

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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18th Report of Session 2003-04

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

**Draft Regulatory Reform (Museum  
of London) (Location of Premises)  
Order 2004**

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### *The Select Committee on Delegated Powers and Regulatory Reform*

The Delegated Powers and Regulatory Reform Committee is appointed by the House of Lords in each session with the orders of reference “to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate level of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under the Regulatory Reform Act 2001; and to perform, in respect of such documents and orders and subordinate provisions orders laid under that Act, the functions performed in respect of other instruments by the Joint Committee on Statutory Instruments”.

### *Current Membership*

The Members of the Delegated Powers and Regulatory Reform Select Committee are:

Lord Brooke of Sutton Mandeville  
Baroness Carnegy of Lour  
Lord Dahrendorf (Chairman)  
Lord Desai  
Lord Harrison  
Lord Mayhew of Twysden  
Lord Temple-Morris  
Lord Tombs  
Lord Wigoder

### *Publications*

The Committee’s reports are published by The Stationery Office by Order of the House. All publications of the Committee are on the internet at

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### *Contacts for the Delegated Powers and Regulatory Reform Committee*

If you have any queries regarding the Committee and its work, please contact the Clerk to the Delegated Powers and Regulatory Reform Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103/3233. The fax number is 020 7219 2571.

The Committee’s email address is [dprc@parliament.uk](mailto:dprc@parliament.uk)

### *Historical Note*

In February 1992, the Select Committee on the Work of the House, under the chairmanship of Lord Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, para 133). The Jellicoe Committee recommended the establishment of a delegated powers scrutiny committee in the House of Lords which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed in the following session, initially as an experiment for a limited period. It was established as a sessional committee from the beginning of Session 1994–95. Also in Session 1994–95, following the passage of the Deregulation and Contracting Out Act 1994, the Committee was given the additional role of scrutinising deregulation proposals under that Act. As a result, the name of the committee was changed to the Select Committee on Delegated Powers and Deregulation. In April 2001, the Regulatory Reform Act 2001 was passed which expanded the application of the deregulation order-making power under the 1994 Act, and the Committee was taken on the scrutiny of regulatory reform proposals under the Act. With the passage of the 2001 Act, the committee’s name was further amended to its present form, the Select Committee on Delegated Powers and Regulatory Reform.

# Eighteenth Report

## PROPOSAL FOR THE DRAFT REGULATORY REFORM (LOCAL COMMISSIONER FOR WALES) ORDER 2004

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### Introduction

1. This is a “first-stage” proposal laid before Parliament on 18 March 2004. A Statement (“the Statement”) by the Wales Office (“the Department”) was laid with the proposal under section 6(1) of the Regulatory Reform Act 2001 (“the 2001 Act”).<sup>1</sup> The House of Commons Regulatory Reform Committee reported on this proposal in a report published on 4 May (6th Report, HC 553).
2. The purpose of the order is to amend provisions in section 23(2A) and (3) of the Local Government Act 1974 (“the 1974 Act”) which, in effect, prevent the Welsh Administration Ombudsman, although a Commissioner of the Commission for Local Administration in Wales, from undertaking investigations as a “Local Commissioner”.
3. There are, at present, three public sector ombudsmen in Wales:
  - the Welsh Administration Ombudsman (WAO);
  - the Health Service Commissioner for Wales (HSCW); and
  - the Local Commissioner (“the Local Commissioner”)<sup>2</sup> of the Commission for Local Administration in Wales (CLAW), a member of the CLAW who is empowered to investigate complaints of maladministration against local authorities and certain other bodies.<sup>3</sup>

The order would enable all three posts to be held by the same individual. The Statement explains (at paragraph 2) that this measure is “an interim step towards bringing these offices together into a unified service led by a single individual”, a policy objective supported by both the Government and the Welsh Assembly Government.

### Background

4. The background to the proposal is set out in paragraphs 9 to 16 of the Statement. In March 2001, the Secretary of State for Wales jointly announced with the First Minister, Welsh Assembly Government, that there would be a review of public sector ombudsman services in Wales. The provisional view of the Secretary of State and the Welsh Assembly Government was that there should be one ombudsman for Wales, bringing

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<sup>1</sup> Available on the internet, along with a consultation document, at <http://www.cabinet-office.gov.uk/regulation/trr/rro/proposals.asp>.

<sup>2</sup> The Local Commissioner is sometimes referred to as the Local Government Ombudsman.

<sup>3</sup> The Housing Bill, which was introduced into the House of Lords on 13 May, makes provision for the creation of an Office of Social Housing Ombudsman for Wales (OSHOW) which will investigate complaints about Registered Social Landlords. The Bill provides that this jurisdiction would be exercised by the Local Commissioner for the CLAW. According to the Statement (n2), the bill, if enacted, would not affect the case for proposed regulatory reform order.

together the offices listed in paragraph 3 above. In December 2002, a consultation document was published on that basis.<sup>4</sup> According to the Statement (paragraph 14), the proposal received unanimous support and, in October 2003, a further consultation was undertaken about the powers and jurisdiction of the unified office.<sup>5</sup> That second consultation ended in December 2003.

5. The establishment of a unified service will require primary legislation. In March 2003 and again in March 2004, the Welsh Assembly Government's proposals for a Public Services Ombudsman (Wales) Bill received cross-party support in the National Assembly for Wales and will be introduced "when Parliamentary time allows" (paragraphs 15 and 50 of the Statement).
6. The present regulatory reform proposal does not, according to the Statement (paragraphs 16 and 51), depend on the implementation of these wider proposals but provides "an important interim step by allowing a single individual simultaneously to hold all three offices".

### **Removal of a burden**

7. The Department (paragraphs 24 and 25 of the Statement) argues that section 23(3) of the 1974 Act imposes a burden in that it prevents the WAO from undertaking investigations as a Local Commissioner of the CLAW and that this burden is removed by the proposed regulatory reform order. The Committee agrees.

### **Necessary protection**

#### *Protection identified in the Statement*

8. The Department suggests (at paragraph 30 of the Statement) that the protection provided under the 1974 Act is that the CLAW must consist of at least two Commissioners. Prior to 1999, the two Commissioners were the Parliamentary Commissioner for Administration (PCA) (who is not empowered to undertake investigations under the 1974 Act) and the Local Commissioner (who is so empowered). Devolution has brought about no change in this arrangement, to the extent that the offices of PCA and WAO have been held by the same person.
9. At paragraph 31 of the Statement, the Department argues that the necessary protection is maintained because the Commission would continue to consist of two Commissioners: the PCA (not empowered to undertake investigations) and WAO (who would also be Local Commissioner, and therefore be empowered to undertake investigations).
10. Although the requirement for at least two Commissioners is identified by the Department as a protection, we note that in their response to a letter from the Clerk to the House of Commons Regulatory Reform Committee, the Welsh Assembly Government states that "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 Government in Wales, consisting of, at a minimum, the PCA and the "Local Commissioner". Similarly why in relation to local government, the

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<sup>4</sup> "Ombudsmen's Services in Wales: Time for Change?".

<sup>5</sup> "A Public Services Ombudsman for Wales: Powers and Jurisdiction".

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”.<sup>6</sup> The Committee therefore questions on what grounds the requirement for at least two Commissioners is considered to be a protection but concludes that if it is a protection, that protection is maintained.

### *Protections identified by the House of Commons Regulatory Reform Committee*

11. In its Report, the Commons Committee suggests that there are two aspects of the protection provided by existing legislation which the Department had not addressed.<sup>7</sup> 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 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 WAO). Under the proposal, the WAO would be member of the CLAW and be able to act as a Local Commissioner without having been appointed under the procedure in section 23(4).
12. The Department has accepted the points raised by the Commons Committee<sup>8</sup> and suggested that the proposal could be amended “relatively easily” to ensure that the present statutory arrangements for appointment to the CLAW are maintained.<sup>9</sup> The Commons Committee has recommended that the proposed order should be amended so that the WAO may act as Local Commissioner only when he or she has been appointed to the CLAW under section 23(4). The Committee agrees with this recommendation.

### **Reasonable expectation**

13. Given that the proposal does not alter the categories of potential complaints, the basis on which complaints can be made or the scope of the WAO’s jurisdiction, the Committee agrees that the proposal does not prevent anyone from exercising a right or freedom which they might otherwise expect to exercise.

### **Consultation**

14. The Department published a consultation paper on 14 July 2003. The consultation period ended 6 weeks later on 26 August. The consultation period was therefore shorter than the 12 weeks stipulated by the Cabinet Office’s Code of Practice on Written Consultations. The Statement (at paragraph 45) explains that the reason for the reduced period was because of the earlier consultation on the policy (see paragraph 4 above).
15. The consultation document was sent directly to over 100 organisations and individuals (listed in Annex A to the Statement) and published on two Government websites. Twenty-eight responses were received. A summary of

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<sup>6</sup> 6th Report, House of Commons Regulatory Reform Committee, HC 553, Session 2003-04, p 34, para 12.

<sup>7</sup> Ibid, pp 11-12, paras 41-43.

<sup>8</sup> Ibid, p 12, para 46.

<sup>9</sup> Ibid, p 13, para 49.

responses is set out in paragraph 46 of the Statement and a full analysis provided in Annex B to the Statement. The twenty-four respondents who gave a view, supported the proposals. (The other four respondents did not express a view). The Committee agrees that the consultation was adequate.

### **Conclusion**

- 16. The Committee recommends that, save for the point raised in paragraph 12, the proposal is an appropriate use of the 2001 Act and meets its requirements.**

## **DRAFT REGULATORY REFORM (MUSEUM OF LONDON) (LOCATION OF PREMISES) ORDER 2004**

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### **Introduction**

17. On 22 January 2004, the Government laid before Parliament a proposal for a draft Regulatory Reform (Museum of London)(Location of Premises) Order 2004, together with a Statement by the Department for Culture, Media and Sport.<sup>10</sup> We reported on the Government's proposal on 26 February 2004.<sup>11</sup>
18. The purpose of the order is to amend section 4(1) and (2) of the Museum of London Act 1965 so as to allow the Board of the Museum of London (MoL) to operate anywhere within Greater London rather than, as currently required, within the City of London only. This will allow the MoL to merge with the Museum in Docklands situated in the Docklands area of London at West India Quay.
19. In our earlier Report, we recommended no changes to the draft which we considered. The House of Commons Regulatory Reform Committee similarly recommended no change to the terms of the proposal.<sup>12</sup> No amendments have been made to the draft by the Government.

### **Conclusion**

20. **In our first Report on this proposal, we concluded that it was appropriate to be made under the Regulatory Reform Act 2001. We remain of that view, and therefore recommend that the order, as it now stands, is in a form satisfactory to be submitted to the House for affirmative resolution.**

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<sup>10</sup> Available on the internet, along with a consultation document, at <http://www.cabinet-office.gov.uk/regulation/rra/rro/proposals.asp>.

<sup>11</sup> 8th Report, HL Paper 42, Session 2003-04.

<sup>12</sup> 4th Report, HC 414, Session 2003-04.