



House of Commons  
Regulatory Reform Committee

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**Proposal for the  
Regulatory Reform  
(Local Commissioner  
for Wales) Order 2004**

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**Sixth Report of Session 2003–04**





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*Report, together with formal minutes and  
written evidence*

*Ordered by The House of Commons  
to be printed 27th April 2004*

## The Regulatory Reform Committee

The Regulatory Reform Committee is appointed to consider and report to the House of Commons 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 (*Democratic Unionist, Lagan Valley*)  
Mr Dai Havard (*Labour, Merthyr Tydfil and Rhymney*)  
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Brian White (*Labour, Milton Keynes North East*)

### 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](http://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 Internet at [www.parliament.uk/parliamentary\\_committees/regulatory\\_reform\\_committee.cfm](http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm).

A list of Reports of the Committee in the present Parliament is at the back of this volume.

### Committee staff

The current staff of the Committee are Martyn Atkins (Clerk), Stuart Deacon (Committee Specialist), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

### Contacts

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## Summary

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The purpose of the proposal is to remove the present restriction in legislation which prevents the Welsh Administration Ombudsman, although *ex officio* a member of the Commission for Local Administration in Wales (“the CLAW”), from undertaking investigations as a Local Commissioner of the CLAW.

The proposal, if enacted, would enable the same individual to hold three investigatory ombudsman posts in Wales, namely the posts of Welsh Administration Ombudsman, Health Service Commissioner for Wales and Local Commissioner of the CLAW. The Wales Office, which is promoting the proposal, indicates that this is an interim step towards the policy goal of establishing a unified Welsh Ombudsman’s office, able to investigate complaints across the whole range of public services in Wales.

The Committee will make its formal report to the House on the proposal later in the 60-day period for Parliamentary consideration. On the evidence presently before it, the Committee considers that the proposal should be amended to provide that the person undertaking investigations as the Local Commissioner of the CLAW should continue to be appointed following statutory consultation with local authorities in Wales (paragraph 52).



# 1 Report under Standing Order No. 141

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1. The Regulatory Reform Committee has examined the proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004 in accordance with Standing Order No. 141. On the evidence before us, we consider that the proposal should be amended before a draft order is laid before the House.

2. Some 37 days of the period for Parliamentary consideration still remain, during which we may yet receive further representations. We will therefore make our formal recommendation to the House later in the 60 day period. Meanwhile, our report on the evidence is set out below.

## 2 Background

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3. On 18 March 2004 the Government laid before Parliament a proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004 in the form of a draft of an order and an explanatory statement from the Wales Office.<sup>1</sup> The proposal has been prepared by the Welsh Assembly Government, which has arranged for the Wales Office to promote the proposal in Parliament.<sup>2</sup>

### **The policy objective: unified ombudsmen's services in Wales, England and Scotland**

4. There are presently three public sector ombudsman posts in Wales with the remit of investigating maladministration in public bodies in Wales. They are the Welsh Administration Ombudsman ("the WAO"), the Health Service Commissioner for Wales ("the HSCW") and the Local Commissioner of the Commission for Local Administration in Wales ("the Local Commissioner", sometimes known as the Local Government Ombudsman).<sup>3</sup> At present the WAO is prevented from undertaking investigations as a Local Commissioner.

5. The policy objective behind the present proposal is to enable the same individual to hold each of the three posts. This is in line with the policy objective, expressed by both the Government and the Welsh Assembly Government, that the three ombudsmen's services should be brought together into a unified service led by a single individual. This step would require primary legislation.

6. Similar policy approaches have been taken in respect of ombudsmen's services in England and in Scotland, with different outcomes. The Collcutt Report on ombudsmen's services in England, prepared by the Cabinet Office in April 2000, recommended an integrated Commission incorporating the Parliamentary Commissioner for Administration, the Health Service Commissioner and the Commission for Local

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 website: <http://www.cabinetoffice.gov.uk/regulation/act/proposals.htm>

2 This arrangement is made under the provisions of section 41 of the Government of Wales Act 1998.

3 An outline of the functions and responsibilities of each post is included at the Annex to this Report.

Administration, which would operate as a collegiate body, with each Ombudsman being able to investigate complaints against any of the public bodies within a broadly-defined jurisdiction. In July 2001 the Government announced, by means of a written answer, that it agreed with the review's recommendations and stated that detailed proposals would be published in due course, but in January 2002 it told the Public Administration Committee (PASC) that it would be undertaking further consultation.<sup>4</sup> The Government then indicated that primary legislation would be required to implement the Collcutt recommendations.

7. The Public Administration Committee recommended in March 2003 that a draft bill should be published to give effect to Collcutt. In its response to the Committee's report, the Government declined to give any commitment on a bill or draft bill, preferring instead to concentrate on how public sector ombudsmen could cooperate without the need for legislation. We are not aware of any subsequent Government commitment to the introduction of primary legislation.

8. The existing Ombudsmen's services in Scotland have already been merged into one office, the Scottish Public Services Ombudsman (SPSO). Professor Alice Brown took up her appointment as SPSO in September 2002 and began work on 23 October 2002 when the Scottish Public Services Ombudsman Act 2002 came into force.<sup>5</sup> She is supported by three deputies with experience in particular areas of public administration.<sup>6</sup>

### Why a regulatory reform order?

9. The Government decided to press ahead with a regulatory reform order as an interim step in order to deal with the situation which was predicted to arise in Wales in 2003, when each of the offices was scheduled to fall vacant. It considered that there were potential difficulties in advertising three separate posts under existing arrangements, since each post "would demand only a very modest time commitment, with, on a pro-rata basis, an equally modest salary."<sup>7</sup> The Government was concerned that advertising each post separately on such terms "would not attract a candidate of the necessary calibre and would create adverse public perception of the importance and value government attaches to both [sic] offices."<sup>8</sup> It therefore considered that steps should be taken to enable a single individual to be appointed to all three posts.

10. Before embarking on consultation on a proposed regulatory reform order, the Government sought the Committee's views on the likely appropriateness of such an order. The Committee considered the request for advice in March 2003 and indicated that, on the evidence before it, the matter was appropriate for delegated legislation. The Committee's response is discussed in more detail at paragraph 29 below.

11. The Committee noted that any advertisement seeking applicants to hold the three posts jointly should indicate that the appointment to all three posts would be subject to

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4 Third Report from the Public Administration Committee, *Ombudsman Issues*, HC (2002–03) 448

5 2002 asp 11

6 The SPSO's present deputies are Carolyn Hirst, Lewis Shand Smith and Eric Drake.

7 Explanatory statement, para 12

8 *Ibid.*

Parliamentary approval of a regulatory reform order. The information pack sent to all applicants contained the following statement:

In March 2003 the Assembly Government and the Secretary of State announced that in the light of the responses received they intend to proceed with the establishment of the single Ombudsman's Office. This will require primary legislation, and is dependent upon Parliamentary time becoming available for the necessary Bill. In the meantime, and as a first step to establishing the new Office, it is intended in 2003 to appoint one individual to hold the three existing Offices simultaneously. To enable this to happen, it is necessary for Parliament to agree to a Regulatory Reform Order; the process of securing such an Order is now underway. The successful appointment to this Office, as advertised, is dependent on that.

### Present appointments

12. On her appointment as the Parliamentary Commissioner for Administration ("the PCA") in 2002, Ms Ann Abraham was also appointed Acting WAO and HSCW. The Government was initially keen to have the order in place by November 2003, to enable the successful applicant for the posts of WAO, HSCW and Local Commissioner to take them up simultaneously. Ms Abraham has agreed to remain in post as Acting WAO until November 2004, in the expectation that the proposed order will then be in place.<sup>9</sup>

13. The three posts were advertised simultaneously in March 2004 under the non-statutory title of Public Services Ombudsman for Wales.<sup>10</sup> Mr Adam Peat was appointed as Local Commissioner of the CLAW (in succession to Mr Elwyn Moseley) on 1 October 2003, and Health Service Commissioner for Wales (in succession to Ms Abraham) on 4 November 2003. Should the proposed order be made, it is intended that Mr Peat will succeed Ms Abraham as WAO in November 2004.<sup>11</sup>

## 3 Purpose of the proposal

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14. The Welsh Administration Ombudsman holds *ex officio* the office of Commissioner of the Commission for Local Administration in Wales. The WAO is presently prevented from undertaking investigations as a Local Commissioner of the CLAW. The purpose of the proposal is to amend section 23(2A) and (3) of the Local Government Act 1974 ("the 1974 Act") to remove the restriction preventing the WAO from undertaking investigations as a Local Commissioner.

15. The proposal also makes consequential amendments to the 1974 Act, the Government of Wales Act 1998 ("the 1998 Act") and the Health Service Commissioners Act 1993 ("the 1993 Act"). Where one person holds all three offices (or any two of them) these amendments would allow the disclosure of information obtained in dealing with a complaint in one capacity for the purposes of dealing with a complaint by the same person relating to the same matter in any of the other capacities.

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<sup>9</sup> Appendix B, para 7, n 1

<sup>10</sup> An extract from the information pack provided to candidates for the post is reproduced in the Annex to this Report.

<sup>11</sup> Explanatory statement, para 16

16. The Local Commissioner (sometimes known as the Local Government Ombudsman) can presently investigate complaints of local government maladministration in Wales. The matters which may be investigated by the Local Commissioner are set out in section 26 of the 1974 Act. These include maladministration by local authorities and certain other bodies. In addition, the Local Commissioner may investigate complaints of misconduct by a local authority member (investigated under part III, chapter III of the Local Government Act 2000).

17. The CLAW has historically consisted of two Commissioners. One of these commissioners is, *ex officio*, the Parliamentary Commissioner for Administration. The PCA is not empowered to undertake investigations under the 1974 Act. The other commissioner is empowered to undertake investigations as a “Local Commissioner”.

18. The Government of Wales Act 1998 created the office of Welsh Administration Ombudsman, who is also, *ex officio*, a Commissioner of the CLAW but (like the PCA) does not have the power to undertake investigations. Since the Act was enacted Her Majesty has always appointed the PCA to the office of Welsh Administration Ombudsman, so the number of Commissioners of the CLAW has remained at two.

19. The proposal would therefore enable three of the four offices of public sector ombudsmen able to investigate complaints about public bodies in Wales—the Welsh Administration Ombudsman, the CLAW’s Local Commissioner and the Health Service Commissioner for Wales—to be held by the same individual. In addition, legislation presently before the House will, if enacted, create the office of a Social Housing Ombudsman for Wales (OSHOW), the functions of which are intended to be discharged by the Local Commissioner. This legislation is discussed further at paragraph 22 below.

20. The proposal would not amend the powers or jurisdictions of any of the offices affected. The Wales Office has consulted on the specific powers and jurisdiction which a unified Ombudsman’s office should have.<sup>12</sup> Implementation of any proposals emerging from that consultation process would require primary legislation and would be beyond the scope of the present proposal. The issue of primary legislation is discussed at paragraph 24 below.

21. Should the order be made, it is intended that Ms Ann Abraham will relinquish her post as acting WAO in the autumn of 2004. The Government then intends to appoint Mr Adam Peat to the post of WAO, since the restriction preventing the WAO from undertaking investigations as a Local Commissioner of the CLAW will have been lifted. As PCA, Ann Abraham will remain as a Commissioner of the CLAW, but will be unable to undertake investigations.

### **Related primary legislation: the Housing Bill**

22. The Housing Bill, which is presently awaiting Report Stage in the Commons, would create an Office of Social Housing Ombudsman for Wales (“the OSHOW”). This officer would investigate complaints against registered social landlords. The Bill would provide

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<sup>12</sup> The consultation paper *A Public Service Ombudsman for Wales: Powers and Jurisdiction* was issued in September 2003, and consultation closed in December 2003: see below, para 58.

that the Local Commissioner of the CLAW would exercise the jurisdiction of the OSHOW. In effect, should the proposed order be made and the Bill be enacted, one individual would be able to hold four public sector ombudsman appointments.

23. The Wales Office considers that the Bill, if enacted, would not affect the arrangements or the case for the proposed regulatory reform order.<sup>13</sup>

### Prospective legislation: a Public Services Ombudsman (Wales) Bill

24. The Wales Office intends this proposal as an interim step towards the establishment of a single ombudsman service for Wales, which will require primary legislation via a Public Services Ombudsman (Wales) Bill. The Wales Office has stated that this bill has received cross-party support and will be introduced “when Parliamentary time allows.”<sup>14</sup>

25. The National Assembly for Wales approved the principle of a Public Service Ombudsman (Wales) Bill in March 2003, as part of the legislative programme the Assembly Government proposed to submit to the UK Government for inclusion in its legislative programme for the present Session.<sup>15</sup> A Bill was not included in the Queen’s Speech, and we have received no indication that one will be forthcoming in this Session. The National Assembly again approved the principle of a Bill in its debate on the Assembly Government’s legislative programme on 17 March 2004.<sup>16</sup>

26. The Secretary of State for Wales considers that the interim arrangement for the structure of ombudsmen’s services in Wales which the proposed order would establish is sustainable “indefinitely”.<sup>17</sup> While this may be so, it is clearly not an ideal alternative to primary legislation which would provide a proper statutory basis for a unified ombudsman service in Wales. **We recommend that a Public Services Ombudsman (Wales) Bill, to provide a statutory basis for a unified ombudsman service in Wales, should be included in the Government’s legislative programme for the 2004–05 Session.**

## 4 Extent of the proposal’s application

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27. The Department states that the proposal affects Wales only, since the separate provision made for the Commission for Local Administration in England in section 23 of the Local Government Act 1974 is not affected.

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13 Explanatory statement, para 6, footnote 2

14 Explanatory statement, para 50

15 Official Record, National Assembly for Wales, 12 March 2003, pp 32–56

16 *Ibid.*, 17 March 2004, pp 37–69

17 Appendix A, para 7

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

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### Inappropriate use of delegated legislation

28. Before the Wales Office issued its consultation paper on the proposed order, the Secretary of State for Wales, Rt Hon Peter Hain MP, wrote to the Committee on 4 March 2003 to seek its without-prejudice view on whether the proposed order was likely to be appropriate for delegated legislation.<sup>18</sup>

29. The Committee considered the Secretary of State's request on 18 March 2003. The Chairman subsequently wrote to the Secretary of State indicating that the prospective draft order as described to the Committee would appear to make an appropriate use of the regulatory reform procedure.<sup>19</sup> The Wales Office has referred to the Committee's without-prejudice view in its explanatory statement.<sup>20</sup>

30. There appears to have been no substantive change in the outline of the proposal since the Secretary of State sought the Committee's without-prejudice advice in March 2003. What the proposed order purports to do is to remove a restriction on one individual holding all three posts. But it leaves the existing structure of offices and their jurisdictions intact. This does not appear to pre-empt, or to place any restriction upon, Parliament's consideration of a future Bill intended to make the necessary amendments to primary legislation in order to establish a unified ombudsman service in Wales.

31. The Secretary of State said in his letter of March 2003 that the provisions of the prospective order would be "sustainable indefinitely" pending the introduction of any Bill for a unified service. The Department has also said that the present proposal is in no way dependent upon implementation of proposals for a unified service, although it would provide for "an important interim step."<sup>21</sup>

**32. We consider that the proposal appears to be appropriate for delegated legislation.**

### Removal of burdens

33. The Department considers that section 23(3) of the 1974 Act imposes a burden on the Welsh Administration Ombudsman, in that he cannot undertake investigations as a Local Commissioner of the CLAW.

34. The Department proposes to remove this burden by means of article 2 of the proposed order. This would amend section 23(3) of the 1974 Act to bring the Welsh Administration Ombudsman within the definition of a Local Commissioner able to undertake investigations. The Department considers that this constitutes the removal of a burden within the meaning of section 1(1)(a) of the Regulatory Reform Act 2001.

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18 Appendix A

19 The Chairman's letter is printed at Appendix B.

20 Explanatory statement, para 48

21 Explanatory statement, para 51

35. Section 2(1) of the Regulatory Reform Act 2001 excludes from the regulatory reform process any proposal which removes burdens which solely affect a Minister of the Crown or a Government department. In this case the restriction to be removed falls on the incumbent of the post of Welsh Assembly Ombudsman. The holder of the office is appointed by the Crown on the recommendation of the Secretary of State, and the office is entirely independent of Government.

**36. We consider that the proposal removes a burden within the terms of the Regulatory Reform Act 2001.**

### **Maintenance of necessary protection**

37. In the explanatory statement the Department set out its view that the proposal does not remove any necessary protection from the functions of the Commission for Local Administration in Wales. It has stated that this protection for the CLAW in existing legislation resides in the requirement that there be at least two Commissioners.

38. When the post of Welsh Administration Ombudsman was created, it was theoretically possible for the CLAW to consist of three Commissioners, since the 1974 Act was amended to provide that the WAO should be an ex-officio Commissioner alongside the Parliamentary Commissioner for Administration. But the PCA has since 1998 also held the post of WAO, so there have in effect only been two Commissioners.

39. The proposal, if enacted, would allow the WAO to act as a Local Commissioner. But the restriction preventing the PCA from acting as a Local Commissioner would remain. There would therefore still be two Commissioners of the CLAW. The Department states that, in the event that the positions of PCA and WAO were again held by the same person, another Local Commissioner would have to be appointed.

40. The Department states that the proposed change does not alter the categories of potential complainants to the Ombudsman, does not alter the basis on which complaints can be made and does not add to or remove bodies from the Ombudsman's jurisdiction.<sup>22</sup>

### **Appointments to the CLAW**

41. There are two aspects of the protection provided by the existing legislation which we found the Department had not addressed in its explanatory statement. Both relate to the appointment of members to the CLAW:

- a) under section 23(4) of the 1974 Act, appointments to the CLAW (in effect appointments as Local Commissioners) are made by Her Majesty on the recommendation of the Secretary of State, after consultation with representatives of Welsh local authorities; and
- b) the CLAW should always comprise a Commissioner appointed under section 23(4) in addition to the ex-officio Commissioners (the PCA and the WAO).

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<sup>22</sup> Explanatory statement, para 33

42. Since the procedure in section 23(4) of the 1974 Act provides that the Crown shall consult with local authorities in Wales before appointing a Local Commissioner to the CLAW, this procedure may be considered a form of protection.

43. Under the proposal, the WAO would be a member of the CLAW, and able to act as a Local Commissioner, *without* having been appointed under the procedure in section 23(4). There would be no statutory requirement to consult local authorities in Wales before the WAO could act as a Local Commissioner, and it would in future be possible for the CLAW to be constituted with two Commissioners who had been appointed without consultation with local authorities in Wales.

44. We therefore asked the Department why the above arrangements were maintained when the legislation establishing the WAO was enacted in 1998; whether they constitute a form of protection; and, if so, what reason there was for that protection and why the protection is not maintained under the proposals.<sup>23</sup>

### **The Department's response**

45. The Department has explained the background to the present arrangements establishing the Welsh Administration Ombudsman as an ex-officio member of the CLAW. The Government of Wales Act 1998 established the office of WAO and ensured it had equal status with the offices of the PCA and the Local Commissioner of the CLAW. The Department has explained that the 1974 Act was amended to provide that, if the office of PCA and WAO ever came to be held by different individuals, the WAO would be a Commissioner of the CLAW in his or her own right.<sup>24</sup> The Department explains that it was not considered appropriate to make other changes to the method whereby the CLAW was constituted at that time without full and proper consultation, particularly since the National Assembly was yet to be elected.

46. The Department has accepted that there is a form of protection in the existing legislation which may be removed by the proposal. It nevertheless considers that the existing level of protection is maintained.<sup>25</sup> This is by virtue of the fact that the present Local Commissioner and Health Service Commissioner for Wales, Mr Adam Peat, was appointed under the existing statutory requirements. Mr Peat is required by statute to relinquish each of the ombudsmen's offices he holds in the year he reaches the age of 65. The Department explains that this will be in 2013, although Mr Peat may ask to be relieved from office earlier. The Department states that should he wish to relinquish, or should he be removed from, one of the offices he holds, his terms of service require him to relinquish or to be removed from the other ombudsmen's offices.<sup>26</sup>

47. Should the offices concerned fall vacant before existing statute has been replaced by a Public Services Ombudsman (Wales) Act, the Department has indicated that the Secretary of State would have 'due regard' to the statutory requirement to consult local authorities in Wales, via the Welsh Local Government Association, on the appointment of a Local

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23 Appendix C

24 Appendix D, para 3

25 Appendix D, para 14

26 Appendix D, para 7

Commissioner. The Department proposes two ways in which the Secretary of State could ensure that the present level of protection is maintained:

- a) by continuing the practice of making separate appointments to each ombudsman's office. The Department accepts that this would, strictly speaking, be unnecessary, since the person appointed as WAO would be *ex officio* a member of the CLAW and would be able to undertake investigations as a Local Commissioner should the proposed order be made; or
- b) by following the present arrangements on consultation for appointments to the posts of WAO and HSCW established by the Secretary of State for Wales. Rt Hon Alun Michael MP, when Secretary of State, gave a written undertaking to the National Assembly that party leaders within the Assembly would be consulted on such appointments.

48. Should the relevant posts fall vacant before the introduction of primary legislation, the Department envisages making separate appointments of the same individual to all three posts. The Department considers that this arrangement would maintain the protection contained in section 23(4) of the 1974 Act as respects the appointment of Local Commissioner.

49. The Department has nevertheless stated that the proposed order could be amended 'relatively easily' to ensure that the present statutory arrangements for appointment to the CLAW were maintained, and has advanced two possible ways in which the protection might be maintained.<sup>27</sup>

### **The Committee's view**

50. The Department argues that the present level of protection can be maintained *de facto* by administrative arrangements and undertakings.

51. We accept that the Department's intention is to secure the proposed order as an interim measure which will take advantage of the opportunity to appoint the same individual to all three ombudsman posts in Wales, pending the passage of primary legislation which will enable the establishment of a unified ombudsman service for Wales. We nevertheless consider that it is preferable for the order to be amended so as to maintain the statutory protection which presently exists in respect of the appointment of the Local Commissioner.

52. We consider that the proposed order should ensure that the Welsh Administration Ombudsman may act as a Local Commissioner only when he or she has been appointed to the CLAW under section 23(4). **We recommend that the proposed order be so amended before a draft order is laid before the House.**

53. The amendments we have outlined above appear to fall within the scope of the present proposal, and we do not believe that further consultation in this respect is necessary.

## Preventing exercise of rights or freedoms

54. The Department does not consider that the proposal would prevent anyone from exercising a right or freedom which they might otherwise expect to exercise. It notes that consultees have agreed with this view.

55. Since the proposed change does not, in the Department's opinion, alter the categories of potential complainants to the Ombudsman, does not alter the basis on which complaints can be made and does not add to or remove bodies from the Ombudsman's jurisdiction, **we consider that the proposal does not prevent anyone from exercising a right or freedom which they might otherwise expect to exercise.**

## Adequate consultation

56. The Department published the consultation document on 14 July 2003, and the initial consultation period closed on 26 August, after a brief extension. The period of consultation was therefore six weeks, reduced from the twelve weeks stipulated by the Cabinet Office's Code of Practice on Written Consultation.

57. The Secretary of State indicated in March 2003 that the consultation period on the proposed order was likely to be reduced. In his letter of 18 March 2003, the Chairman reminded the Secretary of State that he should be prepared to justify why the consultation period was reduced.<sup>28</sup>

58. The Wales Office has stated that the consultation period was shortened "in light of an earlier consultation on this issue."<sup>29</sup> A consultation on the principle of bringing together the three offices of the Commission for Local Administration in Wales, the Welsh Administration Ombudsman and the Health Service Commission for Wales, into "a unified service led by a single individual" was launched on 4 December 2002 and closed on 7 February 2003.<sup>30</sup>

59. A subsequent consultation, on the detailed powers and jurisdiction of a unified ombudsman's office, was launched on 8 October 2003 and closed on 19 December 2003.<sup>31</sup>

60. The Department published the consultation document online and publicised it by means of a press release, as well as sending copies to specific consultees. The list of consultees is set out in annex A of the explanatory statement.

61. A total of 28 consultees responded to the consultation. The Department has included in its analysis of responses all responses received after the closing date for the consultation. The Department states that 24 of the responses were in favour of the proposals, and four offered no view. A table summarising the responses received, by sector, is included in the

28 Appendix B

29 Explanatory statement, para 45

30 Explanatory statement, para 13: *Ombudsmen's Services in Wales: Time for Change?*, Wales Office and Welsh Assembly Government, December 2002

31 Explanatory statement, para 14: *A Public Services Ombudsman for Wales: Powers and Jurisdiction*, Wales Office and Welsh Assembly Government, October 2003

explanatory statement at paragraph 46. A summary of responses received is at annex B of the explanatory statement.

62. When it considered the appropriateness of the prospective order in March 2003, the Committee noted that the object of the consultation on the prospective order was substantively different from that of the Government's initial consultation, which was on establishing the principle of a unified service. It was therefore conceivable that consultees who welcomed the principle of a unified service might nevertheless have believed that the course of action the Government intended to take in establishing a *de facto* unified service was not the right one.

63. It appears that the Department has consulted widely on the proposal, following on from its initial consultation on a unified ombudsman's service for Wales, and that none of the consultees have raised objections against the proposal either during or after the period for consultation. **We therefore consider that the period allowed for consultation on this proposal has been adequate.**

64. The acting Welsh Administration Ombudsman and (then) Health Service Commissioner for Wales, Ms Ann Abraham, welcomed the proposals, as did the then Local Commissioner, Mr Elwyn Moseley. The proposals are also supported by the British and Irish Ombudsman Association and the Chairman of the Commission for Local Administration in England.

65. All Members of the Welsh Assembly have been consulted individually on the proposal. Since the proposal does not modify any of the functions of the National Assembly, the formal consent of the Assembly to the making of the order is not required. The Minister responsible is nevertheless required to consult the National Assembly as a body on any proposed order where the provision made by the order would extend to Wales.<sup>32</sup>

66. In this case the Welsh Assembly Government has itself prepared the proposal and has arranged for the Wales Office to promote its passage through Parliament under the provisions of section 41 of the Government of Wales Act 1998.

67. This point was not expressed explicitly in the explanatory statement. **We take this opportunity to remind Departments that they should, when preparing explanatory statements, set out in full how the specific requirements of section 5(1) of the Regulatory Reform Act regarding statutory consultation have been fulfilled.**

### **Relevant points made in response to consultation**

68. One of the Government bodies likely to be affected by the new arrangements, the Environment Agency, commented that allowing a single official to hold all three Ombudsman posts in Wales would lead to a "more co-ordinated approach" to the investigation of complaints made against the Agency in Wales. It considered this to be a beneficial arrangement, since in its experience a number of complaints made to separate ombudsmen's offices appeared to be mis-directed.

69. Caerphilly Country Borough Council noted that “it would not be realistic to expect the new (combined) Ombudsman to have detailed local government experience”, and therefore recommended that “there should be within the new management structure a deputy who possesses . . . detailed legal and constitutional knowledge so that the practical issues that local government monitoring officers are able to discuss directly with Mr Moseley [the previous Local Commissioner] can still be dealt with in the future structure by someone at a senior level in the organisation who has the necessary background knowledge.”

70. The Department has responded to the point by indicating the responses received to its consultation on the principle of establishing a unified service. It states that the responses received indicated an over-riding concern that the unified ombudsman service should have access to specialist advice from the health, local government and parliamentary sectors.<sup>33</sup>

## Costs and benefits

71. A regulatory impact assessment has been prepared and is attached to the explanatory statement.<sup>34</sup>

### Costs

72. The Department states that there are no cost implications arising from the implementation of the proposal. The remuneration to be paid to the individual who holds all three posts is to be set at that currently received by the Local Commissioner. The three posts were advertised in March 1999 at a combined salary of £102,999 per annum, rising to £107,408 from 1 April 2003. The Department does not intend to increase the salary payable to the Local Commissioner to reflect the additional time commitment to the offices of WAO and HSCW.<sup>35</sup>

73. The Department considers that the alternative option to the regulatory reform order, that of making three separate appointments and waiting for primary legislation, would not have been viable. It would also have resulted in nugatory expenditure, since another competition for the unified ombudsman post would have been required following the passage of primary legislation.<sup>36</sup>

74. The Department did not set out in the explanatory statement whether there were any costs involved in the practical reorganisations consequent on the appointment of the same individual to all three posts. We therefore asked the Department what the practical consequences of the joint appointments would be, if the proposed order were made, and whether there would be any resulting costs.

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33 Explanatory statement, annex B, response F2

34 Explanatory statement, annex C

35 Explanatory statement, annex C, para 12

36 Explanatory statement, annex C, para 8.2

75. Staff of the CLAW are located in Bridgend, while staff of the WAO and HSCW are located on the same site in Cardiff. In practice staff of the HSCW may undertake any function of the WAO if authorised to do so by the WAO.<sup>37</sup>

76. The Department has stated that the passage of the proposed order will have no practical consequences in terms of relocation or co-location of offices.<sup>38</sup> But, although staff of the three offices will not be required to relocate following the passage of the proposed order, the Department states that the present Local Commissioner and HSCW, Mr Peat, will undertake to develop “the very different working practices and organisational structure of the offices . . . into a common culture.” It considers that co-location of the three offices is a prerequisite to this, although such co-locations or relocations are not dependent on the passage of the proposed order.<sup>39</sup>

### *Benefits*

77. The Department identified the following benefits from the proposal:

- The proposal would allow progress to be made towards the establishment of a unified ombudsman service in Wales, which is an approach strongly endorsed by responses to consultation on the subject;
- The arrangement whereby one individual would hold three posts would provide “a greater consistency of approach to investigations and a more co-ordinated response to all complaints”;
- One individual would better be able to raise the overall profile of the ombudsman service.

78. The Department states that where the posts of PCA, WAO and/or HSCW are held by the same person, existing legislation prevents the PCA drawing a salary for the offices in Wales. The three offices have historically been held by the same individual. Since the establishment of the WAO and the National Assembly, the amount of time the PCA has spent on Welsh matters as WAO or HSCW has been charged to the Assembly on a pro-rata basis. The Department indicates that there are therefore no savings to be made in this area.

**79. We consider 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.**

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37 Government of Wales Act 1998, schedule 9, para 5

38 Appendix D, paras 15, 19

39 Appendix D, para 16

## 6 Conclusion

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80. On the evidence currently before us,<sup>40</sup> we conclude that the proposal should be amended in the manner set out in paragraph 52 above before a draft order is laid before the House.

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<sup>40</sup> See para 1 above

## Glossary

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|                           |   |
|---------------------------|---|
| <b>CLAW</b>               | Commission for Local Administration in Wales  |
| <b>Local Commissioner</b> | the Commissioner of the CLAW appointed under section 23(4) of the Local Government Act 1974, and able to undertake investigations (sometimes called the Welsh Local Government Ombudsman) |
| <b>HSCW</b>               | Health Service Commissioner for Wales   |
| <b>OSHOW</b>              | Office of the Social Housing Ombudsman for Wales (proposed to be established by the Housing Bill (2003–04): its functions are to be discharged by the Local Commissioner)                 |
| <b>PCA</b>                | Parliamentary Commissioner for Administration (the Parliamentary Ombudsman)   |
| <b>SPSO</b>               | Scottish Public Services Ombudsman  |
| <b>WAO</b>                | Welsh Administration Ombudsman (established in 1998)  |

## Annex

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### **Proposed functions and responsibilities of the Public Services Ombudsman for Wales: information for candidates<sup>1</sup>**

The Public Services Ombudsman for Wales is an interim non-statutory title for the new holder of the separate Offices of Health Service Commissioner for Wales, Welsh Administration Ombudsman and Commissioner for Local Administration in Wales. Appointments now need to be made to each of the Offices, to take effect in the second half of 2003.

In March 2001 the Welsh Assembly Government and the Secretary of State for Wales announced a review of public sector Ombudsmen in Wales. A consultation paper, "Ombudsmen's Service In Wales: Time for change?" was published in December 2002. It invited views on the principle of establishing a single Ombudsman's office, uniting the three existing jurisdictions into one Office held by a single individual. In March 2003 the Assembly Government and the Secretary of State announced that in the light of the responses received they intend to proceed with the establishment of the single Ombudsman's Office. This will require primary legislation, and is dependent upon Parliamentary time becoming available for the necessary Bill. In the meantime, and as a first step to establishing the new Office, it is intended in 2003 to appoint one individual to hold the three existing Offices simultaneously. To enable this to happen, it is necessary for Parliament to agree to a Regulatory Reform Order; the process of securing such an Order is now underway. The successful appointment to this Office, as advertised, is dependent on that.

#### *The role and responsibilities of the Ombudsman*

In exercise of one or other of the three existing jurisdictions, the Public Services Ombudsman for Wales can investigate complaints made by members of the general public that they have suffered an injustice as a consequence of maladministration on the part of those bodies listed at Appendix I; complaints about hospital and community services, family health services and NHS funded care in the independent sector, including clinical care and treatment provided by doctors, nurses and other health care professionals; and allegations of a local authority member's failure to comply with that authority's code of conduct.

Also, but on a non-statutory basis, the Ombudsman can investigate complaints about failure to disclose information in accordance with the National Assembly for Wales' Code of Practice on Public Access to Information and The Code of Practice on Openness in the NHS. (This jurisdiction will pass to the Information Commissioner when the Freedom of Information Act is brought fully into force in 2005).

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<sup>1</sup> This Annex reproduces information issued by the Public Appointments Unit, Welsh Assembly Government, to candidates for the post of Public Services Ombudsman for Wales in March 2003.

The powers and responsibilities of the Ombudsman are set out in Schedule 9 to the Government of Wales Act 1998; the Health Service Commissioners Act 1993 as amended by Schedule 10 to the Government of Wales Act 1998; and Part III of the Local Government Act 1974 as amended. Information on how each Office is funded and operates is provided in Appendix II. Information produced by the Ombudsmen themselves is available on their respective web sites – [www.ombudsman.org](http://www.ombudsman.org) and [www.ombudsman-wales.org](http://www.ombudsman-wales.org).

In addition to undertaking the statutory functions of each Office the successful candidate will have responsibility for preparing for, implementing and leading staff through the change that will necessarily come about as a result of legislation to establish a unified public sector Ombudsman service in Wales.

### ***Appendix I: Bodies subject to investigation by the proposed Public Services Ombudsman for Wales***

#### *Bodies subject to investigation by the Welsh Administration Ombudsman*

The National Assembly for Wales  
 The Arts Council for Wales  
 The Countryside Council for Wales  
 The Environment Agency (for matters relating to Wales)  
 The Forestry Commissioners (for matters relating to Wales)  
 ESTYN  
 The Sports Council for Wales  
 Urban Development Corporations (where established for urban development areas wholly in Wales)  
 The Wales Tourist Board  
 The Welsh Development Agency  
 The Welsh Language Board  
 The Care Council for Wales

#### *Bodies subject to investigation by the Commission for Local Administration in Wales*

##### *a) In respect of complaints of maladministration*

County and County Borough Councils (but not town or Community Councils)  
 National Park Authorities  
 Police Authorities including the National Criminal Intelligence Service and the National Crime Squad  
 Fire authorities.  
 The Environment Agency (flood defence and land drainage matters only)  
 Joint authorities and joint boards of local authorities  
 Education Appeal Panels  
 School Governing Bodies (admission matters only)  
 School Organisation Committees

### *b) In respect of allegations of misconduct*

Members of: County and County Borough Councils  
 Community Councils  
 Fire authorities  
 Police Authorities  
 National Park Authorities  
 Joint authorities of local authorities

### *Bodies subject to investigation by the Health Service Commissioner for Wales*

All NHS bodies in Wales, including NHS Trusts, Local Health Boards, family health services practitioners, i.e. family doctors (GPs), dentists, pharmacists, opticians and other professions supplementary to medicine.

## ***Appendix II: Funding and operation of the Ombudsman's Offices***

### *Who can complain?*

Members of the general public can complain directly to the Ombudsman. They do not have to enlist the support of an Assembly Member or, as is the case with the Parliamentary Commissioner for Administration, a Member of Parliament. The Ombudsman does however normally expect the body being complained about to have had an opportunity to put matters right and for that body's own internal complaints procedure to be invoked and exhausted.

### *Investigations*

If the Ombudsman decides not to take up a complaint for investigation, a reasoned written explanation is given for that decision.

Where a complaint is accepted for investigation the body concerned will be asked to send their comments and all relevant papers, including medical records where relevant. An investigation can involve a detailed scrutiny of the files held by the answerable body, interviewing of the complainant, officials and sometimes Ministers. All enquiries are carried out in private, except in circumstances where the Ombudsman decides that an allegation of a breach by a member of an authority's code of conduct should be referred to a Standards Committee or the Adjudication Panel for Wales. In such cases, the complainant may be called upon to give evidence in public before the authority's Standards Committee or a tribunal of the Adjudication Panel for Wales.

The Ombudsman has the same powers as the High Court to obtain evidence and interview witnesses and investigations can take several months.

### *Funding*

Each Office is funded by the National Assembly for Wales, but through different mechanisms. Funding for the Office of Welsh Administration Ombudsman and Health

Service Commissioner for Wales is funded directly by the Assembly. Funding for the Commission for Local Administration in Wales is provided from Local Government's Revenue Support Grant allocation.

The Office of Welsh Administration Ombudsman and Health Service Commissioner manages a total budget of £600,000. The Commission for Local Administration's budget is approximately £1 million.

### *Administrative Support*

#### *a) Welsh Administration Ombudsman and the Health Service Commissioner for Wales*

The Welsh Administration Ombudsman and Health Service Commissioner for Wales currently have an office in Cardiff, employing 9 members of staff. Central support services are currently provided on a chargeable basis by the Office of the Parliamentary Commissioner for Administration and Health Service Commissioner for England.

The appointee will be the Accounting Officer for both the Office of the Welsh Administration Ombudsman and the Office of the Health Service Commissioner for Wales with particular responsibilities established in Schedule 9 paragraph 11 of the Government of Wales Act 1998 and Schedule 10 of the Government of Wales Act 1998 respectively. These include responsibility for the signing of accounts, the propriety and regularity of the finances for the Office and for the economy and efficiency and effectiveness with which resources are used.

The Ombudsman is empowered to appoint such staff as is considered necessary to discharge his or her statutory functions. This includes the appointment of staff with a sufficient command of the Welsh language to undertake investigations in Welsh.

#### *b) Commission for Local Administration in Wales*

The Commission for Local Administration in Wales currently has an office in Bridgend, employing around 18 members of staff. The Commissioner is responsible for the investigation of complaints of maladministration by local authorities and allegations of misconduct by authority members within Wales and is supported in this task by investigative and support staff.

The Local Commissioner is responsible for the proper stewardship of the Commission's funding, but is not formally designated as the Accounting Officer of the Commission. This includes presenting the Commission's accounts and advising the Commission on matters of propriety and regularity as well as the economy, efficiency and effectiveness of its administration.

The Commission is empowered to appoint a Secretary and such other officers as is considered necessary for the discharge of its functions. The Commission is required to ensure that staff are available who can enable the Local Commissioner to deal with complaints in the Welsh language.

## Formal minutes

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**Tuesday 27 April 2004**

Members present:

Mr Peter Pike, in the Chair

Mr Dai Havard

Dr Doug Naysmith

Mr Mark Lazarowicz

Brian White

Mr Denis Murphy

The Committee deliberated.

Draft Report [Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004], proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 80 read and agreed to.

Summary agreed to.

Annex agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

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

Several papers were ordered to be appended to the Report.

*Ordered*, That the Appendices to the Report be reported to the House.

[Adjourned till Tuesday 11 May at 9.30 am.]

## List of written evidence

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# Appendix A

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## Letter from the Secretary of State for Wales to the Chairman of the Committee

### Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004: Ombudsman Appointments in Wales

#### *Purpose*

1. I am writing to seek a without prejudice view on a proposal I intend putting to your respective Committees for a Regulatory Reform Order (RRO), the purpose of which is to remove a restriction in Part III of the Local Government Act 1974 that prevents the Welsh Administration Ombudsman, although a Commissioner of the Commission for Local Administration in Wales, from undertaking investigations as a “Local Commissioner”.<sup>1</sup>

2. The purpose of my writing to you now is to identify any concerns you may have with achieving this policy aim through an RRO. While I am content that these proposals are uncontroversial and fall within the letter and spirit of the Regulatory Reform Act 2001, I am aware that this would be the first RRO affecting the Ombudsman service. Consequently I thought that the Committees would welcome an opportunity to express an opinion at an early stage. For your assistance I attach a copy of the proposed Order in draft, and copies of the relevant provisions:

- i. Part III of the Local Government Act 1974: Commission for Local Administration in Wales
- ii. Schedule 9 to the Government of Wales Act 1998: Welsh Administration Ombudsman
- iii. Schedule 10 to the Government of Wales Act 1998: Health Service Commissioner for Wales

#### *Policy Background*

3. The National Assembly Advisory Group, a body set up to advise the Secretary of State for Wales on various practical aspects of devolution, said in its report to the Secretary of State in August 1998 (recommendation 7.18):

“We welcome the creation of a new office of Welsh Administration Ombudsman, and note that the office can be held simultaneously with that of the Health Services Commissioner for Wales. We recommend that consideration be given in due course to both offices, and that of the Local Government Commissioner for Wales being held by the same person.....”

4. In March 2001, my predecessor jointly announced with the Welsh Assembly Government that there would be a review of public sector Ombudsmen in Wales the purpose of which would be to consider whether the present arrangements for the organisation of the Welsh Administration Ombudsman, Health Service Commissioner for Wales and the Commission for Local Administration in Wales best meet the needs of our citizens in the new century; allow for Ombudsman services to evolve in step with the changing face of public sector service delivery in Wales; and provide for interaction with other independent complaint bodies.

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<sup>1</sup> The Office of Commissioner for Local Administration in Wales is a non-statutory title adopted, and in common use, to describe the Local Commissioner who is empowered to investigate complaints which fall within the jurisdiction of the Commission for Local Administration. Under Part III, Chapter III of the Local Government Act 2000 this includes allegations of misconduct by a local authority member the equivalent of which in England falls to the Standards Board. The definition of Local Commissioner in section 23(3) of the Local Government Act 1974, which identifies a member of the Commission who can investigate complaints, excludes the Welsh Administration Ombudsman and the Parliamentary Commissioner for Administration. That definition is in effect used for the purposes of the said 2000 Act, see section 68(5) of that Act.

5. Consultation on the future of public sector Ombudsman services in Wales commenced on 4 December 2002 when, together with the Welsh Assembly Government I published "Ombudsmen's Services In Wales: Time for change?", seeking views on the **principle** of bringing together the Commission for Local Administration in Wales, Welsh Administration Ombudsman and Health Service Commissioner for Wales into a unified service led by a single individual. I am enclosing a copy for your information and would like to draw your particular attention to the changes proposed for Wales set out in paragraphs 12 - 16.

6. Key figures in the Ombudsman service were involved in the development of the consultation paper. The principle on which we consulted was endorsed by Sir Michael Buckley, the former Parliamentary Commissioner for Administration, who was also Welsh Administration Ombudsman and Health Service Commissioner for Wales; Ann Abraham, Sir Michael's successor in both England and Wales (the latter on an acting basis); Elwyn Moseley, the Commissioner for Local Administration in Wales; and the Leader of the Welsh Local Government Association. I am enclosing a list of those organisations with whom we consulted. The consultation paper was also sent to Welsh MPs, Assembly Members and individuals who had expressed an interest in the review of Ombudsman services in Wales. The consultation was also published on the National Assembly for Wales' website: [www.wales.gov.uk](http://www.wales.gov.uk).

7. Responses to the consultation paper were due no later than 7 February 2003 and have shown **unanimous** agreement to the principle of bringing together the Commission for Local Administration in Wales, Welsh Administration Ombudsman and Health Service Commissioner for Wales into a unified Office led by a single individual. A second consultation will now follow on the detail of the new Office, including its powers and jurisdiction. Primary legislation will then be required to establish any new Ombudsman service in Wales. There is no certainty as to when we will be able to secure a Bill to create a new Ombudsman service, but implementing this RRO would allow us at least to ensure that one person can hold the three Offices – particularly significant since all are expected to fall vacant later this year. While we will not be able to reorganise the separate Offices of CLAW, WAO and HSCW into a unified Ombudsmen service in Wales, I am content that this proposal for the RRO will be sustainable indefinitely if primary legislation for the wider proposal is not immediately forthcoming.

### **Current Ombudsman Appointments in Wales**

8. Later this year, the Offices of Commissioner for Local Administration, Health Service Commissioner for Wales and Welsh Administration Ombudsman all fall vacant. The Commissioner for Local Administration in Wales is expected to retire in Summer 2003. The current appointments to the Offices of the Welsh Administration Ombudsman and Health Service Commissioner for Wales are acting appointments which must come to an end no later than 3 November 2003. Schedule 9, paragraph 3 to the Government of Wales Act 1998 and Schedule 1A, paragraph 3 to the Health Services Commissioners Act 1993, as inserted by Schedule 10, paragraph 17 to the Government of Wales Act 1998 refer. The decision not to proceed with making substantive appointments to these last two Offices was prompted by the Commissioner for Local Administration in Wales announcing his intention to retire in the Summer. This presented an opportunity to take an interim step towards the establishment of a new Ombudsman service in Wales by enabling me to recommend the appointment of a single individual simultaneously to hold all three Ombudsman Offices from 2003. Formal unification of the three jurisdictions into one could then proceed later under the primary legislation previously referred to.

9. At present the three Offices are separate appointments but whilst there is nothing to prevent the Welsh Administration Ombudsman also accepting an appointment as the Health Service Commissioner for Wales it would not be open to him/her also to accept appointment as a Local Commissioner. Under section 23 of the Local Government Act 1974 the Welsh Administration Ombudsman is *ex officio* a member of the Commission for Local Administration in Wales, but is not a Local Commissioner who is able to undertake investigations. The policy objective is to make him also a Local Commissioner and so also able to carry out investigations under Part III of the 1974 Act and also under Part III, Chapter III of the Local Government Act 2000.

10. Proceeding in this way would enable us to overcome the difficulties we have identified in advertising the Offices of Welsh Administration Ombudsman and Health Service Commissioner for Wales under existing

arrangements. There is a significant risk that we will not receive an application from a candidate of suitable calibre to fulfil the Offices of Welsh Administration Ombudsman and Health Service Commissioner for Wales on their own. In reality these Offices demand a time commitment of no more than 0.5 and 1 day per month respectively, and would command an equally modest salary. Remuneration has not previously been a consideration as legislation does not allow the payment of a salary for the Office of Welsh Administration Ombudsman where the officeholder is also the Parliamentary Commissioner for Administration, Schedule 9, paragraph 4(2) the Government of Wales Act 1998 refers. Similarly, Schedule 1A, paragraph 5(2) (a) and (b) to the Health Services Commissioners Act 1993 prevents payment of a salary for the Office of Health Service Commissioner for Wales where the Officeholder is also the Welsh Administration Ombudsman or the Parliamentary Commissioner for Administration. There is also a risk of creating adverse public perception of the importance and value we attach to both Offices.

11. If we are unsuccessful in securing the RRO I am proposing, and so have to proceed with these appointments under existing arrangements, potential candidates could be deterred from applying due to uncertainty about the future of the Offices in light of the review of Ombudsman services in Wales. If we are successful in securing this RRO, the expectation is that the successful candidate will assume responsibility for preparing for the establishment and implementation of the new service.

12. The difficulties we have identified with proceeding with appointing a suitable successor to the Offices of Welsh Administration Ombudsman and Health Service Commissioner for Wales are in themselves forceful arguments for combining public sector Ombudsmen appointments in Wales. The opportunity to overcome these difficulties via legislation would have been pursued in light of the Commissioner for Local Administration in Wales announcing his retirement this year even had there not been a review of Ombudsman services in progress.

### ***The Proposal***

13. The purpose of the RRO is to remove a restriction in Part III of the Local Government Act 1974 that prevents the Welsh Administration Ombudsman from investigating complaints in his/her capacity as a Commissioner of the Commission for Local Administration in Wales. Most of the actual work of the Commission is done by or on behalf of a member of the Commission who comes within the definition of "Local Commissioner" in section 23(3) of the Local Government Act 1974.

14. The result would be that a person appointed as Welsh Administration Ombudsman would be ex officio a Local Commissioner able to undertake investigations. It would not be open to that person to accept his/her appointment, or to resign his/her appointment, as Welsh Administration Ombudsman without becoming or ceasing to be a Local Commissioner. He/she would be paid for his/her functions as a Local Commissioner under Schedule 4 to the Local Government Act 1974.

15. The effect of the proposal is the de facto amalgamation of the Office of Welsh Administration Ombudsman and Local Commissioner. It would not, of course, prevent the appointment of other Local Commissioners if that were thought necessary. However such a scenario is unlikely to occur. Historically, CLAW has only ever consisted of 2 Commissioners, initially the PCA and a Local Commissioner. Since 1999 the same person has held both the PCA and WAO offices and so there have continued to be only 2 Commissioners. If our proposal is implemented there will continue to be 2 Commissioners, one being the PCA and the other being the WAO who would also be a Local Commissioner.

16. Another approach might be to amend the 1974 Act so as to permit the separate appointment of the same person to the offices of Welsh Administration Ombudsman and Local Commissioner. A difficulty with that approach is that even if the 2 Offices had been advertised and filled on the basis that the same person would be appointed to them, that would not guarantee that that person could subsequently be prevented from just resigning the one Office. That would defeat the purpose of this proposed reform. We are not certain that a condition on the appointment of one person separately to both Offices, namely that he/she would have to resign from both Offices and not just from one of them, could in all circumstances be enforced successfully. A further difficulty is that the drafting involved in allowing the same person to be appointed to both Offices would be complex.

17. A great deal of consideration has been given to how best to remove the restriction with the aim of keeping legislative amendments as simple as possible. A draft RRO which is enclosed for your consideration amends the status of the WAO so that the person appointed becomes the Local Commissioner with powers to undertake investigations into local authority matters which fall within the Commission for Local Administration for Wales' jurisdiction.

18. In light of the extensive consultation already undertaken on this issue, as detailed in paragraphs 5 –7 above, the overwhelming endorsement received to the principle of establishing a unified Ombudsman service in Wales led by a single individual, and our aim to have an RRO in place by November 2003, when the term of office for the person acting as WAO must end, we propose to allow a period of six weeks for interested parties to respond to a consultation document on an RRO as an interim measure to deliver in part our policy objective.

19. For completeness I should bring to your attention two separate but related matters.

20. As I explained in paragraph 8 above, later this year, the Offices of Commissioner for Local Administration, Health Service Commissioner for Wales and Welsh Administration Ombudsman all fall vacant. The recruitment of a single individual to all three Offices is dependent on the proposed RRO but to enable us to identify, in time, a suitable successor to these Offices the recruitment process needs to commence immediately. The forthcoming vacancies are therefore being advertised now but with a caveat that they are conditional upon the RRO being achieved. I am content that, as this proposal does not establish any new Office, it accords with existing protocol. I would still however welcome the Committee's views as to advertising any future vacancies which may be dependent on the passage of an RRO should a similar situation arise again.

21. The separate proposal for a "Social Housing Ombudsman in Wales", is supported by the Office of the Deputy Prime Minister, and will require amendments to the Housing Act 1996. This will provide for a system of investigation of complaints of maladministration made against registered social landlords in Wales. Such investigations will be carried out by a new office to be known as "Social Housing Ombudsman in Wales". It will be a requirement that only a Local Commissioner for Wales can hold that new office. The proposed amendments are being sought via a Housing Bill that is intended to be published for pre-legislative scrutiny later this year. Additional workload arising from this is not expected to affect any of the proposals set out above. In particular, there will still be a need for only one Local Commissioner in Wales.

22. I would be grateful for your thoughts on the proposed RRO at the earliest opportunity.

*4 March 2003*

## Appendix B

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### **Letter from the Chairman of the Committee to the Secretary of State for Wales**

#### **Prospective Regulatory Reform (Commission for Local Administration in Wales) Order 2003**

Thank you for your letter of 4 March, seeking the without prejudice view of the Committee on a prospective draft Regulatory Reform (Commission for Local Administration in Wales) Order. The Committee considered the matter at its meeting earlier today, and has asked me to make the following reply.

You will of course recognise that the opinion of the Committee expressed below is without prejudice to any conclusions we might reach following our scrutiny of any proposal for a draft order in these terms which you might subsequently lay before Parliament.

#### ***Appropriateness***

Based on the information provided in your letter, and the preliminary draft of the order which has been supplied to us, we believe that the prospective draft order, insofar as it proposes to lift the present restriction on the Welsh Administration Ombudsman from undertaking investigations as a Local Commissioner of the Commission for Local Administration in Wales, would make an appropriate use of the regulatory reform procedure.

#### ***Consultation***

We note that at paragraph 18 of your letter you propose to allow a period of six weeks for interested parties to respond to consultation on the proposed draft order. At this stage it may be helpful to remind you of the Committee's remit under Standing Order No. 141(6)(d), where it is required to consider whether proposals for regulatory reform orders "have been the subject of, and take appropriate account of, adequate consultation." If the consultation period is reduced to six weeks, you should be prepared to justify in the explanatory statement accompanying the proposal for the draft order why this period was adopted. Should the Committee consider that this criterion has not been fulfilled at proposal stage, we will not hesitate to recommend that re-consultation take place.

#### ***Advertising of vacancies***

At paragraph 20 you ask for the Committee's advice on the advertising of vacancies which are dependent upon the passage of a regulatory reform order. We consider that wherever it is proposed to advertise a vacancy the filling of which will require a change in the law by way of a regulatory reform order, the following principle should apply: the advertisement should make it clear that the ability to make the appointment is subject to Parliament approving, and the Minister making, the necessary order.

#### ***Other matters***

You ask whether the Committee has any concerns with achieving this policy aim through a regulatory reform order. The Committee is not, at present, in a position to comment upon the prospective draft order further than it has above. We will be in a better position to comment on any issues if and when the proposal for the draft order is laid before Parliament.

We nevertheless note that reform of ombudsmen's services in Scotland has already taken place, and that proposals have been put forward for the review of ombudsmen's services in England. We trust that the reform the Government proposes to achieve in respect of Wales will be addressed within the context of its overall strategy for ombudsmen's services across the United Kingdom.

A copy of this letter goes to Lord Macdonald of Tradeston, Minister for Regulatory Reform.

18 March 2003

## Appendix C

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### Letter from the Clerk of the Committee to the Public Administration and Honours Unit, Welsh Assembly Government

#### Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004: request for further information

Thank you for your appearance before the Committee this morning, and for the extremely helpful briefing which you and the Office of the Counsel General gave on the proposal.

The Committee considered the proposal at its subsequent meeting and resolved to seek further information from the Department. The issues which concern the Committee are set out below, together with questions arising from them, under the relevant categories for consideration set out in the Regulatory Reform Act and the Committee's Standing Order.

#### ***Whether the proposal continues any necessary protection (S.O. No. 141(6)(c))***

1. The Committee notes that the proposal would remove two apparent protections in existing legislation relating to the composition of, and appointment to, the Commission for Local Authorities in Wales (CLAW).
2. Under the existing legislation, the CLAW must consist of two Commissioners—the Parliamentary Commissioner for Administration, *ex officio*, and the 'Local Commissioner' empowered to carry out investigations, who is appointed by Her Majesty following consultation with representatives of local authorities in Wales, under section 23(4) of the Local Government Act 1974 ("the 1974 Act"). Where the offices of Parliamentary Commissioner for Administration and Welsh Administration Ombudsman are held by different individuals, the Welsh Administration Ombudsman is also an *ex officio* member of the CLAW.
3. Under the proposals, the Welsh Administration Ombudsman will be able to carry out investigations as a Local Commissioner. This appears to circumvent two of the requirements in the existing legislation, namely that the CLAW must consist of at least one Commissioner appointed under section 23(4) of the 1974 Act, and that the Commissioner of the CLAW able to undertake investigations as a Local Commissioner must be appointed under section 23(4). Should the proposal be enacted, it would therefore be possible for the CLAW to be constituted, and for the Welsh Administration Ombudsman to exercise the functions of a Local Commissioner, without any prior consultation with local authorities in Wales.

**Q 1** Please indicate why the arrangements requiring the Commission for Local Authorities in Wales to comprise at least one appointed Commissioner were retained when the legislation establishing the Welsh Administration Ombudsman was enacted in 1998.

**Q 2** Please indicate whether the present statutory provision for the composition of the Commission and the appointment of the Local Commissioner constitute a form of protection, and if so why.

**Q 3** If the statutory provision referred to in Q2 does constitute a form of protection, please explain why that protection is not maintained under the proposals.

***Estimates in increases or reductions of costs or other benefits (S.O. No. 141(6)(m))***

4. The Department has not stated, in the explanatory statement, whether there are any costs involved in any practical reorganisations consequent on the appointment of the same individual to all three posts.

**Q 4** Please indicate what the practical consequences of the joint appointments will be, in terms of re-location and co-location of the relevant offices, if the proposed order is made.

**Q 5** Please indicate whether there will be any resulting costs or savings, and if so, what these are estimated to be.

I would be grateful to receive your response to the above questions, together with any further information the Department believes would be helpful to the Committee, not later than **Friday 16 April**.

30 March 2004

## Appendix D

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### Letter from the Public Administration and Honours Unit, Welsh Assembly Government to the Clerk of the Committee

#### Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004: request for further information

1. Thank you for your letter of 30 March. We were pleased to hear that the Committee found our briefing on the above helpful and trust that the following will address the subsequent concerns that have been raised.

2. Taking each of the Committee's questions in turn:

***Whether the proposal continues any necessary protection (S.O. No. 141(6)(c))***

**Q 1** Please indicate why the arrangements requiring the Commission for Local Authorities in Wales to comprise at least one appointed Commissioner were retained when the legislation establishing the Welsh Administration Ombudsman was enacted in 1998.

3. The Government of Wales Act 1998 was only concerned with establishing the new office of Welsh Administration Ombudsman and ensuring it had equal status to that of the Parliamentary Commissioner for Administration (PCA) and the "Local Commissioner" in the field of public sector Ombudsmen's services in Wales. Provision therefore needed to be made so that if the office of PCA and Welsh Administration Ombudsman ever came to be held by different individuals, then the Welsh Administration Ombudsman would, like the PCA, be a Commissioner of the Commission for Local Administration in Wales in his/ her own right.

4. It would not have been appropriate to make any fundamental changes to the Commission for Local Administration in Wales or the definition of "Local Commissioner" at that time without full and proper consultation. Reform of UK public sector ombudsmen was in prospect, but the precise form it should take in Wales was inevitably a matter on which the National Assembly for Wales could be expected to have a view, and it would not have been appropriate for reforms to have been implemented by the Government of Wales Act 1998 before the Assembly had been elected and had an opportunity to contribute to the debate. In any event, the recommendations of the National Assembly Advisory Group, which first floated the idea of a

unified Ombudsman's service for Wales, only emerged in September 1998, after the Government of Wales Bill had received Royal Assent.

**Q 2 Please indicate whether the present statutory provision for the composition of the Commission and the appointment of the Local Commissioner constitute a form of protection, and if so why.**

5. If we have interpreted the Committee's question correctly we take the Committee's point that there is a form of protection in section 23 (4) of the Local Government Act 1974. That is, that the Secretary of State for Wales can only recommend an individual for appointment as "Local Commissioner" after consultation with "the appropriate representative body". This, in Wales, means the Welsh Local Government Association (WLGA).

6. When the offices of "Local Commissioner", Health Service Commissioner for Wales and Welsh Administration Ombudsman fell vacant in 2003 we advertised for a single individual to take up all three offices under the non-statutory title of Public Services Ombudsman for Wales (PSOW). The position of PSOW was advertised subject to this Order being achieved and expressly stated that should the successful candidate wish to relinquish any of the offices earlier than statutorily required then the expectation would be that all three offices would be relinquished simultaneously.

7. The appointment of Mr Adam Peat to the offices of "Local Commissioner" and Health Service Commissioner for Wales were made in accordance with existing statutory requirements.<sup>1</sup> The WLGA were, therefore, consulted. It is written into Mr Peat's terms and conditions of service that relief or removal from one office will necessitate relief or removal from the other two.

8. Technically, it could be argued that this proposed Order would remove the protection referred to in paragraph five above but that is dependent on whether the effect of this Order is interpreted as meaning that the "Local Commissioner" could also be appointed as Welsh Administration Ombudsman, or whether the appointed Welsh Administration Ombudsman could act as "Local Commissioner" without being appointed as a "Local Commissioner", thereby circumventing the requirement to consult the WLGA.

9. This technicality will only arise if this Order is achieved and Mr Peat leaves office before existing statute<sup>2</sup> has been replaced by a Public Services Ombudsman (Wales) Bill. It is a statutory requirement that Mr Peat must relinquish each office in the year in which the age of 65 is attained, that will be in 2013, but he could, if he so wished, ask Her Majesty that he be relieved from office earlier.

10. Should such a situation arise, we can confirm that the Secretary of State for Wales would have due regard to the statutory requirement to consult the WLGA on the appointment of whomsoever is empowered to undertake investigations as "Local Commissioner". That could take the form of:

- i. retaining the current position whereby separate appointments are made to each respective office even though that would not strictly be required if the Welsh Administration Ombudsman, who is already a Commissioner of the Commission for Local Administration in Wales, can also undertake investigation as "Local Commissioner" - as this Order proposes, or;
- ii. mirror the current arrangement for the appointment of the Health Service Commissioner for Wales and Welsh Administration Ombudsman whereby party leaders within the National Assembly for Wales are consulted on the appointments in accordance with a written undertaking given to the National Assembly for Wales by the Rt. Hon. Alun Michael when Secretary of State for Wales.

11. In order to protect the "Local Commissioner's" status we envisage separate appointments continuing to all three offices even if the Order is approved. Thus, if all three offices fell unexpectedly vacant soon after the

1 Mr Peat succeeded to the offices of "Local Commissioner" and Health Service Commissioner for Wales in October and November 2003 respectively. Ann Abraham, Parliamentary Commissioner for Administration, has agreed to stay in office as Welsh Administration Ombudsman until the Autumn of 2004 in expectation of Parliament approving the Regulatory Reform (Commission for Local Administration in Wales) Order 2004.

2 Part III of The Local Government Act 1974 and Schedules 9 and 10 to The Government of Wales Act 1998.

Order were made then we would envisage a successful single candidate being separately, and if needs be successively, appointed to each of the offices of “Local Commissioner”; Health Service Commissioner for Wales and Welsh Administration Ombudsman. That would have the effect of section 23(4) of the Local Government Act 1974 continuing to apply. If the Committee so wished, protection of section 23(4) could be further enshrined in legislation rather than rely on a commitment that the above procedure would be followed. While we would need to consult the Office of the Parliamentary Counsel on the drafting, we consider that the proposed Order could be amended relatively easily to cater for that. For example, the proposed Order could further amend section 23 to provide specifically that a person may be appointed as a “Local Commissioner” notwithstanding that he/she was also the Welsh Administration Ombudsman. Alternatively section 23 (2A) could be amended to provide that the Welsh Administration Ombudsman is only an ex officio member where he/she is not also appointed as a “Local Commissioner”. While no doubt the Committee would wish to consider any proposed drafting changes first, we hope that the Committee would agree that such changes were purely of a technical nature and not requiring further consultation.

12. We have tried, without success, to ascertain through Hansard, the policy behind the initial provision in section 23 of the Local Government Act 1974 that there must be a Commission for Local Administration in Wales consisting of, at a minimum, the PCA and the “Local Commissioner”. Similarly why in relation to local government, the Ombudsman service is vested in a Commission, a body corporate consisting of at least two Commissioners, but in relation to health and parliamentary matters the Ombudsman service is vested in an individual, a corporation sole.

13. This proposed Order does not, of course, change the fundamental requirement for the Commission for Local Administration in Wales to consist of at least two Commissioners. If, however, the Committee wishes us to pursue the background to the policy behind section 23 of the Local Government Act 1974 we will do so with the Office of the Deputy Prime Minister.

**Q 3 If the statutory provision referred to in Q2 does constitute a form of protection, please explain why that protection is not maintained under the proposals.**

14. In light of our response to question two above we believe that the protection that the appointment of whomsoever is empowered to undertake investigations as “Local Commissioner” is maintained.

#### ***Estimates in increases or reductions of costs or other benefits (S.O. No. 141(6)(m))***

**Q 4 Please indicate what the practical consequences of the joint appointments will be, in terms of re-location and co-location of the relevant offices, if the proposed order is made.**

15. There are no practical consequences in terms of re-location and co-location of the relevant offices by enabling Mr Peat to hold the office of Welsh Administration Ombudsman as well as his existing offices of “Local Commissioner” and Health Service Commissioner if the proposed Order is made.

16. A key feature of Mr Peat’s open recruitment was that he would, “have responsibility for preparing for, implementing and leading staff through the change that will necessarily come about as a result of legislation to establish a unified public sector Ombudsman service in Wales.” It is in that context that Mr Peat has immediately recognised that a seamless transition to a unified service will not be possible unless the very different working practices and organisation structure of the offices are developed into a common culture. Co-location is a prerequisite to that.

17. Staff of the Commission for Local Administration in Wales, currently located in Bridgend, are employed by the Commission<sup>3</sup> which, in practice, means, Mr Peat in his capacity as “Local Commissioner”. The office of the Welsh Administration Ombudsman and Health Service Commissioner for Wales are co-located in Cardiff but, in practice, all Cardiff staff are employees of Mr Peat as Health Service Commissioner for Wales. Schedule 9, paragraph 5 to the Government of Wales Act 1998 provides for any function of the Welsh

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<sup>3</sup> The Commission consists of Mr Peat who as “Local Commissioner” is Chairman of the Commission and Ann Abraham, who is both PCA and Welsh Administration Ombudsman.

Administration Ombudsman to be undertaken by a member of the staff of the Health Service Commissioner for Wales if authorised to do so by the Welsh Administration Ombudsman.

18. If this Order is not made it will not affect any decision Mr Peat and Ms Abraham will need to make now, or in the future, for the re-location and co-location of these offices. Ms Ann Abraham fully supports Mr Peat.

**Q 5 Please indicate whether there will be any resulting costs or savings, and if so, what these are estimated to be.**

19. In light of our response to question four above there no costs or savings arising out of any co-location and relocation of Mr Peat's offices as that is not dependent on this Order.

20. Please don't hesitate to contact me if you require any further information.

*16 April 2004*

## Reports from the Regulatory Reform Committee since 2001

The following reports were published during the present Parliament by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee.

### Session 2001-02

|                      |  |     |
|----------------------|--|-----|
| 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                | Draft Deregulation (Restaurant Licensing Hours) Order 2002<br>Draft Deregulation (Bingo and other Gaming) Order 2002<br>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              | Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002<br>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                | Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002<br>Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002          | 708 |
| Tenth                | Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002<br>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 have been published by the Regulatory Reform Committee during the present Parliament under its current name.

### Session 2001-02

|                       |  |      |
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| 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 |

### Session 2002-03

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| First   | Proposal for the Regulatory Reform (Credit Unions) Order 2002<br>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   | Draft Regulatory Reform (Credit Unions) Order 2003<br>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 |
| Eighth  | Draft Regulatory Reform (Housing Management Agreements) Order 2003   | 520 |
| Ninth   | Proposal for the Regulatory Reform (British Waterways Board) Order 2003  | 521 |
| Tenth   | Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003                                  | 549 |

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| Eleventh             | Draft Regulatory Reform (Sugar Beet Research and Education) Order 2003  | 591  |
| Twelfth              | Draft Regulatory Reform (British Waterways Board) Order 2003  | 682  |
| Thirteenth           | Proposal for the Regulatory Reform (Gaming Machines) Order 2003   | 715  |
| Fourteenth           | Draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003<br>Draft Regulatory Reform (Gaming Machines) Order 2003 | 1210 |
| First Special Report | The operation of the Regulatory Reform Act 2001: a progress report  | 908  |

#### **Session 2003-04**

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| First                | Proposal for the Regulatory Reform (Sunday Trading) Order 2004  | 108 |
| First Special Report | Government Response to the Committee's First Special Report, Session 2002–03: <i>The operation of the Regulatory Reform Act 2001: a progress report</i> | 256 |
| Second               | Proposal for the Regulatory Reform (Patents) Order 2004   | 337 |
| Third                | Draft Regulatory Reform (Sunday Trading) Order 2004   | 338 |
| Fourth               | Proposal for the Regulatory Reform (Museum of London) (Location of Premises) Order 2004   | 414 |
| Fifth                | Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004   | 438 |

All reports are available from The Stationery Office.