

House of Commons
Regulatory Reform Committee

**PROPOSAL FOR THE
REGULATORY REFORM
(SCHEMES UNDER SECTION
129 OF THE HOUSING ACT
1988) ORDER 2003**

Seventh Report of Session 2002–03

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*Report, together with
Proceedings of the Committee
and Appendix*

Ordered by The House of Commons to be printed 11th February 2003

HC 436
Published on 13th February 2003 by authority of the House of Commons
London : The Stationery Office Limited
£6.00

REGULATORY REFORM COMMITTEE

The Regulatory Reform Committee is appointed to consider and report to the House on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any “subordinate provisions order” made under the same Act.

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Mrs Claire Curtis-Thomas was a Member of the Committee until 9 January 2003, when she was discharged and Mr John MacDougall added.

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No 141, available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Committee’s website http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm. A list of reports of the Committee in the last Parliament may be found at the back of this report.

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SEVENTH REPORT

The Regulatory Reform Committee has agreed to the following Report:

PROPOSAL FOR THE REGULATORY REFORM (SCHEMES UNDER SECTION 129 OF THE HOUSING ACT 1988) ORDER 2003

Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) Order 2003 in accordance with Standing Order No. 141. In order to provide some degree of certainty for those affected, we are making a report of our assessment of the proposal against the statutory and Standing Order criteria now. However, some 14 days of the period for Parliamentary consideration still remain, during which time we may yet receive further representations. We will therefore make our formal recommendation to the House later in the 60 day period.

2. We understand that the proposal will be revised before a draft order is laid before the House. On this basis, our intention is to recommend that the proposal should be amended before a draft order is laid before the House. Our report on the evidence before us is set out below.

Introduction

3. On 10 December 2002 the Government laid before Parliament the proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) Order 2003 in the form of a draft of the order and an explanatory statement from the Office of the Deputy Prime Minister (the Department).¹ The proposed regulatory reform order would amend section 129 of the Housing Act 1988 (the 1988 Act) by removing the requirement for local housing authorities in England to obtain approval from the Secretary of State where they wish to operate a scheme providing for payments to assist tenants in obtaining other accommodation. Such a scheme is known as a cash incentive scheme.

4. The House has instructed us to examine the proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether the Government should proceed, whether amendments should be made, or whether the order should not be made.²

5. Our discussion of matters arising from our examination is set out below. Where a criterion specified in Standing Order No. 141(6) is not discussed in this report, this indicates that we have no concerns to raise about that criterion. In the course of our examination, we requested further information from the Department about a number of matters. The Department's response is discussed in paragraphs 14, 26 and 27, 29, 32, 34 and 40 below.

Background

6. Section 129 of the 1988 Act enables a local housing authority to make a cash incentive scheme. Under such a scheme, an authority may choose to make cash grants to qualifying tenants or licensees of the authority for the purpose of freeing up existing council housing for households in housing need. Cash grants may be made for:

¹ Copies of the proposal are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office web site <http://www.cabinet-office.gov.uk/regulation/act/proposals.htm>

² Standing Order No. 141(2)

- (a) purchasing properties on the open market, and/or
- (b) carrying out works to an existing house to provide additional accommodation.

In 2001/02, 56 local housing authorities ran schemes and made a total of 670 grants.³ In 2000/01, 827 grants were given in England totalling approximately £11 million.⁴ The Department states that cash grants made under (b) are rare.

7. Under section 129, a local authority must have a scheme approved by the Secretary of State before implementing it (the section 129 requirement). At the time at which the section 129 requirement was introduced, schemes in England were partly funded by central government grant, meaning that central government had a direct financial interest in their operation. This is no longer the case, as discussed in paragraph 9 below.

8. The information that should be included in a scheme is specified in guidance notes issued by the Department from time to time.⁵ The consultation document on the proposal states that, generally, the Secretary of State requires as a condition of his approval that applicants must be local authority tenants with at least two years' public sector tenure. Authorities in London and the east and south-east of England may offer grants of up to 80% of the average right to buy discount in their area. These authorities may also pay grants of £13,000 or more; in these cases the Secretary of State will generally require as a condition of approval that the applicant has been a public sector tenant for a minimum of five years. Authorities elsewhere in England may offer grants of no more than £10,000. It is for each local authority to consider what level of grant would be appropriate; grants can be made at a flat rate or may vary according to the size of the accommodation released.⁶

Purpose of the proposal

9. The proposal would remove the section 129 requirement in respect to England, so that the Secretary of State would not have to approve schemes. The position in respect of Wales is discussed in paragraphs 12 to 14 below. The Department considers that the section 129 requirement is no longer needed because, in 1999, the part-funding of cash incentive schemes by central government grant ended, as part of a Government drive to reduce support provided to local government in "ring-fenced" form for specific schemes. The Government considers that reducing ring-fencing provides local authorities with greater freedom to determine how they can make best use of available resources to address local needs and priorities. As a result, central government no longer has a direct financial interest in the operation of cash incentive schemes.

Timing of the proposal

10. Shortly after the proposal was laid, the Minister of State for Housing, Planning and Regeneration wrote to us, seeking our co-operation in reporting to the House on the proposed order as soon as possible. The Minister would like the proposed regulatory reform order to be in force by 1 April 2003, so that local authorities can run their schemes for 2003/04 without the need to have them approved by the Secretary of State. The Minister acknowledges that "the timetable is extremely tight". The 60 day statutory period expires on 7 March; the first day on which the draft order could be laid will therefore be

³ See the explanatory statement, para 5.3; it is not clear whether this figure applies only to England or whether it includes Wales.

⁴ Explanatory statement, Appendix B, para 2.6

⁵ See Appendix C of the explanatory statement for a copy of the most recent guidance note.

⁶ Explanatory statement, Appendix B, para 2.3

10 March.⁷ Standing Order No. 141(15) then allows us 15 sitting days in which to report to the House on the draft order.⁸

11. Taking the Minister's request into account, we have reported on the proposal as soon as possible in the 60 day statutory period. We undertake to report on the draft order as soon as possible in the 15 sitting day period, although our ability to do so will obviously be dependent on the Minister ensuring that the draft order complies with the requirements of the Regulatory Reform Act and takes account of the issues raised in this report.

Extent of the proposal's application

12. Although section 129 applies to both England and Wales, the proposal would remove the section 129 requirement in relation only to England, and not to Wales. The National Assembly for Wales exercises the Secretary of State's section 129 power in Wales, in accordance with the Transfer of Functions Order; consequently, if the proposal were to apply to Wales, it would require the consent of the National Assembly.

13. In the explanatory statement, the Department states that the proposal would apply only to England because "the Secretary of State considers that it is probable that approval [from the National Assembly] would not be forthcoming".⁹ The Secretary of State's assessment appears to be based on a decision by the National Assembly's Minister for Finance, Local Government and Communities, cited in the explanatory statement, that the National Assembly "should not agree" to the proposal extending to Wales, in view of the comparatively little use made of such schemes in Wales.¹⁰ Currently, only one scheme has been made in Wales under section 129. Additionally, the Department notes the opinion of the Wales Office that, as very little use is made of section 129 in Wales, there is no significant benefit to be gained from the application of the proposal to Wales.

14. We asked the Department to elaborate on the statement that the National Assembly "should not agree" to the proposal extending to Wales. We also asked the Department to provide further details of the consultation process it undertook with respect to the National Assembly. The Department stated that the National Assembly considers that the proposal should not seek to cover Wales because of "greater priorities for the Assembly's time".¹¹ This assessment appears to be based on the minimal use made of cash incentive schemes in Wales. **We are satisfied that the Department undertook appropriate consultation with respect to the National Assembly for Wales.**

Assessment of the proposal against Standing Order No. 141(6) criteria

15. Before setting out our assessment of the proposal, we wish to comment on the adequacy of the explanatory statement accompanying the draft order. **We consider that the quality of the explanatory statement is unsatisfactory.** It addresses the requirements of section 6(2) of the Regulatory Reform Act in a muddled fashion and, in respect of requirements relating to burdens, undertakes only a superficial analysis of whether these are in fact met. We are concerned that the Department has brought forward a proposal for a regulatory reform order on the basis of what appears to be an inadequate analysis, particularly given the Minister is seeking to have priority given to the progress of the proposed order. **We expect any future explanatory statements from the Department to address the requirements of the Regulatory Reform Act in a much more satisfactory manner.**

⁷ The 60 day statutory period is provided for in section 8(2) of the Regulatory Reform Act.

⁸ We anticipate that this period will expire on 28 March.

⁹ Explanatory statement, para 4.1

¹⁰ Explanatory statement, para 4.2

¹¹ Appendix, para A1

Inappropriate use of delegated legislation

16. The proposal appears to be appropriate for delegated legislation.

Removal or reduction of burdens

17. We are satisfied that the proposal removes a burden imposed on local housing authorities in England. As it is currently drafted, we consider that the proposal re-enacts a provision which imposes a burden on local housing authorities in respect of Wales. However, the Department has informed us that it intends to revise the proposed order in such a way that it will no longer re-enact a burden in respect of Wales. **If the proposed order is revised in the way indicated by the Department, we consider that the proposal would no longer re-enact a provision having the effect of imposing a burden on local housing authorities in Wales.**

Removal of burdens in respect of England

18. The Department considers that the section 129 requirement imposes the following three burdens:

- (a) a burden “affecting local [housing] authorities”
- (b) a burden on the Secretary of State, because he or she is required to consider applications from local housing authorities to have their schemes approved, and
- (c) a burden on government regional offices in assessing these applications; currently, government departments take around ten person days a year to assess these applications.

The Department considers that the proposal would remove these three burdens, and would not impose any new burden.

19. The Department suggests that the removal of burden (a) would benefit local housing authorities by:

- saving authorities the work involved in applying for the Secretary of State’s approval of a scheme
- removing the delays involved in waiting for the Secretary of State’s approval of a scheme, particularly in relation to minor revisions of scheme conditions, and
- allowing authorities freedom to determine the conditions that will apply to their schemes.

20. From the information provided by the Department, we infer that the nature of the burden imposed by section 129 is that, if a local housing authority wishes to implement a scheme, it must first apply to the Secretary of State for him or her to approve the scheme. We consider that this is a burden imposed on *all* local housing authorities, not just those authorities that in fact choose to operate a scheme. Section 129 therefore imposes a requirement on local housing authorities that constitutes a burden for the purposes of section 2(1) of the Regulatory Reform Act. Clearly, the proposal would remove this burden by removing the section 129 requirement. **We are therefore satisfied that the proposal removes a burden imposed on local housing authorities in England.**

Re-enacting provisions that impose burdens in respect of Wales

21. In its explanatory statement, the Department argued that “the entire order is made only with a view to the removal of the requirement of approval in England, and not also with a view to re-enactment of the requirement in Wales.”¹² We considered that the Department could not sustain this argument: as currently drafted, the proposal would clearly re-enact the section 129 requirement in respect of Wales, thus re-enacting a provision which imposes a burden on local housing authorities. Consequently, if the proposal were to proceed as currently drafted, it would need to satisfy section 1(1)(b) of the Regulatory Reform Act. Section 1(1)(b) requires that a provision having the effect of imposing a burden may be re-enacted only where the burden is proportionate to the benefit expected to result from the re-enactment.

22. In the event that we did consider that the proposal would re-enact a provision, the Department argued that the burden imposed by the re-enacted provision would be proportionate to the benefit which would be expected to result from its re-enactment. The Department based its assertion that the re-enacted burden would be proportionate on the following assessment:

The burden is very slight as the schemes are not used much and the Secretary of State considers that the slight burden is proportionate to the benefit of approval in the circumstances applicable in Wales.¹³

23. We were not convinced by this argument. The burden imposed by section 129 affects *each individual local housing authority*. It is therefore a burden imposed on every local housing authority in Wales, not just the one authority that is in fact choosing to operate a scheme, because any local housing authority may *choose* to operate a scheme. Although only one local housing authority in Wales has chosen to operate a scheme, the burden on local housing authorities is no more “slight” simply because only one such authority currently operates a scheme.

24. Consequently, on the basis of the explanatory statement, we were not convinced that the Department was justified in seeking to distinguish the “circumstances applicable in Wales” from those applicable in England. The same burden applies in both England and Wales, regardless of how many local housing authorities choose to take up the option of operating a scheme. The Department had therefore not shown what benefit would result from the re-enactment of section 129 with respect to Wales, nor whether this benefit would be proportionate to the burden arising from the re-enacted provision.

25. We therefore asked the Department to comment on whether, if section 129 were to be re-enacted in respect of Wales, the imposition of the burden would be proportionate to the benefit which would be expected to result from its re-enactment. The Department responded by announcing its intention to revise the proposed draft order:

Given that housing functions have been devolved to the National Assembly for Wales, it is difficult to see how the Secretary of State can be sufficiently informed to take a view on the effect of re-imposing the burden (and whether or not the burden would be proportionate to the benefit) without requesting detailed evidence from the National Assembly. In the circumstances it has therefore been decided to re-draft the order so as to give effect to the proposal on which consultation took place, while avoiding the making of a provision which will in the opinion of the Committee involve the exercise of the power in section 1(1)(b). A copy of the re-drafted order is attached. The Department apologises for any lack of clarity caused by its failure to be more precise in the [explanatory statement] as to its view of the law.¹⁴

¹² Explanatory statement, para 7.1

¹³ Explanatory statement, para 7.1

¹⁴ Appendix, para A3

26. The revisions to the proposed draft order put forward by the Department do not change the policy underlying the order. The revisions are only drafting changes, and would mean that section 129 of the 1988 Act would continue to apply to Wales in the same way in which it currently does. Consequently, if the draft order is revised in the manner suggested by the Department, it will no longer attract the test set out in section 1(1)(b) of the Regulatory Reform Act.

27. We are therefore satisfied that, if the proposed draft order is revised in the way indicated by the Department, the proposal will no longer re-enact a provision having the effect of imposing a burden on local housing authorities in Wales. The revised draft order would not affect the application of section 129 of the 1988 Act to Wales and the section 1(1)(b) test would no longer be applicable.

28. However, we are concerned by the Department's statement that "it is difficult to see how the Secretary of State can be sufficiently informed to take a view on the effect of re-imposing the burden (and whether or not the burden would be proportionate to the benefit) without requesting detailed evidence from the National Assembly." This statement contradicts the assertion in the explanatory statement that, if the Secretary of State is demonstrated to be wrong in his assessment that the proposal would not re-enact the section 129 requirement in relation to Wales, then he "considers that the burden of approval in Wales is proportionate to the benefit which is expected to result from re-enactment, in relation to Wales."¹⁵ We fail to understand how the Secretary of State can have initially asserted that the section 1(1)(b) test is satisfied but then, upon subsequent questioning, state that he is not sufficiently well-informed to assess whether the section 1(1)(b) test is satisfied. **We expect both the Department and the Secretary of State to ensure, in respect of any future proposals, that any assertion that a particular test of the Regulatory Reform Act is satisfied is based on adequate and convincing evidence.**

Maintenance of necessary protection

29. The Department considers that the proposal would not lessen any existing protection. It points to a number of existing general constraints on local housing authorities which it considers will ensure necessary protections are maintained. These constraints would require a local housing authority to:

- be able to demonstrate that a scheme was an appropriate use of public funds and that it represented good value for money (local authorities are required to be able to demonstrate this in respect of all their expenditure)
- have sufficiently robust systems in place to detect fraud
- exercise a duty of fiduciary care towards its council taxpayers by taking their interests into account when deciding whether to incur expenditure
- take account of inspection reports by the Audit Commission and adhere to the principles of Best Value, by monitoring the operation of a scheme to ensure it continues to deliver good value for money.

30. Currently, local housing authorities operating schemes are required to carry out means testing of applicants' income and savings to ensure that grants are not awarded to tenants who can afford to buy without assistance and that applicants have the resource to sustain home ownership once they have moved into their new home. In the consultation document on the proposal, the Department states that, if the proposed draft order is made,

¹⁵ Explanatory statement, para 7.1

it expects local housing authorities to continue to carry out means testing.¹⁶ We asked the Department whether it would consider it appropriate for a local housing authority not to continue carrying out means testing and, if not, to tell us what sanctions there would be against an authority which did not carry out means testing.

31. The Department told us that, if the proposed draft order is made, local housing authorities would, as now, need to be satisfied that any grants made under a cash incentive scheme are appropriate and represent good value for money. This should involve an authority ensuring that an applicant can afford to sustain home ownership and that he or she does not have sufficient resources to purchase a property on the open market without the grant. The Department states that it would not expect any authority to run a scheme without means testing, but that there would no specific sanction if an authority did not carry out means testing. However, an authority would continue to be obliged to act in accordance with general administrative law principles on reasonableness, including those relating to an authority's fiduciary duty, and with the need to satisfy auditors about financial prudence and propriety.

32. Under section 129, the information required in a scheme is specified in guidance notes issued by the Department (as discussed in paragraph 8 above). The removal of the section 129 requirement would give authorities freedom to determine the conditions of their schemes, within the limits of the protections listed above. The Department notes that a number of the consultation responses from local housing authorities commented that a "good practice" guide would be welcome. It agrees that this would be a good idea and is planning to issue non-statutory guidance to local housing authorities in February 2003. This guidance will set out the range of issues to be addressed in deciding whether to run a scheme and in establishing a scheme framework.

33. We also asked the Department whether it intends to undertake any monitoring of cash incentive schemes to establish whether local housing authorities are following good practice. The Department told us that, if the proposed draft order is made, it intends to carry out an analysis of its impact over the next 18 months, although there are as yet no detailed plans in place. In addition to this, information on the number of cash incentive scheme grants, the total expenditure on grants and the average value of a grant will continue to be available from the regular returns that authorities provide on housing capital expenditure. The Department states that it is keen to promote greater use of cash incentive schemes by local housing authorities in high demand areas and that this will necessarily involve discussions between government regional offices and authorities about the operation and structure of schemes.

34. We are therefore satisfied that the proposal continues the necessary protection provided by the 1988 Act. We trust that, over the next 18 months, the Department will carry out its intended analysis of the impact of the proposed draft order, and we ask the Department to inform us of the results of any such analysis.

Adequate consultation

35. We are satisfied that the proposal has been the subject of an adequate consultation process and that the Department has taken appropriate account of the consultation responses. The Department published a consultation document on the proposal on 16 August 2002. The document was sent to all local authorities in England,¹⁷ to regional assemblies and to 26 other interested organisations; it was also sent to the National Assembly for Wales and to the Wales Office. The document was made available on two government web sites. Those consulted were given nine weeks to respond.

¹⁶ Explanatory statement, Appendix B, para 3.5

¹⁷ See the explanatory statement, Annex A of Appendix B, for a complete list of consultees.

36. Responses were received from 20 local authorities and six representative organisations.¹⁸ The responses were strongly supportive of the proposal; a number of local housing authorities indicated that the removal of the section 129 requirement would allow them to operate schemes more effectively.

Preventing exercise of right or freedom

37. **We are satisfied that the proposal would not prevent any person from continuing to exercise any right or freedom that he or she might reasonably expect to continue to exercise.** As the Department states, the decision to run a scheme is a matter for individual local housing authorities to decide in the light of local circumstances; tenants have no specific right to a grant under such a scheme.

Costs and benefits

38. In relation to estimated increases or reductions in costs, the Department considers that savings would result from staff time freed by removing the section 129 requirement. The Department states that government regional offices would save around ten person days a year. Initially, it was not clear whether the Department considered that the proposal would also result in savings in local housing authorities' staff time. In the consultation document, the Department states that the proposal would benefit local housing authorities from an administrative point of view, as authorities would no longer need to devote staff time and other resources to applications for approval of schemes.¹⁹ By contrast, in the explanatory statement, the Department describes such savings as "negligible", because authorities choosing to operate schemes would still need to formulate and administer them.²⁰

39. We sought clarification from the Department about whether it considers that the proposal would result in savings in local housing authorities' staff time, given these apparently contradictory statements. The Department explained that the description of such savings as "negligible", in the explanatory statement, reflects the Department's current position. The Department re-assessed the estimate it had made in the consultation document as a consequence of additional information provided by some local housing authorities in the consultation responses. Authorities' staff time would still be taken up in formulating and operating schemes.

40. We note that the Department also identifies likely reductions in costs resulting from local housing authorities' ability to make more effective use of schemes, because of the increased flexibility that would result from the proposal. The Department states that generating extra social tenancies through cash incentive schemes is substantially cheaper than providing new housing through registered social landlords. In London and south-east England, where demand for housing is greatest, tenancies are being generated through cash incentive schemes with grants of up to £30,000, whereas the cost of providing new social housing is around £100,000 per property. The Department states that it cannot quantify how many more council houses would be freed up for those in housing need if the proposed draft order were to be made.

41. In relation to other benefits, the Department considers that the proposal would remove delays caused to local housing authorities in the course of seeking the Secretary of State's approval for schemes.

¹⁸ See the explanatory statement, Appendix D, for a complete list of respondents to the consultation document.

¹⁹ Explanatory statement, Appendix B, para 5.1

²⁰ Explanatory statement, para 12.1

42. We are therefore satisfied that the proposal has been the subject of, and takes appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation.

Conclusion

43. On the evidence currently before us,²¹ we conclude that a draft order revised in the manner discussed in paragraph 26 above should be laid before the House.

²¹ See paragraph 1 above.

Appendix

Letter from the Office of the Deputy Prime Minister to the Committee Specialist

Proposal for a draft Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) Order 2003: request for further information

Q1. Can the Department elaborate on its statement that the National Assembly for Wales' Minister for Finance, Local Government and Communities has decided that the National Assembly "should not agree" to the proposal extending to Wales?

A1. Both the National Assembly (NAW) and the Wales Office were consulted about the inclusion of Wales in this proposed RRO. Under s.1(5) of the Regulatory Reform Act 2001, an order removing a function of the NAW requires their consent. The formal response from the officials in NAW stated that their Minister for Finance, Local Government and Communities "has decided that, in view of the comparatively little use made of the scheme in Wales, the proposed Regulatory Reform Order should not seek to cover Wales". This primarily reflected their view that, given that the scale of the current burden (only one authority affected), there were greater priorities for the Assembly's time.

Q2. Can the Department provide further details of the consultation process it undertook with respect to the National Assembly?

A2. The first contact with the NAW about the proposed deregulation of schemes under section 129 was made in early January 2002. This explained that ODPM Ministers were considering ending the requirement for authorities to obtain approval for such schemes, provided some background to this and explored the process for establishing whether the deregulation should apply to Wales. On 30 January 2002 officials in the Department wrote to HM Treasury seeking their agreement to proceed with the deregulation. The NAW was copied in on this correspondence. There were further contacts at official level before the NAW's formal response in June which indicated that the National Assembly's Minister for Finance, Local Government and Communities had decided that, in view of the comparatively little use made of the scheme in Wales, the Order should not seek to cover Wales. The proposal to proceed with deregulation but not to cover Wales was cleared with Ministers through DA and LP Committees. The NAW have been consulted on the draft order and the associated explanatory statement. Consultation also took place with the Wales Office who wrote to the National Assembly's Minister for Finance Local Government and Communities saying it would be more efficient if the regulatory reform order related to England.

Q3a. What benefit is expected to result from the re-enactment of the section 129 requirement that local housing authorities must obtain approval from the National Assembly of Wales to operate a cash incentive scheme?

Q3b. Is this benefit proportionate to the burden imposed on local housing authorities by section 129?

A3. The aim of this order was to remove the burden in England and to maintain the status quo in Wales rather than to re-enact the provision and, therefore, re-impose the burden in Wales. However, given that the Committee clearly takes the view that s.1(1)(b) of the Regulatory Reform Act 2001 is engaged, it has become necessary to consider how best to address the problem.

Before making an order that was intended only to affect burdens in England, the Department had to consider whether it was appropriate to do so. It is accepted that there is no difference between housing authorities in England and Wales in the limit on an authority's statutory powers to make schemes under s.129 of the Housing Act 1988 arising from the need for the Secretary of State's approval or in the case of authorities in Wales that of the National Assembly. In Wales, only one authority is currently operating a scheme under section 129. The NAW concluded that the current legislation didn't represent a significant actual burden for all authorities and in the light of this concluded that there were greater priorities for the Assembly's time. Ministers concluded that the approval requirement should be removed only in respect of authorities in England.

Given that housing functions have been devolved to NAW, it is difficult to see how the Secretary of State can be sufficiently informed to take a view on the effect of re-imposing the burden (and whether or not the burden would be proportionate to the benefit) without requesting detailed evidence from the National Assembly. In the circumstances it has therefore been decided to re-draft the order so as to give effect to the proposal on which consultation took place, while avoiding the making of a provision which will in the opinion of the Committee involve the exercise of the power in s.1(1)(b). A copy of the re-drafted order is attached. The Department apologises for any lack of clarity caused by its failure to be more precise in the Statement as to its view of the law.

Q4. When is it intended to issue the good practice guide referred to in paragraph 8.4 of the explanatory statement?

A4. We intend to issue a non-statutory guidance note to local housing authorities in February 2003.

Q5. Does the Department intend to undertake any monitoring of cash incentive schemes to establish whether they are following good practice? If so, how and when will that monitoring be undertaken?

A5. Information on the number of cash incentive scheme grants, total expenditure and average value of a grant will continue to be available from the regular returns that authorities provide on housing capital expenditure. The

Government is keen to promote greater use of the Cash Incentive Scheme by authorities in high demand areas and this will involve discussions between Government Offices and authorities about the operation and structure of schemes. Although there are not as yet any detailed plans in place, we will want to carry out some analysis of the impact of deregulation over the next 18 months.

Q6. Would the Department consider it appropriate for a local housing authority not to continue carrying out means testing? If not, what sanctions would there be against an authority which did not carry out means testing?

A6. Local authorities will, as now, need to be able to be satisfied that any grants made are appropriate and represent good value for money. In the context of CIS grants this should involve ensuring that an applicant can afford to sustain home ownership and that they do not have sufficient resources to purchase a property on the open market without the grant. We would not expect any authority to run a scheme without a means test but there would not be any sanctions, other than general administrative law principles on reasonableness, including those relating to an authority's fiduciary duty, and the need to satisfy auditors about financial prudence and propriety. There is no statutory requirement to means test in relation to renewal grants paid to improve poor conditions in private sector housing following the recent deregulation in that area. Although the present approval requirement ensures that means testing is carried there are no specific details which need to be met. This means that authorities have considerable flexibility over what they do now.

Q7. Can the Department clarify whether it considers that the proposal would result in savings in local housing authorities' staff time, given the apparently contradictory statements in the consultation document and the explanatory statement? Did the re-assessment in the explanatory statement arise as a result of the consultation responses?

A7. The reassessment in the explanatory document arose from additional information provided by some authorities in the consultation process. However it is still the case that the Order will remove a burden from local authorities. Our consultation document recognised that authorities would still need to spend time working up schemes and operating schemes that the administrative savings would be small. There will also be benefits to authorities in terms of the delays in starting up or amending schemes linked with the approval process and the flexibility to tailor schemes more to local circumstances.

Q 8. Does the Department stand by its assessment that, if the proposed draft order were made, government regional offices would save around ten person days a year, given the issues raised about monitoring cash incentive schemes to establish whether local housing authorities are following good practice (set out under "Whether the proposal continues all necessary protections", above).

A8. Yes. The estimate relates to the savings in the administration of applications for approval, and in dealing with requests for information (from authorities and tenants) about the approval arrangements. General issues about the role of CIS as part an authority's overall housing strategy will continue as now.

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

TUESDAY 11 FEBRUARY 2003

Mr Peter Pike, in the Chair

Mr Brian Cotter

Mr John MacDougall

Mr Denis Murphy

Dr Doug Naysmith

Andrew Rosindell

The Committee deliberated.

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Paragraphs 1 to 43 read and agreed to.

A paper was ordered to be appended to the Report.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till Tuesday 4 March 2003 at half past Nine o'clock

**LIST OF COMMITTEE REPORTS PUBLISHED IN THE
PREVIOUS SESSION OF PARLIAMENT**

The following reports were published during the previous Session of Parliament by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee. All reports are available from The Stationery Office.

Session 2001–02

Report	Title	HC number
First	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2001	265
Second	Draft Regulatory Reform (Special Occasions Licensing) Order 2001	388
Third	Draft Deregulation (Disposals of Dwelling-Houses By Local Authorities) Order 2001	449
Fourth	Proposal for the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	583
Fifth	<ul style="list-style-type: none"> • Draft Deregulation (Restaurant Licensing Hours) Order 2002 • Draft Deregulation (Bingo and other Gaming) Order 2002 • Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002 	599
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	<ul style="list-style-type: none"> • Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002 • Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002 	677
Eighth	Proposal for the Regulatory Reform (Carer's Allowance) Order 2002	691
Ninth	<ul style="list-style-type: none"> • Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002 • Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002 	708
Tenth	<ul style="list-style-type: none"> • Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 • Draft Regulatory Reform (Carer's Allowance) Order 2002 	807
First Special Report	Further report on the Handling of Regulatory Reform Orders	389

The following Reports were published by the Regulatory Reform Committee during the last Session of Parliament under its current name. All reports are available from The Stationery Office.

Session 2001–02

Report	Title	HC number
Eleventh	Draft Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	867
Twelfth	Proposal for the Regulatory Reform (Removal of the 20 Member Limit) Order 2002	1104
Thirteenth	Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003	1247
Fourteenth	Draft Regulatory Reform (Removal of 20 Member Limit in Partnerships Etc.) Order 2002	1303
Second Special Report	The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001-02	1029
Third Special Report	The Handling of Regulatory Reform Orders (III)	1272

The following reports have been published during this Session of Parliament.

Session 2002–03

Report	Title	HC number
First	<ul style="list-style-type: none"> • Proposal for the Regulatory Reform (Credit Unions) Order 2002 • Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002 	82
Second	Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003	182
Third	Proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	183
Fourth	Draft Regulatory Reform (Special Occasions Licensing) Order 2002	193
Fifth	Proposal for the Regulatory Reform (Housing Management Agreements) Order 2003	328
Sixth	<ul style="list-style-type: none"> • Draft Regulatory Reform (Credit Unions) Order 2003 • Draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 	329

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