



House of Commons
Regulatory Reform Committee

Draft Regulatory Reform (Prison Officers) (Industrial Action) Order 2005

Fifth Report of Session 2004–05

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 25th January 2005*

HC 271

Published on 27th January 2005
by authority of the House of Commons
London: The Stationery Office Limited
£4.50

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.

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/regrefcom

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

Committee staff

The current staff of the Committee are Mick Hillyard (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.

Contents

| | <i>Page</i> |
|---|--------------------------|
| Report | |
| 1 Report under Standing Order No. 141 | 3 |
| 2 Introduction | 3 |
| 3 Findings of our previous report | 4 |
| 4 The Department's response to our report | 4 |
| Drafting of the Order | 4 |
| Necessary protection | 4 |
| 5 Other representations | 4 |
| 6 Recommendation | 5 |
| | |
| Formal minutes | 6 |
| | |
| Reports from the Regulatory Reform Committee in the previous and present Session | |
| | <i>inside back cover</i> |

1 Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Prison Officers)(Industrial Action) Order 2005 in accordance with Standing Order No. 141. We recommend unanimously that the draft Order be approved.

2 Introduction

2. Section 127 of Criminal Justice and Public Order Act 1994 renders anyone who induces a prison officer, custody officer or prison custody officer in the United Kingdom to withhold his or her services or to commit a breach of discipline liable to civil action by the Secretary of State. On 18 October 2004, the Government laid proposals to amend section 127 so that it would cease to apply in relation to prison officers employed by the Prison Service in Great Britain, but would still apply to prison officers in Northern Ireland and all custody officers and prisoner custody officers wherever they are located.

3. We published our report on the proposal on 17 December 2004 and considered the Home Office's case for making the proposal.¹ According to the Home Office, the amendment of section 127 would re-instate the full statutory trade union rights of prison officers in England and Wales and in Scotland, and would thereby honour a pre-election pledge made by the present Government when in Opposition.

4. The Government decided to limit the repeal of section 127 to prison officers in England and Wales and in Scotland on the grounds that those prison officers are subjected to legally binding collective agreements that prevent them from inducing strike action. Such legally binding agreements do not exist for prison officers in Northern Ireland or custody officers or prisoner custody officers throughout the United Kingdom.

5. On 11 January 2005 the Government laid the draft Order before Parliament, together with an explanatory statement from the Home Office.² The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee or to any other representations made during the period for Parliamentary consideration.³

1 Regulatory Reform Committee, Third Report of Session 2004-05, *Proposal for the Regulatory Reform (Prison Officers) (Industrial Action) Order 2004*, HC 148. The Resolution was reported to the House on 14 December 2004.

2 Copies of the draft Order and the explanatory statement dated 11 January 2005 are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office web site: www.cabinet-office.gov.uk/regulation/rra/rro/proposals.asp

3 Standing Order No. 141(7)

3 Findings of our previous report

6. In our report on the proposal for the Order we concluded that, except for one item of defective drafting, the proposal met the criteria against which we were required to judge it and recommended that the draft Order should be amended.⁴

7. In our report, we also considered whether the legally binding agreements between the Prison Officers Association (POA) and the POA (Scotland) and the Prison Service would maintain necessary protection against industrial disruption following the repeal of section 127 for prison officers in England and Wales and in Scotland. The Government had taken the view that the legally enforceable agreements would provide the necessary protection as required under the Regulatory Reform Act 2001. We noted that with 12 months notice required for termination of the agreements and their relatively limited coverage compared with section 127, the agreements would provide less protection than that given by section 127. We concluded that, although the proposal did not maintain existing protection, as the Secretary of State is the beneficiary of that protection it was appropriate in the circumstances to leave it to him to determine whether the protection it does provide is adequate.⁵

4 The Department's response to our report

Drafting of the Order

8. The Home Office has amended the text of the draft Order in line with our recommendation.

Necessary protection

9. On the question of maintaining necessary protection in the event that the legally binding agreements are unable to do so, the Home Office statement says that the Department would be “prepared to undertake that a Bill would be introduced to reapply section 127 as quickly as possible in the event of a collective agreement being terminated in circumstances where it was clear that the protection provided by the agreement could not be replaced by a new agreement”.⁶

5 Other representations

10. The House of Lords Delegated Powers and Regulatory Reform Committee concluded that the proposal in its present form did not maintain all the necessary protection. That Committee thought that it might be possible for the Home Office to modify its proposal to maintain that protection, for example, by suspending the operation of section 127 with

4 Regulatory Reform Committee, Third Report of Session 2004-05, *Proposal for the Regulatory Reform (Prison Officers) (Industrial Action) Order 2004*, HC 148, para 29

5 *ibid*, para 15

6 Home Office explanatory statement, 11 January 2005, para 19

respect to a union so long as it has a current agreement with the Secretary of State not to induce, authorise or support industrial action by any of its members employed in the Prison Service. In its statement of 11 January, the Home Office reported that it was not able to identify a viable means of giving effect to the Committee's recommendation and submitted that the option of reapplying section 127 by primary legislation would provide adequate necessary protection, even if it did not maintain existing protection.⁷

11. No other representations were received either by ourselves or by the Home Office.⁸

6 Recommendation

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

⁷ *ibid*, para 20

⁸ *ibid*, para 20

Formal minutes

Tuesday 25 January 2005

Members present:

Mr Peter Pike, in the Chair

Mr Denis Murphy

Mr Anthony Steen

Dr Doug Naysmith

Brian White

The Committee deliberated.

Draft Report [Draft Regulatory Reform (Prison Officers) (Industrial Action) Order 2005], 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 12 read and agreed to.

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

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

[Adjourned till a day and time to be fixed by the Chairman.]

Reports from the Regulatory Reform Committee in the last Session of Parliament

Session 2003-04

| | | |
|-----------------------|---|------|
| 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 |
| Sixth | Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004 | 553 |
| Seventh | Draft Regulatory Reform (Museum of London) (Location of Premises) Order 2004 | 594 |
| Eighth | Draft Regulatory Reform (Patents) Order 2004 | 683 |
| Second Special Report | Draft Regulatory Reform (Museum of London) (Location of Premises) Order 2004 | 818 |
| Ninth | Proposal for the Regulatory Reform (Trading Stamps) Order 2004 | 817 |
| Tenth | Draft Regulatory Reform (Local Commissioner for Wales) Order 2004 | 900 |
| Eleventh | Proposal for the Regulatory Reform (Fire Safety) Order 2004 | 684 |
| Twelfth | Proposal for the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004 | 1056 |
| Thirteenth | Draft Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004 | 1246 |
| Fourteenth | Proposal for the Regulatory Reform (Execution of Deeds and Documents) Order 2004 | 1271 |

Reports from the Regulatory Reform Committee in the present Session of Parliament

Session 2004-05

| | | |
|--------|---|-----|
| First | Proposal for the Regulatory Reform (Joint Nature Conservation Committee) Order 2005 | 117 |
| Second | Proposal for the Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004 | 118 |
| Third | Proposal for the Regulatory Reform (Prison Officers) (Industrial Action) Order 2004 | 148 |
| Fourth | Draft Regulatory Reform (Joint Nature Conservation Committee) Order 2005 | 270 |

All reports are available from The Stationery Office.

Distributed by TSO (The Stationery Office)

and available from:

TSO

(Mail, telephone and fax orders only)

PO Box 29, Norwich NR3 1GN

General enquiries 0870 600 5522

Order through the Parliamentary Hotline *Lo-call* 0845 7 023474

Fax orders 0870 600 5533

Email book.orders@tso.co.uk

Internet <http://www.tso.co.uk/bookshop>

TSO Shops

123 Kingsway, London WC2B 6PQ

020 7242 6393 Fax 020 7242 6394

68–69 Bull Street, Birmingham B4 6AD

0121 236 9696 Fax 0121 236 9699

9–21 Princess Street, Manchester M60 8AS

0161 834 7201 Fax 0161 833 0634

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

18–19 High Street, Cardiff CF10 1PT

029 2039 5548 Fax 029 2038 4347

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders 020 7219 3890

General enquiries 020 7219 3890

Fax orders 020 7219 3866

Accredited Agents

(see Yellow Pages)

and through good booksellers

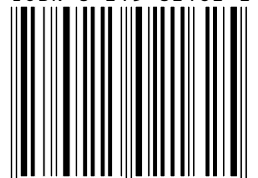
© Parliamentary Copyright House of Commons 2005

Applications for reproduction should be made in writing to The Licensing Division,

HMSO, St Clements House, 2–16 Colegate, Norwich NR3 1BQ

– Fax 01603 723000

ISBN 0-215-02162-2



9 780215 021625