

House of Commons
Regulatory Reform Committee

**DRAFT REGULATORY REFORM
(HOUSING MANAGEMENT
AGREEMENTS) ORDER 2003**

Eighth Report of Session 2002–03

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*Report, together with
Proceedings of the Committee*

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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.

Current membership

Mr Peter Pike (*Labour, Burnley*) (Chairman)
Mr Russell Brown (*Labour, Dumfries*)
Brian Cotter (*Liberal Democrat, Weston-super-Mare*)
Mr Jeffrey M. Donaldson (*Ulster Unionist, Lagan Valley*)
Mr Paul Goodman (*Conservative, Wycombe*)
Mr Dai Havard (*Labour, Merthyr Tydfil and Rhymney*)
Andy King (*Labour, Rugby and Kenilworth*)
Mr Mark Lazarowicz (*Labour, Edinburgh North and Leith*)
Mr Andrew Love (*Labour/Co-operative, Edmonton*)
Mr John MacDougall (*Labour, Central Fife*)
Chris Mole (*Labour, Ipswich*)
Mr Denis Murphy (*Labour, Wansbeck*)
Dr Doug Naysmith (*Labour/Co-op, Bristol North West*)
Andrew Rosindell (*Conservative, Romford*)
Mr Anthony Steen (*Conservative, Totnes*)
Brian White (*Labour, Milton Keynes North East*)

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.

Contacts

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EIGHTH REPORT

The Regulatory Reform Committee has agreed to the following Report:

DRAFT REGULATORY REFORM (HOUSING MANAGEMENT AGREEMENTS) ORDER 2003

Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Housing Management Agreements) Order 2003 in accordance with Standing Order No. 141. We recommend unanimously that the draft order be approved.

Introduction

2. On 24 February 2003 the Deputy Prime Minister and First Secretary of State (the responsible Minister) laid the draft order before Parliament, together with an explanatory statement from the Office of the Deputy Prime Minister (the Department).¹ We have already reported on the proposal for this order.²

3. The draft order would amend section 27 of the Housing Act 1985 (the 1985 Act) so as to reduce the current burden on local authorities concerning the circumstances in which they can delegate their housing management functions. Specifically, it would allow persons or contractors to whom those functions are delegated by local housing authorities to sub-delegate those functions. Such arrangements would allow local authorities more flexibility in performing their duties in respect of housing management.

4. The House has instructed us to examine the draft order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee, or to any other representations made during the period for Parliamentary consideration.³ Our discussion of the matters arising from our examination is set out below.

Findings of our previous report

5. We were satisfied that the proposal for the order met the criteria against which we are required to judge it. We concluded that the proposal should be amended before a draft order were laid before the House, as we were not satisfied with the drafting of the provisions relating to the replacement of the phrase “as agent” in the 1985 Act. We considered that these provisions, namely the proposed new subsections 13 and 14, were not drafted in a readily comprehensible fashion. We also noted the inadequacy of the explanatory statement provided by the Department. We discuss the Department’s response to our report below.

6. We found that the proposal, of itself, was not inappropriate for delegated legislation, as it would allow local authorities more flexibility in the way in which they delegated their housing management responsibilities. Nevertheless, we noted that the proposal was closely

¹ Copies of the draft order are available to Members of Parliament from the Vote Office and to members of the public from the Department. The draft order is also available on the Cabinet Office website at www.cabinet-office.gov.uk/regulation/act/proposals.htm.

² Fifth Report, Session 2002-03, HC 328

³ Standing Order No. 141 (7)

connected with the introduction of private finance initiative (PFI) projects in local authority housing, a subject which is politically controversial and which might merit wider debate in the House. We examine this matter at greater length below.

The Department's response to the report

Replacement of phrase "as agent"

7. In response to our recommendation, the Department has redrafted the provisions relating to the replacement of the phrase "as agent", with the aim of making them more readily comprehensible. The elements of these provisions, which determine where responsibility lies in respect of the delegation of housing management functions, have been restructured and are now set out in clause 2 of the draft order as new subsections 13, 14 and 15 to the proposed new section 27. The Department's explanatory statement sets out a detailed explanation of the effect of the proposed new subsections.⁴ **We consider that the relevant provisions have been amended in a manner which satisfies our concerns.**

8. The Department has acknowledged that the explanatory statement which it provided with the proposal for the order was inadequate. In particular, the Department accepts that its interpretation of the provisions of the Regulatory Reform Act 2001 relating to the re-enactment of burdens was wrong.⁵ It also accepts that the explanatory statement could have been clearer in some other aspects. We take this opportunity to remind Departments that, in preparing the explanatory statements required under section 6 of the Regulatory Reform Act, they must ensure that their analysis clearly explains the effect of the proposed order, by specific reference to each of the requirements laid down in section 6(2) of the Act.

9. On the basis of the explanatory statement, we are satisfied that the responsible Minister has had due regard to our previous report on the proposal for the draft order.

Other representations

10. The Department has amended subsections 8(b) and 10, as inserted by clause 2 of the draft order, in response to a concern raised by the House of Lords Committee on Delegated Powers and Regulatory Reform.⁶

11. Luton Borough Council made a representation to the Department during the period for parliamentary consideration. The Department has indicated that this representation related to issues involved in housing stock transfer to a registered social landlord.⁷ The Council requested that consideration be given to the introduction of a statutory requirement to provide equal funding for the promotion of, and the opposition to, proposals for housing stock transfer when consulting with tenants. The Council was also concerned about the need to ensure adequate protection for tenants and staff in any sub-contracting arrangements made as a result of housing stock transfer.⁸

12. The Department has not made any amendment to the draft order as a result of this representation. As the representation relates to the transfer of housing stock to a registered social landlord, rather than to the delegation of housing management, the Department considers that it falls outside the scope and purpose of the proposed order.

⁴ Explanatory statement, para 8

⁵ Explanatory statement, para 6. The Department's initial reasoning is set out in greater detail in Appendix B to our Fifth Report (HC 329, p 29).

⁶ Explanatory statement, para 9. The Committee on Delegated Powers and Regulatory Reform reported on the proposal in its Eighth Report, Session 2002-03, HL Paper 37, paras 1-13.

⁷ Explanatory statement, para 7

⁸ Explanatory statement, para 2

13. On the basis of the explanatory statement, we are satisfied that the responsible Minister has had due regard to all other representations made during the period for Parliamentary consideration.

Further debate

14. As we noted in our report on the proposal for the order, many Members have an interest in the application of PFI to local authority housing; it is a matter directly affecting the lives of a large number of their constituents. We met concurrently with the Committee on the Office of the Deputy Prime Minister: Housing, Planning Local Government and the Regions to take evidence on the proposal from the Minister. The active participation of that committee, which has a detailed knowledge of the subject matter, demonstrates that the issue of refurbishment of local authority housing stock, and the use of PFI as a means of securing this refurbishment, is worthy of further scrutiny and debate in the House.

15. However, a debate on the floor of the House on a motion to approve a draft regulatory reform order may take place only if this Committee divides on its formal recommendation to the House that a draft order be approved.⁹ If the Committee's recommendation that a draft order be approved is agreed to without a division, the question on any motion to approve a draft order must be put forthwith.¹⁰

16. We consider that many Members of the House will believe that the introduction of PFI into housing management, particularly in relation to the projects which the passage of the order is intended to enable, is sufficiently important to merit examination of the Government's policy in a detailed debate. The issues to be raised in such a debate are, however, likely to range well beyond the scope of any debate to approve the draft order under Standing Order No. 18. We nevertheless trust that the Government will note the considerable interest which exists, on all sides of the House, in the introduction of PFI in local authority housing management, and that it will therefore consider making suitable provision for its policy to be fully debated.

Recommendations

17. In accordance with Standing Order No. 141(15), we recommend unanimously that the draft order be approved. We trust that the Government will note the considerable interest which exists, on all sides of the House, in the introduction of PFI in local authority housing management, and that it will therefore consider making suitable provision for its policy to be fully debated.

⁹ Standing Order No. 18(1)(b). If the Committee recommends that the order not be approved, any subsequent debate on the floor of the House would be on a motion to disagree with the Committee in its report (Standing Order No. 18(2)).

¹⁰ Standing Order No. 18(1)(a)

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

TUESDAY 11 MARCH 2003

Mr Peter Pike, in the Chair

Mr Brian Cotter
Mr Dai HavardMr John MacDougall
Mr Brian White

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 17 read and agreed to.

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

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

[Adjourned till Tuesday 18 March 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 previous 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 the present 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

Seventh	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	436
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