



Briefing for the Public Petitions Committee

Petition Number: [PE1449](#)

Main Petitioner: Dr John Wallace Hinton on behalf of Accountability Scotland

Subject: Maintenance of a Scottish Council for Administrative Justice

Calls on the Parliament to urge the Scottish Government to preserve an independent Scottish Administrative Justice Council when the UK AJTC system is abolished, ensuring the new body has a critical user-interface to enable base-roots input from the public and that it has complete independence from political or civil service influence.

Background

The Administrative Justice and Tribunals Council

The Administrative Justice and Tribunals Council (AJTC) is a UK-wide body with responsibility for overseeing administrative justice – covering tribunals, ombudsmen and statutory inquiries¹ as well as other administrative justice functions such as complaints-handling in the public sector. The Scottish Committee of the AJTC oversees both reserved and devolved aspects of administrative justice in Scotland. Membership of the Scottish Committee includes the UK Parliamentary Ombudsman and the Scottish Public Services Ombudsmen plus additional members appointed by Scottish Ministers.

As part of its reform of public services, the UK Government has decided to abolish the AJTC including its Scottish Committee. The timing of the abolition is not yet known, but the UK Government has power under the Public Bodies Act 2011 to effect the abolition by order. The decision has been questioned in a number of forums. Westminster's Public Administration Committee recommended that the independent oversight provided by the AJTC be retained in its 2012 report "[Future Oversight of Administrative Justice: the proposed abolition of the Administrative Justice and Tribunals Council](#)".

¹ Statutory inquiries are different from public inquiries. Statutory inquiries cover inquiries held in relation to a duty imposed by statute or under an order made by the Lord Chancellor.

Accountability Scotland

Accountability Scotland campaigns to improve the accountability and transparency of decision-making in public sector bodies in Scotland. It is particularly concerned with what it sees as the deficiencies in the way in which the Scottish Public Sector Ombudsman deals with complaints.

Scottish Government Action

A Non-statutory Advisory Committee

The Minister for Community Safety wrote to the Scottish Committee of the AJTC (4 September 2012) to make clear her intention that many of the functions of the Committee will continue after abolition. The immediate solution is to set up a non-statutory advisory committee: however, the Scottish Government will continue to consider longer-term options. Scottish Government officials have confirmed that they are not yet in a position to state which functions of the Committee will be transferred in this manner. In addition, the Scottish Government can only act in relation to the devolved functions of the Committee. Its reserved functions will not be covered by the Minister's current proposal.

Scottish Civil Justice Council

It has also been suggested that the Scottish Civil Justice Council (SCJC) proposed in the Scottish Civil Justice Council and Criminal Legal Assistance Bill currently before the Scottish Parliament could take on some of the functions currently carried out by the Committee. The Scottish Government put forward this proposal in its "[Consultation on the Creation of a Scottish Civil Justice Council](#)" (2011), and it was supported by most respondents.

However, the Bill currently before the Parliament makes no reference to an administrative justice function for the SCJC. This is partly explained by the fact that the devolved tribunals system in Scotland is going to be the subject of significant future reform. A consultation² in relation to proposals has closed but the Scottish Government is yet to publish its response. The full details of the reforms – including what is envisaged in terms of independent oversight – are therefore not yet known.

The [Policy Memorandum](#) to the Scottish Civil Justice Council and Criminal Legal Assistance Bill states (paragraph 29) that the SCJC will only take on any administrative justice functions once judicial leadership for tribunals passes to the Lord President (the head of the civil justice system in Scotland). It is proposed that this will happen as part of the tribunal reform agenda although the timing is not yet clear. Scottish Government officials have confirmed that no final decision has been reached as to which, if any, administrative justice functions will be taken on by the SCJC. Again, the

² Scottish Government. (2012) "[Consultation on the Scottish Government's Proposals for a New Tribunal System for Scotland](#)".

Scottish Government will only be able to act in relation to the devolved functions of the Committee.

Scottish Parliament Action

The Justice Committee has been taking evidence in relation to Stage 1 of the Scottish Parliament's consideration of the Scottish Civil Justice Council and Criminal Legal Assistance Bill. This has included views on what administrative justice role the SCJC should have. Written submissions are available on the Justice Committee's [webpage](#). Relevant oral evidence sessions took place on [26 June 2012](#) and [4 September 2012](#). The Committee will take evidence from the Minister for Community Safety at its next meeting on 18 September.

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