

# Committee For The Scrutiny of the First Minister

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## Evidence Paper - Tribunals Operating in Wales - Administrative Reform

### Introduction

This paper provides written evidence to inform the Committee for the Scrutiny of the First Minister on the issue of the administrative reform of tribunals operating in Wales.

### Administrative Justice

The Administration of Justice generally is not a devolved area. However, devolution has had an impact on the specific subject of administrative justice in Wales, particularly in relation to tribunals.

Tribunals operating in Wales fall into two categories: Welsh tribunals which operate in fields for which executive responsibility has been devolved and cross-border tribunals which operate in fields which are not devolved.

The first phase of devolution under the Government of Wales Act 1998, devolved executive responsibility for policy areas such as education, health and social services and housing. This included the transfer of responsibility for tribunals related to those policy areas, for example tribunals concerned with Special Educational Needs and Mental Health. The National Assembly for Wales also acquired the power to create new tribunals and appeal mechanisms in some devolved policy areas. This power is currently being exercised through the creation, in the Welsh Language Measure, of the new Welsh Language Tribunal.

In January 2010, the Welsh Committee of the Administrative Justice and Tribunals Council (AJTC) published its first special report following its review of tribunals operating in Wales, in which it drew attention to certain shortcomings and made far-reaching recommendations for the modernisation and development of the Welsh tribunals.

The report contains "core" and "other" recommendations. The 5 core recommendations for the Assembly Government to pursue have been given the highest priority. **Recommendation 6 is of particular interest to this committee** – that the **National Assembly scrutinise and monitor the Welsh Assembly Government's implementation of the recommendations in this report**. The remainder, which offer areas for further work and reform, will be treated as special projects and imply a programme of work over 2-3 years. Several recommendations anticipated / support work already underway, within the Assembly Government, to improve the administration of devolved tribunals (i.e. the rationalisation of the Valuation Tribunals into a single Tribunal and the consequential slimming down of the number of members) help to ameliorate some of the concerns of the Welsh Committee.

A central problem identified in the report is that, in many instances, responsibility for tribunals and their administration lies with the departments in the Welsh Assembly Government whose decisions it is the tribunals' duty to consider. The report criticised this arrangement. Tribunals must be sufficiently independent from the departments or agencies whose decisions they are considering.

There has been a ready acceptance by Cabinet of the broad thrust of the recommendations of this report and action has already been taken to address the primary recommendation that there should be a single focal point for administrative justice within the Assembly Government - independent of the departments concerned.

A post to project manage the handling of the report and to develop the future structure for tribunal administration was established earlier this year. The actions needed for the implementation of the recommendations have been identified and an implementation action plan approved by Cabinet.

In order to deliver the essential independence and impartiality, staff who support tribunals and are currently working in policy divisions will transfer, with the relevant budgets, to the Department of the First Minister and Cabinet. These transfers will be cost neutral. The new team will address the core recommendations in the Committee's Report as quickly as possible and will, over the next 2-3 years, develop a rolling programme to address the remaining recommendations.

This puts us on a path of separation of powers which would be more constitutionally appropriate. But it will also help us to address the challenge of the co-ordination and rationalisation of devolved tribunals.

There are other developments in the field of administrative Justice which are relevant. The Courts and Tribunals Integration Programme (CTIP) will bring together Her Majesty's Courts Service (HMCS) and Tribunals Service (TS) into a new single organisation in April 2011. The new agency is to be called Her Majesty's Courts and Tribunals Service. A Ministry of Justice consultation paper on the structural and service benefits of unification will be published on the 30 November 2010.

Creation of the new Service is a step forward. In contrast, the UK Government recently announced its plans to abolish the AJTC, including the Welsh Committee, as part of their Public Bodies Bill.

The AJTC have provided us with a valuable source of information and advice and it would have been useful to have had them to guide us through the implementation of the Welsh Committee's recommendations and to carry out further complementary work. Various options for maintaining some level of support are being examined currently.

To conclude, there is a real opportunity for the Welsh Assembly Government to lead the way in reforming the way in which devolved tribunals operate, and to develop a quality system for the citizens of Wales from the start of the process (the original decision from Government, and the reasons given for the decision), to the end. We have a new focus on administrative justice in Wales, stimulated by the Committee's Report, and there is scope for significant improvement in this aspect of Welsh public administration.