>

*Savings in admin costs:*

Audit -
Identified savings

1. Reduction in rent of £5 per sq ft
2. Improvements to be made to library loans sample regime, by amending PLR Scheme 1982.
3. Income generation, including income generated by UK PLR being contracted to run the Irish PLR scheme.

Costs and savings associated with transfer to British Library

4. IT costs associated with transfer. The existing PLR major IT applications would be retained under the operation going forwards, but would be linked up to BL IT infrastructure including disaster recovery and back up provision, by the switchover. The pipework infrastructure at Stockton on Tees would be developed in order to ensure effective intranet and network linkage. All PLR staff would be provided with new Desktop units in line with BL client upgrade plans and would be able to log on to required BL services as any other BL site would.

5. Communication costs to include work to inform stakeholders, changes to stationery and other communication tools.

6. Net audit savings are to be achieved as PLR’s admin costs currently include payment (to an accountancy firm) for internal audit services and to the NAO for external audit and these costs will be reduced as audits of PLR systems will be absorbed within the BL’s audit budgets in future.

7. Book data is shown as a cost and a saving as PLR currently pays the British Library for the supply of British National Bibliography (BNB) book records. After the transfer the cost to PLR will disappear as will the payment made to the BL.

8. PLR’s admin costs currently include payment for the services of a freelance marketing specialist; PLR will be able to use the BL’s own marketing services in future.

9. After the transfer, and a transition period likely to be until March 2015 during which the postholder of the Registrar public appointment would be contracted by the BL to oversee the transition, a new Head of PLR would assume responsibility for the management of the operation and is likely to be based in the British Library’s Boston Spa office. A net saving in staff costs is expected.

10. It is anticipated that once the transfer of PLR responsibilities to the British Library is fully bedded in some back-office functions currently undertaken by
PLR will be absorbed by the British Library. This will provide opportunities to make staff savings at management level within the existing PLR team.

14 May 2013
APPENDIX 3: OFFSHORE COMBUSTION INSTALLATIONS
(POLLUTION PREVENTION AND CONTROL) REGULATIONS 2013 (SI 2013/971)

Information from Department for Energy and Climate Change

Q1: In Regulation 25(f), mention is made of “significant pollution”. In Regulation 31, mention is made of “serious pollution”. Are there definitions, in primary or secondary legislation, of “significant pollution” and “serious pollution”? If not, how is consistency achieved in assessments made by inspectors?

A1: Paragraph 15(1)(c) of Schedule 1 to the Pollution Prevention and Control Act 1999 (the “PPC Act 1999”) provides for notices in cases of “serious” pollution, hence the use of that word in the “prohibition notice” provisions of regulation 31 to SI 2013/971. The power conferred on an inspector to cause an article to be dismantled is based on the power contained in section 108(4)(g) of the Environment Act 1995. That provision does not limit pollution to “significant” but, given the nature of offshore operations to be inspected, and the fact that the qualification in question was used in predecessor SI 2001/1091 (as amended), it was thus decided to retain the same wording (i.e. “significant pollution”) in regulation 25(f) of new SI 2013/971. Another factor that has to be considered is that any emission of gas may cause “pollution” and therefore, some form of distinction / threshold is needed which is less than “serious” (i.e. a “serious pollution incident” could result in enforcement actions that require the temporary cessation of all activities on an offshore platform in order to resolve the cause / effect of such an incident, whereas an occurrence of “significant pollution” would normally require an Operator - following an assessment by an inspector - to undertake mitigation measures that do not involve stopping a platform’s activities in their entirety).

The existing regulatory Guidance Notes to SI 2001/1091 (as amended) are in the process of being revised to reflect the requirements of SI 2013/971, and DECC will consider providing further guidance on the terms “significant” and “serious” pollution.

Q2: Regulation 33 deals with appeals. In the absence of Rules of Court specific to these provisions, how are appellants expected to know which division of the High Court will handle the matter?

A2: With respect to the appeals process, it is usual drafting to refer just to the High Court and not to a division of the Court. The provisions on appeals in SI 2013/971 is linked to paragraph 15(2) of Schedule 1 to the PPC Act 1999, which refers just to “the High Court”. Any appeals made in accordance with environmental legislation would invariably be handled by the Queen’s Bench Division, and the related process would be explained by DECC to any offshore Operator who might - in the future - wish to launch an appeal against a decision made under SI 2013/971.

17 May 2013
APPENDIX 4: 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 21 May 2013 Members declared the following interests:

**Draft Public Bodies (Abolition of the Registrar of Public Lending Right) Order 2013**

Lord Norton of Louth and Lord Plant of Highfield as authors of downloadable or published material.

**General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules Order of Council 2013 (SI 2013/815)**

Lord Eames as husband of a member of the General Medical Council.

**Attendance:**

The meeting was attended by Lord Eames, Lord Goodlad, Baroness Hamwee, Baroness Morris of Yardley, Lord Norton of Louth, Lord Plant of Highfield, Lord Scott of Foscote and Lord Woolmer of Leeds.