



House of Commons  
Regulatory Reform Committee

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# Draft Regulatory Reform (Local Commissioner for Wales) Order 2004

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**Tenth Report of Session 2003–04**

*Report, together with formal minutes*

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## 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*)  
Andy King (*Labour, Rugby and Kenilworth*)  
Mr Mark Lazarowicz (*Labour, Edinburgh North and Leith*)  
Mr Andrew Love (*Labour/Co-operative, Edmonton*)  
Mr John MacDougall (*Labour, Central Fife*)  
Chris Mole (*Labour, Ipswich*)  
Mr Denis Murphy (*Labour, Wansbeck*)  
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)  
Mr Archie Norman (*Conservative, Tunbridge Wells*)  
Andrew Rosindell (*Conservative, Romford*)  
Mr Anthony Steen (*Conservative, Totnes*)  
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

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Committee Office, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is [regrefcom@parliament.uk](mailto:regrefcom@parliament.uk).

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# 1 Report under Standing Order No. 141

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1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Local Commissioner for Wales) Order 2004 in accordance with Standing Order No. 141. We recommend unanimously that the draft Order be approved.

## 2 Introduction

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2. On 24 June 2004 the Wales Office (“the Department”) laid the draft Order before Parliament, together with an explanatory statement from the Welsh Assembly Government.<sup>1</sup> We have already reported on the proposal for the Order, which would remove the present restriction in law which prevents the Welsh Administration Ombudsman (“the WAO”) from undertaking investigations as a Local Commissioner of the Commission for Local Authorities in Wales (“the CLAW”).<sup>2</sup>

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

## 3 The report on the proposal

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4. We issued our substantive report on 27 April 2004, early in the 60 day period for Parliamentary consideration. On 25 May 2004 we made our formal report to the House, in which we recommended that the proposal should be amended before a draft Order was laid.<sup>4</sup>

5. The Department has responded to the findings of our previous report in the explanatory statement laid with the draft Order.

### Eventual primary legislation

6. The Government intends that the draft Order should be an interim step on the road to the eventual establishment of a Welsh Ombudsman’s office. The office would amalgamate the present functions of the WAO, the Local Commissioner of the CLAW, and the Health Service Commissioner for Wales (“the HSCW”). The new Ombudsman would be able to investigate complaints across the range of public services in Wales.

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1 The regulatory reform order has been prepared by the Welsh Assembly Government, which has arranged for the Wales Office to promote it in Parliament under the provisions of section 41 of the Government of Wales Act 1998. Copies of the draft Order and explanatory statement are available to Members of Parliament from the Vote Office and to members of the public from the Department. The documentation is also available to view on the Cabinet Office website: [www.cabinet-office.gov.uk/regulation/rra/rro/proposals.asp](http://www.cabinet-office.gov.uk/regulation/rra/rro/proposals.asp).

2 Sixth Report of the Regulatory Reform Committee, Session 2003-04, *Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004*, HC (2003-04) 553

3 Standing Order No. 141(7)

4 *Votes and Proceedings*, 25 May 2003

7. The only legislative restriction on the same individual holding all three of the above offices would be removed by the draft Order. The creation of a single Welsh Ombudsman's office would require primary legislation. The Wales Office has stated that the principle of a Public Services Ombudsman (Wales) Bill has received cross-party support and will be introduced "when Parliamentary time allows".<sup>5</sup> A bid for such a Bill was included in the Assembly Government's programme of primary legislation in both 2003 and 2004, but there has been no firm indication that any such Bill will be included in the Government's legislative programme.

8. While the Government considered that the interim legislative and organisational arrangement for the structure of ombudsmen's services in Wales to be established following the passage of the draft Order would be sustainable "indefinitely", we considered that this would not constitute an ideal alternative to primary legislation which would put the unified service on a proper statutory footing.<sup>6</sup> We therefore recommended that the Government should include a Public Services Ombudsman (Wales) Bill in its legislative programme for the 2004-05 Session.

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

9. The Wales Office states that it has noted the Committee's recommendation on this point.<sup>7</sup> We recognise the convention that the Government does not make statements which may anticipate its sessional legislative programme contained in the Queen's Speech. We are nevertheless concerned that primary legislation should be introduced as soon as possible in order to place the new ombudsman service on a proper statutory footing.

**10. We repeat our earlier recommendation that the Government should introduce a Public Services Ombudsman (Wales) Bill in the 2004-05 Session.**

### **Necessary protection: appointments to the Commission for Local Authorities in Wales**

11. We considered that the proposal maintained the necessary protections contained in existing legislation in all respects but one. Under the proposal as drafted, it would have been possible for the WAO to undertake investigations as a Local Commissioner, without being appointed under the procedure laid down in section 23(4) of the Local Government Act 1974 ("the 1974 Act"), which provides that the Queen shall appoint Commissioners to the CLAW only after consultation with representatives of local authorities in Wales. This also meant that the CLAW could be constituted without such consultation having taken place.

12. The Department argued that since the person whom the Government intends to appoint to the post of WAO, Mr Adam Peat, had already been appointed to the post of Local Commissioner under the provisions of section 23(4) of the 1974 Act, the necessary protections in respect of that appointment would in effect be retained until Mr Peat retired at the statutory retirement age of 65 or relinquished or was removed from all his

5 HC (2003--04) 553, para 24, citing the explanatory statement on the proposal, para 50

6 HC (2003-04) 553, para 26

7 Explanatory statement on the draft Order, para 8

ombudsmen's offices at an earlier date.<sup>8</sup> It assured us that should the three offices fall vacant before primary legislation constituting the unified Ombudsman's office was in effect, the Secretary of State would have "due regard" for the requirement to consult representatives of local authorities in Wales before recommending to the Queen a candidate for appointment to the CLAW.

13. We nevertheless considered that the provision constituted a necessary protection. We therefore recommended that the draft Order should be amended to ensure that the protection was maintained.

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

14. The Department has accepted the Committee's recommendation and amended the draft Order, which now provides that the WAO may act as a Local Commissioner of the CLAW only when he has also been appointed to the CLAW following consultation with representatives of local authorities in Wales.

**15. We are content that the draft Order, as amended, maintains all necessary protections.**

### **Consultation with the National Assembly for Wales**

16. In our report on the proposal we noted that the Department had, in its explanatory statement, not made it sufficiently clear how it had met the requirement to consult with the National Assembly for Wales under section 5(1)(d) of the Regulatory Reform Act 2001 before laying the proposal. We reminded Departments of the need to set out clearly in explanatory statements the way in which the requirements of the 2001 Act have been met.

17. The Department accepts that the way in which the requirements of the 2001 Act had been met could have been set out more clearly in the explanatory statement. We are content with the Department's acknowledgment.

**18. We are satisfied that the responsible Minister has had due regard to our previous report on the proposal for the draft Order.**

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<sup>8</sup> Mr Peat is due to reach retirement age in 2013. Should he wish to relinquish office earlier, his terms of service require him to relinquish each of the ombudsmen's offices he holds.

## 4 Other representations made on the proposal

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### House of Lords Committee on Delegated Powers and Regulatory Reform

19. The House of Lords Committee reported that the proposal was an appropriate use of the Regulatory Reform Act and met its requirements.<sup>9</sup> It concurred with our recommendation that the proposal be amended to provide that the Welsh Administration Ombudsman may act as Local Commissioner only when he or she has been appointed to the Commission for Local Authorities in Wales under section 23(4) of the Local Government Act 1974.<sup>10</sup>

20. The Department states that no other representations were received on the proposal.

### Changes made to the draft Order

21. In addition to the substantive change made to the draft Order in response to our earlier report, the Department has made two minor changes to the punctuation of articles of the draft Order. These are detailed in the explanatory statement.<sup>11</sup>

## 5 Recommendation

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**22. In accordance with Standing Order No. 141(15), we recommend unanimously that the draft Order be approved.**

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9 Eighteenth Report of the House of Lords Committee on Delegated Powers and Regulatory Reform, Session 2003–04, HL Paper (2003–04) 98, para 16

10 *Ibid.*, para 12

11 Explanatory statement, para 14

# Formal minutes

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**Tuesday 13 July 2004**

Members present:

Mr Peter Pike, in the Chair

Brian Cotter

Dr Doug Naysmith

Mr John MacDougall

Brian White

Mr Denis Murphy

The Committee deliberated.

Draft Report [Draft 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 22 read and agreed to.

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

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

[Adjourned till Tuesday 20 July at 9.30 am.]

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