

CONSENT MEMORANDUM

PUBLIC BODIES ACT 2011: ABOLITION OF ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL

Consent Motion

1. “To propose that the National Assembly for Wales agrees, in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make the Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013, in accordance with the draft laid in Table Office on 7 January 2013.

Background

2. This memorandum has been laid by Carwyn Jones, First Minister, in accordance with the arrangements agreed by Business Committee on 7 February 2012.
3. The above Motion is tabled to seek the agreement of the National Assembly for Wales (the “National Assembly”), in accordance with section 9(6) of the Public Bodies Act 2011, that the Secretary of State make an Order for the abolition of the Administrative Justice and Tribunals Council (“AJTC”). Section 9(6) of the Public Bodies Act 2011 requires the consent of the National Assembly in circumstances where an Order made under sections 1 to 5 of that Act makes provision which would be within the legislative competence of the National Assembly if it were contained in an Act of the National Assembly.
4. A copy of the Order was laid in Table Office on 7 January.

Summary of the Order and its Policy Objectives

5. The Order abolishes the AJTC. The AJTC was established by the Tribunals, Courts and Enforcement Act 2007.
6. The AJTC’s main functions can be summarised as follows.
 - (a) keeping under review the administrative justice system;
 - (b) considering ways to make it accessible, fair and efficient;
 - (c) advising on the development of and changes to the system;
 - (d) making proposals for research into the system.

For these purposes “*administrative justice system*” means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures

for making such decisions, the law under which such decisions are made and systems for resolving disputes and airing grievances in relation to such decisions.

The AJTC is also responsible for keeping under review and reporting on the working of listed tribunals and also on statutory inquiries – either of its own volition or as referred to it by the Welsh Ministers, Lord Chancellor or Scottish Ministers. A statutory inquiry is an inquiry or hearing in pursuance of a duty imposed by any statutory provision or an inquiry designated by the Lord Chancellor and Secretary of State.

7. The Welsh Committee of the AJTC exercises similar functions so far as relating to Wales.
8. The decision to abolish the AJTC follows the outcome of the UK Government's review of public bodies. The UK Government believes that an advisory body is no longer required in the field of administrative justice.

Competence Issues

9. The Secretary of State proposes to make the Order pursuant to sections 1, 6 and 35 of the Public Bodies Act 2011. The Order would abolish the AJTC and make consequential amendments associated with the abolition.

10. *To the extent that there are:*

(a) overall systems for making decisions of an administrative or executive nature in relation to particular persons, which fall within the Assembly's areas of competence listed in Schedule 7 GoWA 2006; and

(b) tribunals or statutory inquiries in Wales dealing with matters which fall within the Assembly's areas of competence listed in Schedule 7 GoWA 2006,

it is the view of the Welsh Government that taking these matters in Schedule 7 together, it is within the competence of the National Assembly to abolish a regime which makes provision for the review and reporting on such systems, tribunals and inquiries. It is the view of the Welsh Government that the Order, in abolishing the AJTC, is legislating *partly* for purposes which fall within the legislative competence of the National Assembly. For this reason, the consent of the National Assembly is sought pursuant to section 9(6) of the Public Bodies Act 2011.

11. For example, powers and duties of local authorities and their members and officers are within competence in Schedule 7 of the

2006 Act. The Adjudication Panel for Wales hears references about whether local authority members have breached the authority's code of conduct. Such adjudications are conducted by tribunals. This Order would abolish the AJTC which reviews and reports on such tribunals and such abolition would also, *to that extent*, in the view of the Welsh Government, be within the competence of the Assembly.

12. As a further example, other tribunals in Wales which fall within the scope of AJTC's functions deal with education issues. As education is a matter within competence in Schedule 7, *to that extent*, the abolition of the body which reviews and reports on such tribunals would, in the view of the Welsh Government, be within the competence of the Assembly.

Advantages of utilising this Order

13. It is the view of the Welsh Government that the UK Government is firmly committed to abolishing the AJTC. While the Welsh Government considers that the AJTC carries out important work in relation to tribunal reform in Wales, we have worked out alternative arrangements to carry out the AJTC's role in this respect (see 15 below). We are therefore content that this Order should be made, and that it represents the most appropriate and proportionate legislative vehicle to implement the proposal in Wales, so that the AJTC may be abolished at the earliest opportunity.
14. The intention following abolition of the AJTC is for the Welsh Government to establish a non-statutory body to oversee the reform of tribunals in relation to which it exercises executive power. The Ministry of Justice has also said it will work with the Welsh Government to agree protocols for the body to ensure that the Lord Chancellor gives due consideration to its recommendations on devolved Welsh tribunals and consults the body on relevant matters in relation to devolved Welsh tribunals.

Financial Implications

15. Provided the Welsh Government establishes a non statutory body to oversee such tribunal reform in Wales, the Ministry of Justice will reimburse costs of up to £100,00 per annum in 2013/14 and 2014/15. The continuing need for a non statutory body will be reviewed before 2015.

Carwyn Jones
First Minister