Draft Order laid before Parliament under section 11 of the Public Bodies Act 2011, for approval by resolution of each House of Parliament after the expiry of the 40-day period referred to in section 11(4) of that Act.

DRAFT STATUTORY INSTRUMENTS

2012 No.

PUBLIC BODIES

The Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012

Made - - - - ****

Coming into force in accordance with Article 1

The Secretary of State makes the following Order in exercise of the powers conferred by sections 1, 6(1), (2)(a) and (5) and 35(2) of the Public Bodies Act 2011(**1**) ("the Act"), having consulted in accordance with section 10 of the Act.

In accordance with section 8 of the Act, the Secretary of State considers that this Order—

(a) serves the purpose of improving the exercise of public functions, having had regard to the factors set out in section 8(1); and

(b) does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise.

The consent of the National Assembly for Wales has been obtained in accordance with section 9(6) of the Act.

A draft of this Order, and an explanatory document containing the information required by section 11(2) of the Act, have been laid before Parliament in accordance with section 11(1) after the end of the period of twelve weeks mentioned in section 11(3). In accordance with section 11(4) of the Act, the draft of this Order has been approved by a resolution of each House of Parliament after the expiry of the 40-day period referred to in that provision.

Citation, commencement and extent

1.—(1) This Order may be cited as the Public Bodies (Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board) Order 2012.

(**1**) 2011 c.24

(2) Subject to paragraph (3), this Order comes into force on the day after the day on which it is made.

(3) The following provisions come into force on the day after that on which the other provisions of this Order come into force—

(a) paragraphs 36 and 37 of Schedule 1; and

(b) paragraphs 3 and 4 of Schedule 2.

(4) Amendments, repeals and revocations in this Order have the same extent as the provisions amended, repealed or revoked.

Abolition of Her Majesty's Inspectorate of Court Administration

2.—(1) Her Majesty's Inspectorate of Court Administration, established under section 58 of the Courts Act 2003(**2**), is abolished.

(2) The function of inspecting areas of the Crown Court, county courts and magistrates' courts where prisoners are detained in custody is transferred to Her Majesty's Chief Inspector of Prisons.

(3) The function of inspecting any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts is transferred to Her Majesty's Chief Inspector of Prisons.

(4) Any of Her Majesty's Chief Inspector of Prisons, Her Majesty's Chief Inspector of the Crown Prosecution Service, Her Majesty's Inspectorate of Probation for England and Wales and Her Majesty's Inspectors of Constabulary may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Courts Administration immediately before its abolition.

(5) Paragraph (4) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(6) Schedule 1 (which makes consequential etc provision) has effect.

Rights of entry and inspection

3.—(1) An inspector exercising functions under article 2(2), (3) or (4) may enter any place of work occupied by persons provided under a contract made by the Lord Chancellor by virtue of section 2(4) of the Courts Act 2003.

(2) An inspector exercising functions under article 2(2), (3) or (4) may inspect and take copies of any records kept by persons provided under such a contract which the inspector considers relevant to the discharge of the inspector's functions.

(3) Paragraph (1) does not entitle an inspector—

(a) to be present when the Crown Court, a county court or a magistrates' court is hearing proceedings in private; or

(b) to attend any private deliberations of persons having jurisdiction to hear or determine any proceedings.

(4) The records referred to in paragraph (2) include records kept by means of a computer.

(5) An inspector exercising the power under paragraph (2) to inspect records—

(a) is entitled to have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records in question, and

(b) may require—

(**2**) 2003 c.39. Section 58 has been amended by the Education and Inspections Act 2006 (c.40).

(i) the person by whom or on whose behalf the computer is or has been used, or

(ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford the inspector such reasonable assistance as the inspector may require.

(6) The powers conferred by paragraphs (1), (2) and (5) may be exercised at reasonable times only.

Abolition of the Public Guardian Board

4.—(1) The Public Guardian Board, established under section 59 of the Mental Capacity Act 2005(**3**), is abolished.

(2) Schedule 2 (which makes consequential etc provision) has effect.

Name
Parliamentary Under Secretary of State
Ministry of Justice

Date

(**3**) 2005 c.9. Section 59 has been amended by the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I 2006/1016).

SCHEDULE 1 Article 2(6)

Amendments consequential etc on the abolition of
Her Majesty's Inspectorate of Court Administration

Prison Act 1952

1. The Prison Act 1952(**4**) is amended as follows.

2. In section 5A, after subsection (5B), insert—

"(5C) The Chief Inspector shall also inspect or arrange for the inspection of—

(a) areas of the Crown Court, county courts and magistrates' courts where prisoners are detained in custody; and

(b) any vehicle used to transport prisoners in custody to and from the Crown Court, county courts or magistrates' courts,

and shall report to the Secretary of State on them."

3. In Schedule A1 (further provision about Her Majesty's Chief Inspector of Prisons)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 6, insert—

"Joint inspection of courts

7.—(1) The Chief Inspector may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the Chief Inspector under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

Police Act 1996

4. The Police Act 1996(**5**) is amended as follows.

5. In Schedule 4A (further provision about Her Majesty's Inspectors of Constabulary)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 7, insert—

(**4**) 1952 c.52. Section 5A was inserted by the Criminal Justice Act 1982 (c.48) and has been amended by the Immigration, Asylum and Nationality Act 2006 (c.33) and the Police and Justice Act 2006 (c.48). Schedule A1 was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007 (c.28), the Health and Social Care Act 2008 (c.14), the Offender Management Act 2007 (Consequential Amendments) Order 2008 (S.I 2008/912), and the Health and Social Care Act 2008 (Consequential Amendments No 2) Order 2010 (S.I 2010/813).

(**5**) 1996 c.16. Schedule 4A was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, the Police Reform and Social Responsibility Act 2011 (c.13) (not yet in force), and the Offender Management Act 2007 (Consequential Amendments) Order 2008.

"Joint inspection of courts

8.—(1) The inspectors of constabulary may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the inspectors of constabulary under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

Audit Commission Act 1998

6. The Audit Commission Act 1998(**6**) is amended as follows.

7. In Part 1 of Schedule 2A (interaction with other authorities)—

(a) paragraph 1(1)(e) is repealed;

(b) paragraph 1(2)(c) and the preceding "and" are repealed.

Crown Prosecution Service Inspectorate Act 2000

8. The Crown Prosecution Service Inspectorate Act 2000(**7**) is amended as follows.

9. In the Schedule (further provision about Her Majesty's Chief Inspector of the Crown Prosecution Service)—

(a) paragraph 2(2)(d) is repealed;

(b) paragraph 4(d) is repealed;

(c) paragraph 5(3)(d) is repealed;

(d) after paragraph 8, insert—

"Joint inspection of courts

9.—(1) The Chief Inspector may inspect any aspect of the Crown Court or magistrates' courts in relation to their criminal jurisdiction which could have been inspected by Her Majesty's Inspectorate of Court Administration immediately before its abolition.

(2) Sub-paragraph (1) applies only if the inspection includes matters other than any aspect of the Crown Court or magistrates' courts.

(3) The power of the Chief Inspector under this paragraph is in addition to the power under paragraph 5 to act jointly with another public authority."

(**6**) 1998 c.18. Schedule 2A was inserted by the Local Government and Public Involvement in Health Act 2007 and has been amended by the Health and Social Care Act 2008, the Housing and Regeneration Act 2008 (c.17), the Offender Management Act 2007 (Consequential Amendments) Order 2008, and the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 (S.I 2010/844).

(**7**) 2000 c.10. The Schedule was inserted by the Police and Justice Act 2006 and has been amended by the Local Government and Public Involvement in Health Act 2007, the Health and Social Care Act 2008, and the Offender Management Act 2007 (Consequential Amendments) Order 2008.