



House of Commons
Regulatory Reform Committee

**Proposal for the
Regulatory Reform
(Collaboration etc
between Ombudsmen)
Order 2007**

Second Report of Session 2006–07



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*Report, together with formal minutes and
written evidence*

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The Regulatory Reform Committee

The Regulatory Reform Committee is appointed under Standing Order No. 141 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.

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Criteria against which the Committee considers each proposal

Paragraph (6) of Standing Order No.141 requires us to consider any proposal for a regulatory reform order against the following criteria:

... whether the proposal—

- (a) appears to make an inappropriate use of delegated legislation;
- (b) removes or reduces a burden or the authorisation or requirement of a burden;
- (c) continues any necessary protection;
- (d) has been the subject of, and takes appropriate account of, adequate consultation;
- (e) imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (f) purports to have retrospective effect;
- (g) gives rise to doubts whether it is *intra vires*;
- (h) requires elucidation, is not written in plain English or appears to be defectively drafted;
- (i) appears to be incompatible with any obligation resulting from membership of the European Union;
- (j) prevents any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- (k) satisfies the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Regulatory Reform Act 2001;
- (l) satisfies the test of desirability set out in section 3(2)(b) of the 2001 Act;
- (m) 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; or
- (n) includes provisions to be designated in the draft order as subordinate provisions.

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) and Liz Booth (Secretary/Committee Assistant).

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Summary

Overall recommendation

We have examined the proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 in accordance with Standing Order No. 141. We recommend unanimously that a draft Order in the same form as the proposal should be laid before the House.

Outline of the proposed Order

The purpose of the proposed Order is to amend the Parliamentary Commissioner Act 1967 (“the 1967 Act”), the Local Government Act 1974 (“the 1974 Act”) and the Health Service Commissioners Act 1993 (“the 1993 Act”) in order to increase the scope for collaborative working amongst the three Ombudsmen (Parliamentary Ombudsman, the Health Service Ombudsman and the Local Government Ombudsman).

The proposal for the Regulatory Reform Order was laid before the House by the Cabinet Office on 18 December 2006. We have considered the proposal against the criteria set out in paragraph (6) of Standing Order No. 141 and report the following conclusions to the House.

Criterion (a): appropriate for delegated legislation

In our view the proposal appears to be appropriate for delegated legislation.

Criterion (b): removal or reduction of burdens

The proposal would remove or reduce a number of burdens.

Criterion (c): maintenance of necessary protection

We are satisfied that no necessary protection would be lost.

Criterion (d): adequate consultation

We consider the proposal has been the subject of, and appropriate account has been taken of, an adequate degree of consultation.

Criterion (e): charges on public revenues, payments to the Exchequer or any public authority

The proposal would not impose any requirements of this kind.

Criterion (f): retrospective effect

The proposal would not have retrospective effect.

Criterion (g): vires of the proposal

The proposal gives rise to no doubts as to whether it is intra vires.

Criterion (h): requires elucidation, is not written in plain English or appears to be defectively drafted

We do not consider the proposal gives rise to any concerns of this kind.

Criterion (i): compatibility with membership of the European Union

We have seen no reason to consider that the proposal is incompatible with obligations arising from membership of the European Union.

Criterion (j): prevention of the exercise of rights and freedoms it would be reasonable to expect to continue

We consider that the proposal would not prevent the exercise of any right or freedom that any person could reasonably expect to continue to enjoy.

Criterion (k): new and re-enacted burdens are proportionate to the benefit which arises from them

We consider the new and re-enacted burdens imposed by the proposal would be proportionate to the beneficial effects which would arise from them.

Criterion (l): extent to which the Order removes burdens or has other beneficial effects makes it desirable for it to be made

We consider the proposal meets the test of desirability in its removal and reduction of burdens.

Criterion (m): estimates of increases or reductions in costs or other benefits and the account taken of them

We consider the Department has made reasonable efforts to foresee the costs, savings and

other benefits that could arise from the proposal.

Criterion (n): subordinate provisions

The proposal contains no provisions which are designated as subordinate provisions.

Other matters arising

We consider the requirement that complaints to the Parliamentary Ombudsman must continue to be referred via a Member of Parliament to be long overdue for reform.

Explanatory Report

Introduction

1. The proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007 was laid before the House by the Cabinet Office on 18 December 2006.

2. The policy aim of the proposed Order is to increase the scope for collaborative working amongst the three Ombudsmen (Parliamentary Ombudsman, the Health Service Ombudsman and the Local Government Ombudsman). To this end, the draft Order would amend the Parliamentary Commissioner Act 1967 (“the 1967 Act”), the Local Government Act 1974 (“the 1974 Act”) and the Health Service Commissioners Act 1993 (“the 1993 Act”). In particular, the Order would allow the Ombudsmen to:

- undertake joint investigations of complaints (consult with each other, share information and produce joint reports);
- delegate functions to each other’s staff if required for the purpose of a joint investigation;
- appoint and pay a mediator or other appropriate person to assist in relation to any complaint they are investigating; and
- (in the case of the Local Government Ombudsman) investigate a complaint that had not previously been notified to the authority concerned where the Local Government Ombudsman is convinced that no benefit would be achieved in requiring that the case first be considered by the authority.

3. The Order would insert similar provisions into the 1967, 1974 and the 1993 Acts to explicitly permit collaborative working between the Ombudsmen. The Order would amend s26(5) of the 1974 Act to allow the Local Government Ombudsman to investigate a complaint that had not been brought to the notice of the authority to which the complaint relates by either the complainant or on his behalf. This provision would bring the Local Government Ombudsman procedures into line with the other Ombudsmen.

4. It is estimated that about 50 investigations per year into complaints involve more than one Ombudsman.

Ombudsmen

5. The Parliamentary Ombudsman, the Health Service Ombudsman and the Local Government Ombudsman undertake independent investigations into complaints from citizens relating to Government departments, the National Health Service and local authorities respectively (and other related public bodies in their respective areas). All the Ombudsmen are created by statute and operate under statutory provisions as set out in their respective Acts. In 1999 the Government commissioned a review of the organisation of public sector Ombudsmen in England, and following consultations in July 2001 accepted the review’s findings for the establishment of an independent, unified and flexible body to replace the three separate Ombudsmen. In a Memorandum submitted to the

Public Administration Select Committee in January 2002, the then Cabinet Office minister, Mr Christopher Leslie MP, said that the new body could not be created without primary legislation and that it might be possible to make some of the changes needed by regulatory change.

6. The Government is now proposing to use the Regulatory Reform procedure to allow collaboration between the three Ombudsmen while they retain their separate legal identities. An outline of each Ombudsman is set out below.

Parliamentary Ombudsman

7. The Parliamentary Ombudsman may investigate any action taken by or on behalf of a government department or other authority to which the 1967 Act applies. The Parliamentary Ombudsman is appointed by the Crown and operates under the provisions of the Parliamentary Commissioner Act 1967 (as amended). The current Parliamentary Ombudsman is Ann Abraham. She is independent of Government. As regards the work of the Parliamentary Ombudsman, complaints are always received via a Member of Parliament and assessed by the Parliamentary Ombudsman's staff as to whether the complaint falls within the jurisdiction of the Parliamentary ombudsman. Complaints are investigated to establish that maladministration leading to an injustice occurred within 12 months of the complaint being referred and that the matter would not be more appropriately dealt with by a court or tribunal. Findings of any investigation are produced in a report, which may also include a recommendation for some form of redress if maladministration leading to injustice is found. According to its annual report for (financial year) 2005/06, the Parliamentary Ombudsman and her staff received a total of 1,853 investigable cases. The annual reports of the Parliamentary Ombudsman, which are laid before Parliament, are considered by the Public Administration Select Committee.

Health Service Ombudsman

8. The Health Service Ombudsman is appointed in a similar way to the Parliamentary Ombudsman and is similarly accountable to Parliament. To date, the distinct offices of Health Service Ombudsman and Parliamentary Ombudsman have always been held by the same person, but there is no formal requirement for this to be so. The Health Service Ombudsman operates under the provisions of the Health Service Commissioners Act 1993 (as amended), and in terms of investigations, time limits, and alternative remedies, is broadly similar to the 1967 Act. The staff of the Parliamentary Ombudsman and Health Service Ombudsman share premises and common services. The two Ombudsmen have around 300 staff supporting them.

9. Unlike the Parliamentary Ombudsman, the Health Service Ombudsman can be approached directly by complainants, although it is usual for the Health Service Ombudsman to accept a complaint only after the National Health Service complaints process has been exhausted. The Health Service Ombudsman also investigates complaints about the National Health Service that include services delivered on its behalf by private sector providers. Since 1996, the Health Service Ombudsman's jurisdiction has been extended to include matters of clinical judgement. In 2005-06, the Health Service Ombudsman received a total of 1,309 investigable cases.

Local Government Ombudsman

10. There are three Local Government Ombudsmen, each acting independently and covering different geographical areas of England. These Local Government Ombudsmen handle complaints of injustice arising from maladministration by local authorities (local councils) and a number of other public bodies. These Local Government Ombudsmen operate under the provisions of the Local Government Act 1974 (as amended).

11. The Local Government Ombudsmen can receive complaints directly or via a councillor or professional adviser, although the Ombudsmen would usually expect the relevant council or body first be given an opportunity to deal with a complaint against it. The Local Government Ombudsmen can investigate complaints across a wide range of council matters, including housing, planning, education, social services, highways, consumer protection, drainage and local taxation. The Local Government Ombudsmen cannot, however, question the merits of a council's decision in the absence of fault. The jurisdiction of the Local Government Ombudsmen extends to other local bodies such as drainage bodies and schools (concerning admission matters). In 2005-06 the three Local Government Ombudsmen received a total of 18,626 complaints.

12. The proposal seeks to improve the collaborative working between the Parliamentary Ombudsman, the Health Service Ombudsman and the Local Government Ombudsman with the purpose of improving the quality of the service provided to complainants and the overall efficiency of Ombudsmen. To some extent, the Ombudsmen already work closely. For example, the three Local Government Ombudsmen, together with the Parliamentary Ombudsman, comprise the Commission for Local Administration in England (CLAE). CLAE is responsible for the staff and resources available to support the Local Government Ombudsmen and for the provision of published advice and guidance on good administrative practice to bodies within their jurisdiction. CLAE currently employs 205 staff spread across its three offices in York, Coventry and London. The London office is co-located with those of the Parliamentary Ombudsman and Health Service Ombudsman. One of the three Local Government Ombudsmen is also appointed as the Chairman of the Commission. The current Chairman is Tony Redmond.

The Committee's remit

13. The House has instructed us to examine the proposal against the criteria specified in Standing Order No. 141(6) and then, in the light of that examination, to report whether we recommend that the proposal should proceed, whether amendments should be made to it, or whether no Order should be made in the terms of the proposal. Our discussion of matters arising from our examination is set out below. Where a criterion that is specified in Standing Order No. 141(6) is not discussed in the report, it signifies that we have no concerns about that criterion. During our examination, we requested further information from the Department about a couple of issues relating to the proposal and the text of our questions is contained in Appendix A to this report. The Department's letter of response is reproduced as Appendix B.

Extent of the proposal's application

14. The proposed Order would apply to England, and would have no direct impact on the devolved administrations in Scotland and Wales, or in Northern Ireland, where there are separate statutory Ombudsmen schemes.

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

Use of delegated legislation

15. There is no reason why the proposal may not be considered to be appropriate use of delegated legislation.

Removal and reduction of burdens

16. According to the Cabinet Office, the proposed Order deals with the removal or reduction of burdens. The proposed Order amends the relevant sections of the 1967, 1974 and 1993 Acts in order to grant the following powers:

- for the three Ombudsmen, where appropriate, to work collaboratively and to undertake joint investigations of complaints and issue joint reports;
- for the three Ombudsmen to share information with one another in appropriate cases outside of the course of their own investigation;
- for the three Ombudsmen to appoint and pay a mediator or other appropriate person to assist them in relation to any complaint they are investigating;
- for the Local Government Ombudsman to investigate a complaint that has not previously been notified to the authority.

Power to work collaboratively and undertake joint investigations

17. The Cabinet Office says in its explanatory statement (paragraph 12) that the principal purpose of the proposed Order is to give the Ombudsmen an express power to consult each other, share information and work together on cases and issues that involve the jurisdiction of more than one Ombudsman. The proposed power would allow Ombudsmen to undertake joint investigations and to issue joint reports. To this end, the proposed Order would amend all three Acts to enable the Ombudsmen to consult each other on cases and issues that spill over onto the jurisdiction of another Ombudsman and produce a joint report, although each Ombudsman would retain responsibility for his or her work on each part of the complaint. In its statement (paragraph 13), the Cabinet Office identifies the Balchin case, which involved a complaint against central and local government and which, in the absence of a power to conduct joint investigations had to be investigated separately by two Ombudsmen; the same set of events were considered by the two relevant Ombudsmen and culminated in two separate reports being published.

According to the Cabinet Office (paragraph 15), the restrictions on the Ombudsmen's ability to work together means that a fully-joined up and coherent service cannot be provided to complainants whenever complaints involve more than one Ombudsman (paragraph 15). The Cabinet Office says (paragraph 29) that the restriction on joint working imposes burdens: on the Ombudsmen, who have to work independently on the same complaint; on local authorities, central departments and the National Health Service, who may have to provide the same information to more than one Ombudsman carrying out separate investigations on different aspects of the same complaint; and on the complainant, who may have to approach and provide information to more than one Ombudsman to obtain a full investigation of all aspects of the case, which may cause delays in the investigation process. **We therefore agree that the absence of a power to work collaboratively constitutes a burden (as defined by the 2001 Act) which would be removed by the proposal.**

Power to disclose information

18. The existing legislation places restrictions on all three Ombudsmen from sharing information. For example, as set out in the statement (paragraph 28), s11(2) of the 1967 Act, s32(2) of the 1974 Act, and s15 of the 1993 Act all contain parallel provisions restricting disclosure of information except for the purposes of investigations and reports about investigations undertaken under the respective Acts, and for the purposes of certain judicial and criminal proceedings. As the statement adds, although s33 of the 1974 Act contains provisions for consultation between the Ombudsmen, the power to share information is limited to "during the course of conducting an investigation" and does not extend to joint investigation or the production of joint reports.

19. The proposed Order would amend all three Acts to enable the three Ombudsmen to share information with one another in appropriate cases outside of the course of their own investigation. The Cabinet Office argues (paragraph 17) that this would allow investigations to be more efficient and would also avoid the task of each Ombudsman gathering the same information from scratch. **We therefore agree that the absence of a power to disclose information constitutes a burden which would be removed by the proposal.**

Alternative resolution of complaints: power to appoint and pay a mediator

20. The proposed Order would amend the 1967, 1974 and 1993 Acts to give each Ombudsman the express power to appoint and pay a mediator or another appropriate person to help resolve a dispute. The Cabinet Office considers that a burden exists to the extent that the Ombudsmen have only limited powers to call on the assistance of, say, a mediator, in order to assist them in their investigative function. For example, all Ombudsmen have powers to pay expenses and allowances for loss of time to a person who attends or furnishes information for the purposes of an investigation. The Cabinet Office has concluded that this power needs to be enhanced to include a power to pay fees to an external mediator or other appropriate person to allow them to seek the resolution of a complaint through alternative approaches to the usual formal investigation, which may lead to disputes being resolved more quickly. The Cabinet Office makes clear in its statement (paragraph 18) that the power would apply to all investigations, not just those

that are undertaken jointly. **We agree that the absence of an explicit power to appoint and pay a mediator, or similar person, constitutes a burden which would be removed by the proposal.**

Local Government Ombudsman; power to investigate a complaint without local authority exhausting all remedies

21. The proposed Order (Article 15) would amend the 1974 Act so that the Local Government Ombudsman could investigate a complaint that had not previously been investigated internally by the relevant local authority. The Cabinet Office says (paragraph 19) that the requirement in the 1974 Act for the Local Government Ombudsman to notify the authority to allow it to conduct its own investigation is a burden on the Local Government Ombudsman and if removed, would align the position of all three Ombudsmen and allow joint investigations involving the Local Government Ombudsman to proceed without having to wait until the relevant authority had investigated the complaint. The Cabinet Office expects very few cases to be investigated by the Local Government Ombudsman which had not previously been investigated by the local authority. Possible circumstances justifying this would be an irretrievable breakdown in trust or confidence between the complainant and the local authority or as a matter of urgency when the process needed to be speeded up owing to the state of the health of the complainant. **We consider that the requirement to notify the relevant authority of a complaint before allowing the Local Government Ombudsman to conduct an investigation constitutes a burden which would be removed by the proposed Order.**

Removal of inconsistencies and anomalies

22. The proposed Order would also remove particular inconsistencies or anomalies (Section 6(2)(c) of the 2001 Act) that relate to the delegation of powers.

Delegation of powers

23. The proposed Order (Articles 3-5) would amend all three Acts to align provisions to enable each of the Ombudsmen to cross-delegate their functions to each other's staff if required for the purposes of a joint investigation. Under existing legislation, the Parliamentary Ombudsman can delegate functions to the staff of the Health Service Ombudsman, but not the staff of the Local Government Ombudsman; whereas the Health Service Ombudsman is currently able to delegate functions to the staff of the Parliamentary Ombudsman, but not the staff of the Local Government Ombudsman. The Local Government Ombudsman is currently unable to delegate functions to the staff of either the Parliamentary Ombudsman or the Health Service Ombudsman. The proposed amendments would remove these existing anomalies by making all three Ombudsman Acts more aligned and would also support the principal aim of the Order: greater collaboration between Ombudsmen. Although there is a case for treating these amendments as removing burdens on the Ombudsmen which prevent them from conducting joint investigations, the Department views these amendments as removing inconsistencies and anomalies. **We are content that the amendments remove inconsistencies and anomalies as provided for in section 1(1)(d) of the Regulatory Reform Act.**

24. We asked the Cabinet Office how the staff of the Ombudsmen would be likely to conduct a joint enquiry and whether it is envisaged that the implementation of the proposed Order would make it possible for a single officer of one of the Ombudsmen to carry out the work relating to that complaint from the complaint being assessed through to the report being issued. In its written response, the Cabinet Office describes the effect that the proposed RRO is expected to have on the conduct of investigations, including providing for one Ombudsman to be established as the lead office, with a lead manager, and single point of reference and contact for the complainant. The Cabinet Office added that it was envisaged that in most cases, a single officer of one of the Ombudsmen would conduct the investigation, ensuring that that one person “has responsibility for the overview and co-ordination of the case from start to finish”.¹ The Cabinet Office adds that regardless of the precise format of a particular report, “the joint reports would make clear the powers by which findings and recommendations are made.”

New burdens and proportionality between burdens and benefits

25. The Cabinet Office argues (paragraph. 38) that its proposals do not create any new significant burdens, although a small number of minor new burdens would result from the proposals. The additional new burdens are:

- a new requirement on each Ombudsman to obtain consent from the complainant to undertake joint working on the investigation of the complaint; and
- a requirement for the Parliamentary Ombudsman to ensure that when approached by one of the other Ombudsmen to work collaboratively on an investigation of a complaint that was considered appropriate for collaborative working, the case would be referred to her by a Member of Parliament.

New burden: requirement to obtain complainant’s consent

26. In the case of a complaint involving cross-jurisdiction issues, the proposed Order would require the relevant Ombudsman to obtain the complainant’s consent before their complaint can be investigated jointly. This requirement amounts to a new burden on the Ombudsmen. However, the Cabinet Office points out (paragraph 40) that under existing arrangements complainants are already informed whenever there is a need to approach another Ombudsman in the course of an investigation involving more than one Ombudsman. The Cabinet Office adds that obtaining consent to undertake a joint investigation would be a very minor additional burden (statement, paragraph 40). The Cabinet Office also considers that the burden of requiring the consent of the complainant would be proportionate to the benefit, although not all respondents accepted the need for the consent of complainants to be given; arguing that too much significance may be given to the interest of the complainant compared with the public interest in avoiding unnecessary waste and duplicated effort. **We agree that this new burden would satisfy the requirements of proportionality and fair balance.**

New burden: Member of Parliament referral for joint working

27. Under existing legislative provisions as set out in section 5 of the 1967 Act, complainants are required to submit a written complaint to a Member of Parliament and ask for referral to the Parliamentary Ombudsman. The proposed Order includes a proposed amendment to the Parliamentary Commissioner Act 1967 to the effect that in appropriate cases for joint working, the Parliamentary Ombudsman would also require such cases to be referred to her by a Member of Parliament. This requirement would ensure consistency with the existing legislative provisions. The Cabinet Office says (paragraph 41) that in order to minimise the effect of this burden on joint working, the Parliamentary Ombudsman would contact the complainant's Member of Parliament directly to ask them to refer the complaint. The Cabinet Office argues that this new burden on complainants is proportionate and consistent with the existing legislation. **We agree that this new burden would satisfy the requirements of proportionality and fair balance.**

28. Some respondents criticised the current requirement whereby all complaints to the Parliamentary Ombudsman are referred via a Member of Parliament. We comment on this issue in paragraph 45.

Fair balance and desirability

29. The Regulatory Reform Act 2001 (RRA) requires that the Minister may only make an Order creating burdens where (i) he believes that the Order as whole strikes a fair balance between the public interest and the interests of those persons affected by any newly created burdens and (ii) he considers that the extent to which the Order reduces burdens, or has other beneficial effects for persons affected by burdens in the existing law, makes it desirable for the Order to be made. Section 6(2) of the RRA requires the Minister to lay before Parliament a document containing, amongst other things, how the proposed Order as a whole satisfies the proportionality test (s1(1)(c)) and fair balance and desirability tests (s3(2)). The Cabinet Office document comments on the proportionality and fair balance tests for new burdens (paragraphs 40-43). **We agree that the tests of fair balance and desirability are met as described by the Cabinet Office.**

Maintenance of necessary protection

30. The Cabinet Office believes that the proposals in the draft Order do not raise any issues in respect of the continuation of necessary protections or the exercise of rights and freedoms (paragraph 46). However, two aspects of the draft Order require further comment.

Separate investigations

31. At present, complaints that cross the jurisdiction of more than one Ombudsman are investigated separately by each Ombudsman. Although joint working on investigations is expected to bring benefits to the Ombudsmen and complainants when their complaints involve more than one Ombudsman, it is possible that some complainants may prefer to have their complaint investigated separately by each relevant Ombudsman and, rightly or wrongly, may view this as a necessary protection. The statement makes clear that the

option of separate investigations by each Ombudsman would still be available to the complainant by virtue of the complainant's consent being required before joint working on the investigation could take place. The statement also makes clear that the sharing of information between Ombudsmen for the purpose of investigating a complaint would be handled in accordance with existing legal requirements on data protection. **We agree that that any necessary protection would be maintained.**

Exhaustion of remedy powers

32. At present, the Local Government Ombudsman undertakes an investigation only after the local authority has exhausted all possible complaints procedures. The proposed Order would allow the Local Government Ombudsman to undertake an investigation before such procedures had been exhausted, or before the local authority had been notified of a complaint. Some responses from local authorities commented that they would prefer to be given the opportunity to remedy complaints, especially when local authorities and complainant are likely to have a continuing relationship, even after the dispute is settled, such as in the case of the local authority continuing to provide education or social services. As noted above, the Cabinet Office says the power to investigate before the local authority has been notified is expected to be used in only a small number of cases: where the Local Government Ombudsman is convinced that no benefit would be achieved in requiring the complaint be considered first by the local authority concerned, for example, where there has been an irreconcilable breakdown in trust or urgency is paramount. The Cabinet Office says that the local authority would be kept fully informed when this power is exercised (paragraph 49). **We agree that any necessary protection would be maintained.**

33. **We also agree that the proposed Order would not prevent any person from continuing to exercise any reasonable right or freedom.**

Estimates of costs, savings and other benefits

34. The Cabinet Office's statement (paragraph 51) estimates that based on the pilot project, there may be more than 50 complaints per year where joint investigations would be appropriate, which if realised could result in saving in staff time for the Ombudsmen Schemes of around 2-3 days per complaint, which would translate into cost savings equivalent to 50% of the annual salary of a Senior Investigating Officer, approximately £25,000 including on-costs per annum for each Ombudsman scheme (paragraph 51). Extra costs associated with internal training on the new arrangements are expected to be limited. In terms of the overall, budgets of the Ombudsmen, these sums are relatively small.

35. In addition to these resource costs, the draft Order is also expected to lead to a more streamlined and effective service to complainants in the form of a "one-stop shop" for the handling of cross-jurisdiction complaints (paragraphs 37-42). However, to put this into context, the potential number of cases (50) that are expected to be affected by the proposed Order would represent only one-fifth of one per cent of the total caseload (21,788) of all three Ombudsmen in 2005-06. Again, this is estimated to have a relatively small effect. **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.**

Consultation

36. The consultation document was published on 2 August 2005 and made available on the Cabinet Office website. The closing date for the consultation was 18 November 2005 (a period of 15 weeks). The Cabinet Office provides a detailed analysis of the responses in Annex A1 to the explanatory statement. Annexes A2 and A3 to the explanatory statement set out a statistical summary of the responses with a list of the respondents. In total, 129 representations were received with a large majority of the respondents expressing support for each of the five proposals (see below). The Cabinet Office says that at least three quarters of all respondents who expressed a clear view supported the proposals. The summary (paragraph 4) makes clear that a relatively small number of the total responses expressed objections or concerns about the proposed reforms. These concerns were mainly from individual members of the public.

37. The Cabinet Office has confirmed that the table on page 31 of the Explanatory Document showing the analysis of consultation respondents' answers to Question (b) contains an error: the figures in the first and third columns of the table have been inadvertently transposed. This confirmation is set out in appendix B.

Collaborative Working

38. The vast majority of responses welcomed proposals for collaborative working, with only 14 of the total 129 respondents expressing opposition to this reform proposal. In noting that 10 of the 26 responses from the public expressed opposition to the proposal, the Cabinet Office says that as with other objections voiced by some members of the public, these were mainly based on a general dissatisfaction with the Local Government Ombudsman scheme, and as such were outside of the scope of this consultation.

39. The Cabinet Office noted that a few respondents alleged that the Local Government Ombudsman was biased in favour of local government. Five respondents also expressed concern about the possibility that collaborative working between the Ombudsmen might result in a blurring of responsibility and accountability and that additional training would be necessary. The statement says that the Cabinet Office does not believe collaboration would lead to a blurring of responsibility or accountability and goes on to point out that the three Ombudsmen services were already working more closely since 2001 when administrative changes were made. As regards the alleged bias of the Local Government Ombudsman, the statement points out that in 2005/06 the Local Government Ombudsman made 2,982 findings involving financial remedies of approximately £1.7m, representing 27% of the number of decisions. The Local Government Ombudsman believes such figures are inconsistent with accusations of bias. Four respondents questioned how different Ombudsmen decisions would be reflected in joint reports and whether individual Ombudsmen might have less authority to influence the adoption of their recommendations. In response, the Cabinet Office points out (Annex 1, paragraph 8) that each Ombudsman would remain responsible and accountable for any part of a complaint that falls within their respective jurisdiction and that consent from the complainant (or person acting on his/her behalf) would be required before collaborative working on investigations could be undertaken. There was general support for the principle that the consent of complainants would be required.

Delegation of Powers

40. Delegation of powers was supported by the vast majority (76%) of respondents and was generally seen as the logical consequence of joint working. Of those expressing concern, these focused mainly on how the reform would work in practice, including a possible lack of case ownership or delays. In response, the Cabinet Office says that arrangements for delegation of powers would be tailored to each individual case and that delegations would be limited to the period of investigations and monitored to ensure that there was clarity about the powers involved (Annex 1, paragraph 12).

Alternative resolution of complaints

41. There was broad support (79%) for the proposal enabling the Ombudsmen to use alternative forms of resolving complaints, which may be more flexible and potentially quicker, rather than the full formal investigations. However, several members of the public, as well as some public bodies, argued that less formal methods for dealing with complaints were inappropriate and could be used as a means for shutting down complaints without a proper investigation being held (Annex 1, paragraph 21). The Cabinet Office says that this concern was mostly expressed by members of the public and related to the Local Government Ombudsman. Overall, a majority of the public respondents were opposed to this reform. A number of local government respondents questioned how the alternative dispute resolution would be used in practice and who would conduct such an approach. The Cabinet Office decided not to proceed with this proposal on the grounds that existing statutory provisions already allowed Ombudsmen to call for such assistance. However, the Cabinet Office did conclude that this power needed to be bolstered to include a power to pay fees to such a person and that the absence of such a power to pay fees constituted a burden on the Ombudsmen.

Exhaustion of remedies

42. The consultation revealed broad support for the proposal that the Local Government Ombudsman could, in limited circumstances, undertake an investigation which had not previously been notified to the relevant local authority. The Cabinet Office pointed out that local authorities would not be notified only where the Ombudsman was convinced that there would be no benefit in the local authority being first asked to consider the case, such as where there had been an irretrievable breakdown in trust between a complainant and the local authority (Annex 1, paragraph 26) and that it would not be reasonable to expect the complainant to have exhausted his remedies. However, some concerns were expressed about the proposal. For example, the local authority which was the subject of a complaint would not be given an opportunity to resolve the complaint and would not be able to fully help with any investigation by the Ombudsman. Concern was also expressed that the proposal could encourage persistent and vexatious complainants. A number of those expressing concerns about this proposal were local authorities. The Cabinet Office's view is that the proposal would align the positions of all three Ombudsmen and would lead to a more efficient and streamlined service.

Guidance

43. The consultation document contained a proposal for the Ombudsmen to issue advice and guidance. This proposal attracted majority support, although there were concerns expressed about the status of such guidance. However, as the statement says, after further consideration by the Cabinet Office, it was concluded that the Parliamentary and Health Service Ombudsmen already had the power to issue guidance that was necessarily ancillary to their statutory functions and that it would not be within the vires of the Regulatory Reform Act to use a Regulatory Reform Order to clarify their power to issue guidance since such clarification would not amount to removal or reduction of a legal burden. The proposal was therefore dropped.

44. We consider that the proposal has been the subject of, and taken appropriate account of, adequate consultation.

Other matter

45. Under our current Standing Orders (No. 141(5)) we may report to the House on any matter arising from our consideration of a proposal. One matter that arises in our consideration of this RRO was the retention of the “MP filter” whereby complaints could only be referred to the Parliamentary Ombudsman via a Member of Parliament. As noted above, the existence of this MP filter was criticised by a number of respondents: this view was shared by a number of MPs according to the most recent survey of Members’ views and the Public Administration Select Committee.² We asked the Cabinet Office about the removal of the MP filter. In its response, the Cabinet Office stated that it was the Government’s view that a Regulatory Reform Order would not be an appropriate vehicle for making such changes and that these changes could only be made by primary legislation. **We are content with this assessment.**

Conclusion

46. We recommend unanimously that a draft Order in the same form as the proposal should be laid before the House.

² For example, see Public Administration Committee, Third Report of Session 1999-2000, *Review of Public Sector Ombudsmen in England*, paragraph 12, HC 612

Formal minutes

Tuesday 6 March 2007

Members present:

Andrew Miller, in the Chair

Gordon Banks

Alison Seabeck

Dr Doug Naysmith

The Committee deliberated.

Draft Report [Proposal for the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007], 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 46 read and agreed to.

Resolved, That the Report be the Second 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 a day and time to be fixed by the Chairman.]

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Appendix A

Letter from the Clerk of the Committee to the Cabinet Office

Proposal for the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007

Thank you for the presentation which you made today with your colleagues on the subject of this RRO proposal.

The Committee considered the proposal and decided to seek further information on it from you. The issues which concern the Committee are set out below.

1. The Committee notes that the purpose of the proposed Order is to permit the Parliamentary Commissioner, Local Commissioner and Health Service Commissioner to conduct investigations jointly where any one of them believes that a complaint falls within the jurisdiction of more than one Ombudsman, and where the complainant gives his permission for his complaint to be jointly investigated.

Q1 Please explain how the staff of the Ombudsmen would be likely to conduct a joint enquiry and indicate whether it is envisaged that the implementation of the proposed Order would make it possible for a single officer of one of the Ombudsmen to carry out the work relating to that complaint from the complaint being assessed and the report being issued.

2. The Committee notes that a number of those responding to the consultations on the proposed Order made the suggestion that the Order should make provision to amend section 5(1) of the Parliamentary Commissioner Act 1967 so as to permit the public access to the Commissioner's services without their complaint first having been referred to her by a Member of Parliament, and that this suggestion has also been made before by, among others, Public Administration Select Committee.

Q2 Please explain why the Government has not sought in this proposed Order to remove the 'MP Filter' in respect of complaints made to the Parliamentary Commissioner for Administration.

Q3 Please confirm that the answers to question (b) on page 31 of your Explanatory Document have been presented the wrong way round.

I would be grateful to receive your response to these questions, together with any additional information which the Department believes would be helpful to the Committee not later than noon on 19 February 2007.

7 February 2007

Appendix B

Letter from the Cabinet Office to the Clerk of the Committee

Proposal for the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007: response to request for information

1. Thank you for your letter of 7 February following our meeting with the Committee earlier in the day. We were grateful for the opportunity to make a presentation to the Members about our proposals, and I hope that the Members also found it helpful to have an opportunity to discuss the practical effect of the proposed reforms with the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman.

2. Your letter sets out three follow-up questions. The reply to your first question, which concerns the detail of how joint working on a complaint will operate in practice, has been drawn up in consultation with the Parliamentary and Health Service Ombudsman, and the Local Government Ombudsman.

Q1 Please explain how the staff of the Ombudsmen would be likely to conduct a joint enquiry and indicate whether it is envisaged that the implementation of the proposed Order would make it possible for a single officer of one of the Ombudsmen to carry out the work relating to that complaint from the complaint being assessed and the report being issued.

Current arrangements for handling cross-boundary complaints

3. Within the current statutory framework, the three Ombudsmen services are already working more closely. Administrative changes made since 2001 have facilitated closer co-operation between the Ombudsmen and their offices and this has worked well. Currently however, the Ombudsmen's powers and working practices restrict the extent of joint working.

4. Within the Parliamentary and Health Service Ombudsman's office, arrangements are already in place to identify, at the earliest possible stage, those complaints which may benefit from collaborative working. As part of the business process, all complaints are initially considered by an Assessment Panel to determine whether or not to investigate; this assessment includes reference, where relevant, to any aspect of the complaint which cuts across the jurisdiction of the Local Government Ombudsman.

5. In the Local Government Ombudsmen's offices, Assistant Ombudsmen (who manage the investigative teams) screen and assess all new complaints as they arrive. As part of this initial assessment, the Assistant Ombudsmen identify cases that clearly, or potentially, cut across the jurisdiction of the Parliamentary and/or the Health Service Ombudsman.

6. In any case where Parliamentary and Health Service Ombudsman or Local Government Ombudsman identify a cross-boundary complaint, early contact is made with the relevant Ombudsman to determine how best to co-ordinate their respective investigations (assuming that more than one Ombudsman decides to pursue an investigation). There is regular communication between the Investigators (and their managers) for the duration of the separate investigations. However, the law does not give the Ombudsmen any facility to conduct a joint investigation.

The proposed reform of the arrangements for handling cross-boundary complaints

7. The proposed Regulatory Reform Order would allow flexibility for the respective Ombudsmen's offices to decide on the most effective approach in each case. The aim would be to determine from the outset those which would benefit from a joint approach to investigation, rather than attempting artificially to separate out those elements which fall within their respective jurisdictions. Collaborative working in this way will result in a more streamlined and effective service for complainants and a more efficient way of working for the staff involved.

8. The complainant (or anyone acting on the complainant's behalf) will be informed of the implications of joint or separate investigations. Complainants will retain the right to request separate investigations and will be asked to provide written consent for a joint approach.

9. Once a decision is made, with the complainant's consent, to undertake a joint investigation, the Regulatory Reform Order would enable the Ombudsmen to establish either the Parliamentary and Health Service Ombudsman or the Local Government Ombudsman as the lead office - and thereafter to identify a lead manager - thus providing a single point of reference and contact for the complainant. This will ensure that one person has responsibility for the overview and co-ordination of the case from start to finish, thereby avoiding the current confusing and wasteful duplication of work. In most cases it is envisaged that a single officer of one of the Ombudsmen would conduct the investigation. Overall, this will result in a more streamlined and effective service for complainants and a more efficient way of working. It is not envisaged that extensive additional training will be required to implement collaborative working arrangements. The

arrangements for the delegation of powers required for collaborative working would be tailored to each individual case, and would be limited to the period of the investigation.

Once a joint investigation is concluded, the Regulatory Reform Order would permit the publishing of a joint report. The actual format of the report would depend on the individual circumstances of the case, but might, for example, be a single document with a joint chronology, findings and conclusions, with recommendations made either jointly, or individually by the Ombudsmen depending on their content. Joint reports would make clear the powers by which findings and recommendations are made. The proposal does not provide powers for one Ombudsman to assume control over another Ombudsman's jurisdiction, however, and each Ombudsman will remain responsible and accountable for any part of a complaint that falls within their respective jurisdiction.

Q2 Please explain why the Government has not sought in this proposed Order to remove the 'MP Filter' in respect of complaints made to the Parliamentary Commissioner for Administration.

11. In its consultation paper on its proposals for a Regulatory Reform Order on Ombudsman reform published in August 2005, the Government stated, at paragraph 31, that it takes the view that a Regulatory Reform Order would not be an appropriate vehicle for taking forward proposals for reform of the "MP filter" system. The Better Regulation Executive's guidance note on how the regulatory reform power works under the 2001 Act is clear that, as Regulatory Reform Orders are a means of giving legislative effect to policies that could otherwise only be passed by primary legislation, care must be taken over Parliamentary sensitivities. Any reform in this area would impact directly on individual Members of Parliament. The Government is aware that there are strongly-held views amongst Members of both Houses of Parliament on this issue, some strongly in support of removal of the filter and others strongly in favour of its retention. The Government therefore takes the view that any change to the current system should be dealt with in primary legislation giving Parliament the opportunity to debate and vote on any proposal.

12. You subsequently asked for some background information on the 2004 survey of Members of Parliament on the work of the Ombudsman which was conducted jointly by the office of the Parliamentary and Health Service Ombudsman and the Public Administration Select Committee, and which included a section on the operation of the "MP filter" system. Overall, 207 MPs responded to the survey, and a summary of the survey results, which is also available on the Parliamentary and Health Service Ombudsman's website, is enclosed at **Annex A** for your ease of reference.

Q3 Please confirm that the answers to question (b) on page 31 of your Explanatory Document have been presented the wrong way round.

13. I can confirm that as notified to the Committee on 1 February in Sally Pugh's e-mail to Stuart Deacon, the figures in the first and third columns of the table setting out the answers to Question (b) on page 31 of the Explanatory Document have been presented the wrong way round. The table should record the position as 5 respondents saying that the proposals would prevent any person from continuing to exercise any right or freedom, and 44 respondents saying that the proposals would not do so. I apologise for any confusion this error may have caused.

14. Finally, at the presentation meeting on 7 February, the Local Government Ombudsman undertook to provide the Committee with some further information about the exhaustion of remedies proposal. For some years now, after consultation with local government, the Local Government Ombudsmen have not referred back complaints to local authorities for consideration and reply in certain exceptional cases. These include, for example, cases where there is urgency such as school admission cases or cases involving imminent threats of homelessness. Another exception is where the complainant is particularly vulnerable and he or she could not reasonably be expected to complain to the authority as well as to the Ombudsman.

15. The new power proposed in the Regulatory Reform Order is intended primarily to ensure that joint investigations, to which the complainant has consented, can take place without the delay caused by a referral back of the complaint to the local authority. In each case, the Ombudsman would need to be satisfied that this is justified by the circumstances. The provision would also cover situations where the Local Government

Ombudsman reasonably believes that the authority concerned does not have an effective complaint handling process.

16. The Local Government Ombudsmen do not consider that this new provision will add significantly to the number of cases already investigated by them without reference back to authorities under existing administrative arrangements. If the Local Government Ombudsmen were to estimate how many more cases of this kind there will be each year, as a result of this proposed amendment, they would not put this above fifty.

17. I hope that this is helpful. Please do not hesitate to contact me if anything needs further clarification, or if you require any additional information.

19 February 2007

Annex A

Summary results of the survey of Members of Parliament on the work of the Ombudsman

Introduction

This summary sets out the results of a survey conducted jointly by the Public Administration Select Committee and the Office of the Parliamentary and Health Service Ombudsman (OPHSO) during June and July 2004 into the work of the Ombudsman.

The survey was conducted as part of the Office's commitment to the creation of a modern and responsive Ombudsman service and is one component of a broad range of stakeholder research. The last survey of MPs was conducted in 1993.

Two hundred and seven MPs out of 657 surveyed returned completed forms representing a 32% response rate. This compares to 50% or 333 MPs in 1993.

MP filter

When asked whether the MP filter should be removed 134 MPs (66%) said it should. In 1993 the response was nearly half that figure at 38%.

Direct communications with complainants

Respondents were asked whether, in the absence of removal of the MP filter, they favoured direct communication between OPHSO and the complainant once the referral had been made. The results were:

- in favour of direct communication: 35 (16%)
- in favour of direct communication with a copy to the MP: 147 (71%)
- against direct communication: 24 (12%)

Awareness of Ombudsman's role and jurisdiction

Seventy per cent of respondents said that they were 'very clear' or 'quite clear' about the role and jurisdiction of the Parliamentary Ombudsman, with seven per cent saying they were 'not very clear' or 'unclear'. The figures for the Health Service Ombudsman were 70% and 24% respectively.

The majority of respondents (170, 87%) used the Ombudsman's leaflets either 'regularly' or 'sometimes' more than they used her website (94, 45%) or her telephone advice line (89, 43%).

Ombudsman's work and performance

In general the Ombudsman's work is viewed positively with 179 MPs (86%) saying her Office was either 'very' or 'quite' successful. Twenty-three (11%) said her work was 'not very successful'.

When asked to what extent MPs agreed with statements about impartiality, fairness, last resort, speed, value and quality, respondents provided overwhelmingly positive answers, with the exception of speed, to which their answers were more mixed.

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

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Third	Draft Regulatory Reform (Forestry) Order 2006	880
Second Special	Government Response to the Committee's First Special Report of Session 2005-06: Legislative and Regulatory Reform Bill	1004
Fourth	Regulatory Reform (Fire Safety) Subordinate Provisions Order 2006	1005
Fifth	Proposal for the Regulatory Reform (Registered Designs) Order 2006	1142
Sixth	Proposal for the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006	1309
Seventh	Draft Regulatory Reform (Registered Designs) Order 2006	1349
Eighth	Draft Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006	1555

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