



# **Reform of Public Sector Ombudsmen Services in England**

**A Consultation Paper issued by  
the Cabinet Office**

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## SUMMARY OF PROPOSALS

<p>What is being consulted on?</p>	<p>The proposals involve:</p> <p>Amending the Parliamentary Commissioner Act 1967, the Local Government Act 1974, and the Health Service Commissioners Act 1993 to enable the public sector Ombudsmen - the Parliamentary Commissioner for Administration, the Health Service Commissioner for England, and the three Local Government Ombudsmen in England - to achieve a more modern, responsive and co-ordinated complaints handling service for the users of public services.</p> <p>Specifically, the proposals would:</p> <ul style="list-style-type: none"> <li>• enable the Ombudsmen to work collaboratively on cases and issues that are relevant to more than one of their individual jurisdictions, enabling them to provide a more streamlined and effective service with the citizen being the ultimate beneficiary.</li> <li>• enable the Ombudsmen to delegate their functions to each other's staff;</li> <li>• provide express powers to enable the Ombudsmen to issue advice and guidance on good administrative practice and other matters;</li> <li>• give the Ombudsmen express powers to seek the resolution of a complaint, in addition to, or instead of, conducting a formal investigation into the complaint;</li> <li>• amend the Local Government Ombudsman's powers to allow investigation of some cases not first referred to local authorities.</li> </ul>	<p>paras 37 – 42</p> <p>paras 43 – 44</p> <p>paras 45 – 49</p> <p>paras 50 – 56</p> <p>paras 57 - 59</p>
<p>How will these proposals be taken forward, and when will they be implemented?</p>	<p>We intend that the proposed changes to legislation are made through a Regulatory Reform Order under the Regulatory Reform Act 2001. Subject to the outcome of consultation, we propose that the changes are implemented during 2006.</p>	
	<p>This consultation is being made in accordance with the requirements of the Regulatory Reform Act 2001 and the terms of the Government's <a href="#">Code of Practice on Consultation</a>.</p> <p><b>All responses should be received by Friday 18 November 2005</b></p>	<p>Annex D</p>

## INTRODUCTION

1. The Government is committed to delivering first class public services that meet the needs of the citizen. Where levels of service fall below standard, people have a right to expect a robust and user-friendly system for the investigation and resolution of complaints.

2. These proposals concern the Parliamentary Ombudsman, the Health Service Ombudsman in England, and the Local Government Ombudsmen (the Parliamentary Ombudsman and the Local Government Ombudsmen collectively make up the Commission for Local Administration in England). Together these Ombudsman services handle a substantial number of complaints relating to the quality and effectiveness of public services.

3. The Government believes that these public sector Ombudsmen have a vital role to play in contributing to the improvement of public services. However, it recognises that in order to carry out their responsibilities and to investigate and resolve complaints as effectively and efficiently as possible, the structure and working practices of the Ombudsmen would benefit from the removal of certain restrictions on their working practices in order to provide a more efficient and streamlined service to the citizen.

4. Under existing legislation, the Ombudsmen are restricted in their ability to work together, thereby preventing them, in cases which cross more than one Ombudsman jurisdiction, from providing a fully joined-up and coherent service for the citizen. Therefore the Government, which has worked closely with the public sector Ombudsmen on this, wishes to remove some of the existing legislative constraints, and considers that an Order made under the Regulatory Reform Act 2001 would be a suitable vehicle to achieve this objective.

5. This consultation paper sets out the Government's proposals for reform, by means of a Regulatory Reform Order, of the legislation governing certain aspects of the working arrangements for the public sector Ombudsmen to enable them to work together more closely. The proposals would amend the following legislation:

- The Parliamentary Commissioner Act 1967 (as amended)
- The Local Government Act 1974 (as amended)
- The Health Service Commissioners Act 1993 (as amended)

6. The proposed reforms would enable the public sector Ombudsmen to work collaboratively, including consulting each other and sharing information, and would enable them to undertake joint investigations and produce joint reports; to issue guidance and advice; and to seek alternative methods of resolving complaints.

7. Taken together, these proposed reforms would improve and streamline the complaints handling processes for the complainant in instances where the circumstances of a particular complaint crosses the jurisdiction of more than one Ombudsman, enabling the relevant public sector Ombudsmen to work together collaboratively to address the issues raised by the case. This would essentially provide a “one-stop shop” for the complaint whereas at present a complainant would have to make more than one complaint resulting in the relevant Ombudsmen each conducting separate investigations. This is unnecessarily bureaucratic and an inefficient use of resources. It results in delays for the complainant, and could deter individuals from pursuing legitimate concerns.

8. This consultation is being conducted in accordance with the provisions of section 5 of the Regulatory Reform Act 2001. Views are invited on all aspects of the consultation paper, and full details about how to respond to the proposals are set out at paragraphs 14-22, and also at the end of this consultation document.

9. These proposals would not impact directly on the devolved administrations.

## REGULATORY REFORM ORDERS – BACKGROUND

10. Each proposal for a Regulatory Reform Order (RRO) must satisfy a number of legal tests. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Committees that, among other things, the proposal satisfies these tests. In particular, the Regulatory Reform Act requires information on:

- whether any of the proposals could remove any necessary protection;
- whether any of the proposals could prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise and, if so, how he is to be enabled to continue to exercise that right or freedom;
- whether any burdens are being imposed on any person in the carrying out of an activity;
- whether any parts of the proposals may need to be changed subsequently, using the less elaborate ‘subordinate provisions’ procedures;
- whether any savings or increases in cost are estimated to result from the proposals and, if so,
  - (i) the reasons why savings or increases in cost should be expected, and
  - (ii) if it is practicable to make an estimate of the amount, that amount and how it is calculated; and
- any benefits (other than savings in cost) which are expected to flow from the implementation of the proposals.

11. For this reason, we would particularly welcome your views on whether the proposed changes in this consultation document meet the following tests:

- **Necessary protection** - the Minister making an RRO must be of the opinion that it does not remove any necessary protection. This means that no order can be made unless the Minister is of the opinion that it would maintain any protections that he or she considers to be necessary. Such protection relates to the checks and balances associated with a particular regulatory regime. The protection does not have to be statutory in nature and does not have to be for the purposes

originally intended by Parliament. If the Minister considers a particular protection to be no longer necessary, he or she must provide the Parliamentary scrutiny committees with compelling evidence to support this view.

- **Rights and freedoms** - an RRO cannot be made unless the Minister is satisfied that it does not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to enjoy. This test recognises that there are certain rights that it would not be fair to take away from people under these procedures.

### ***Other Safeguards***

12. In order to provide for the effective reform of regulatory regimes, RROs can re-state existing burdens and create new burdens. But where that is the case stringent additional safeguards apply:

- **Proportionality** - If a new legal burden is being imposed (or an existing burden is being re-enacted), then the Minister must ensure that it is proportionate to the benefit it brings. This means, for example, that imposing a burden which will cost charities several thousand pounds in return for some negligible benefit would not pass the test.
- **Fair balance** - before proposing any RRO that has the effect of imposing new legal burdens, the Minister must be of the opinion that a fair balance is being struck between the interests of the person affected by the Order and the interests of the wider public. In this context, fairness does not mean that everyone must benefit. What it does mean is that the benefit to society as a whole must be such as to justify the additional burden on a small group or the individual.
- **Desirability** - before proposing any RRO that has the effect of imposing new legal burdens, the Minister making the Regulatory Reform Order must be of the opinion that the extent to which it removes burdens or brings other benefits makes the Order as a whole desirable.

13. The proposed reforms would remove restrictions on the main public sector

Ombudsmen and allow them to provide a more effective, streamlined and simplified service for complainants. It would also provide for more efficient and effective working for those working in the offices of the Ombudsmen, and the bodies within these Ombudsmen's jurisdictions. The reforms would result in a more effective system for all involved. The proposals would impose certain new burdens, in particular on the Ombudsmen themselves, and the Government's views on the operation of the safeguards in relation to these new burdens are set out below. Overall the Government believes that the proposals would result in efficiency savings for the Ombudsmen, and a more effective and efficient service for complainants. The Government would welcome comments on those views.

## **Consultation**

14. The Act requires Departments to consult widely on regulatory reform proposals. It requires Government to collect evidence on a number of issues from a wide range of consultees. The list of consultees, including the devolved administrations, to whom this document has been sent, is at [Annex A](#). The full consultation document, including the list of consultees, can be accessed at:

- [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/parliamentary\\_ombudsman/ombudsmenreform.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/parliamentary_ombudsman/ombudsmenreform.asp) ;
- [http://www.cabinetoffice.gov.uk/regulation/regulatory\\_reform/completed\\_consultations/index.asp](http://www.cabinetoffice.gov.uk/regulation/regulatory_reform/completed_consultations/index.asp) ; and
- <http://www.consultations.gov.uk>

Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at [Annex B](#).

15. The Parliamentary Committees who will deal with orders under the Regulatory Reform Act have requested that a note explaining the Parliamentary process for orders to be made under the Act be annexed to all consultation papers so that consultees understand when and to whom they are able to put their views, should they wish to do so. This is set out in [Annex C](#).

16. This consultation document follows the format recommended by the Cabinet Office for such proposals. The criteria applicable to all UK public consultations under

the Cabinet Office [Code of Practice on Consultation](#) are set out in [Annex D](#)

## Disclosure

17. Normal practice will be for details of representations received in response to this consultation document to be disclosed, or for respondents to be identified. While the Act provides for non-disclosure of representations, the Minister is required to include the names of all respondents in the list submitted to Parliament alongside the draft Order. You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.
- In all cases where your representation concerns information that may be damaging to the interests of a third party, the Minister is not obliged to pass it on to Parliament if he does not believe it to be true or he is unable to obtain the consent of the third party.

18. Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form at [Annex B](#).

19. Finally, you should be aware that the Scrutiny Committees will be able to request sight of your representation as originally submitted. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will only be used rarely and on an exceptional basis.

20. All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. (These

are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004.) If you want your response to remain confidential in respect of possible disclosure under these regimes, you should explain why confidentiality is necessary and your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding.

21. Comments should be sent by **Friday 18 November 2005** at the latest to:

Ms Sally Pugh  
Propriety and Ethics Team  
Cabinet Office  
Room 118  
70 Whitehall  
London SW1A 2AS

Tel: 020 7276 2472

Fax: 020 7276 2495

Email: [ombudsmenreform@cabinet-office.x.gsi.gov.uk](mailto:ombudsmenreform@cabinet-office.x.gsi.gov.uk)

Printed copies of the consultation document may also be requested from the above contact. The consultation document can also be accessed on-line at: [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/parliamentary\\_ombudsman/ombudsmenreform.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/parliamentary_ombudsman/ombudsmenreform.asp)

22. If you have any comments or concerns about the conduct of this consultation you should make these in writing and address them to the Consultation Co-ordinator in the Cabinet Office: Amy Bishop, Better Regulation Executive, Fourth Floor, Kirkland House, 22 Whitehall, London SW1A 2WH or by email: [amy.bishop@cabinet-office.x.gsi.gov.uk](mailto:amy.bishop@cabinet-office.x.gsi.gov.uk)

## **BACKGROUND TO THE PROPOSED REFORMS**

23. The Parliamentary Ombudsman, Local Government Ombudsmen (three covering different geographical areas of England), and the Health Service Ombudsman undertake independent investigations into complaints from citizens within their respective jurisdictions of Government Departments, local authorities, and the National Health Service, (and other related public bodies in these areas). All are created by statute, and operate under statutory provisions. They are impartial in their dealings with complainants and those complained about.

24. The Parliamentary Ombudsman and Local Government Ombudsmen investigate complaints that injustice has been caused by maladministration on the part of Government Departments, local authorities, and certain other public bodies. The Health Service Ombudsman investigates complaints that a hardship or injustice has been caused by the failure of the National Health Service to provide a service, by a failure in service or by maladministration.

25. In most cases (in all cases for the Local Government Ombudsmen), before submitting a complaint to any of the public sector Ombudsmen, a complainant must first have given the relevant Department, National Health Service body, local authority or other public body concerned an opportunity to deal with a complaint against it, using the organisation's own complaint procedure. If the complainant is not satisfied with the action taken, he or she can make a written complaint to the appropriate Ombudsman. The relevant governing legislation allows complainants to have direct access to the Local Government Ombudsmen and Health Service Ombudsman. Complaints to the Parliamentary Ombudsman must be made via a Member of Parliament.

### ***Parliamentary Ombudsman***

The Parliamentary Ombudsman operates under the provisions of the Parliamentary Commissioner Act 1967 (as amended). She is an officer of Parliament and is independent of Government. The Parliamentary Ombudsman lays her annual reports before both Houses of Parliament and may from time to time lay other reports before Parliament on the discharge of her functions. The House of Commons has chosen, through its Standing Orders, to appoint a Select Committee to consider those reports and to take evidence from the Ombudsman and from others on her work. The Public Administration Select Committee performs this role. The office-holder is appointed by the Crown and

is a member of the Commission for Local Administration in an *ex-officio* capacity. The current Parliamentary Ombudsman is Ann Abraham.

Under the provisions of the 1967 Act, all complaints to the Parliamentary Ombudsman are channelled through a Member of Parliament. The Parliamentary Ombudsman's staff screen all new complaints to decide whether they are within jurisdiction. They must also be satisfied that there is evidence of maladministration leading to injustice, that the complaint is (usually) not about matters that gave rise to a complaint more than twelve months before referral, and that it is not a matter for, or one that has been considered by, a court or Tribunal. Investigation leads to the production of a report in which some form of redress may be recommended (but not enforceable) if maladministration leading to injustice is found. In 2004-05, the Parliamentary Ombudsman and her staff received a total of 2,214 investigable cases. The handling of cases is accounted for in the Ombudsman's annual reports<sup>1</sup>.

### ***Health Service Ombudsman for England***

The Health Service Ombudsman for England ('the Health Service Ombudsman') operates under the provisions of the Health Service Commissioners Act 1993 as amended. The Health Service Ombudsman is appointed in a similar way to the Parliamentary Ombudsman (see above) and is similarly accountable to Parliament. To date, the separate offices of Health Service Ombudsman and Parliamentary Ombudsman have always been held by the same person, but there is no formal requirement for that to be so. The law, as it relates to investigations, time limits, and alternative remedies, is broadly similar to the Parliamentary Commissioner Act 1967. The staff of the Parliamentary Ombudsman and Health Service Ombudsman share premises and common services. Around 250 staff support the work of the two office-holders.

Complainants can approach the Health Service Ombudsman direct. Generally, a complaint will be accepted by the Health Service Ombudsman only after the National Health Service complaints process has been invoked and (usually) exhausted. A health service body can also refer a complaint it has received

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<sup>1</sup> The Parliamentary Ombudsman's annual reports can be accessed at [http://www.ombudsman.org.uk/about\\_us/our\\_plans/annual\\_reports/index.html](http://www.ombudsman.org.uk/about_us/our_plans/annual_reports/index.html)

about itself to the Health Service Ombudsman, but this is unusual. The Health Service Ombudsman investigates complaints about the National Health Service which includes service delivered on its behalf by private sector providers. Since 1996, the Health Service Ombudsman's jurisdiction has included matters of clinical judgement. In 2004-05, the Health Service Ombudsman received a total of 1,397 investigable cases. These are also accounted for in the annual reports of the Health Service Ombudsman<sup>2</sup>.

### ***Local Government Ombudsman***

The three Local Government Ombudsmen deal with complaints of injustice arising from maladministration by local authorities (local councils) and a number of other public bodies. The Ombudsmen operate under the provisions of the Local Government Act 1974 as amended. They each act independently, and cover different parts of England from offices in York, Coventry and London. The Ombudsmen will expect complainants to have given the relevant council or body an opportunity to deal with a complaint against it, but if the complainant is not satisfied with the action the council takes, he or she can send a written complaint to the Local Government Ombudsman, or ask a councillor or professional adviser to do so on their behalf.

The Local Government Ombudsmen can investigate complaints about most council matters, including housing, planning, education, social services, highways, consumer protection, drainage and local taxation. The Local Government Ombudsman can investigate complaints about how the council has operated, but cannot question the merits of a council's decision in the absence of fault. Their jurisdiction extends to other local bodies such as drainage bodies and schools (concerning admission matters).

The three Local Government Ombudsmen are currently: Tony Redmond - who deals with complaints about most North London boroughs, the Greater London Authority, Buckinghamshire, Berkshire, Hertfordshire, Essex, Kent, Surrey, Suffolk, and Sussex; Patricia Thomas - who deals with complaints from Birmingham City, London Borough of Tower Hamlets, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire and most of the North of England; and Jerry White - who deals with complaints from the rest of England. The Ombudsmen's

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<sup>2</sup> The Health Service Ombudsman's annual reports can be accessed at [http://www.ombudsman.org.uk/about\\_us/our\\_plans/annual\\_reports/index.html](http://www.ombudsman.org.uk/about_us/our_plans/annual_reports/index.html)

regions are drawn in this way in order to ensure that their workloads are evenly spread, and also to avoid any perception that conflicts of interest may arise in their investigative duties. Together in 2004-05 the three Local Government Ombudsmen received nearly 18,700 complaints. The handling of these complaints is set out in the Local Government Ombudsman's annual reports<sup>3</sup>.

The three Local Government Ombudsmen, together with the Parliamentary Ombudsman as an ex officio member, comprise the Commission for Local Administration in England (CLAE). The CLAE is responsible for the staff and resources available to support the Ombudsmen and for provision of published advice and guidance on good administrative practice to bodies within their jurisdiction. The CLAE currently employs 215 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 Ombudsmen is also appointed as the Chairman of the Commission. The current Chairman is Tony Redmond.

26. The Government and the Ombudsmen wish to modernise the public sector Ombudsman system to enable them to provide a more accessible, flexible and modern complaints handling service for complainants as an integral component of improving public service delivery. In 1999 the Government commissioned a review of the organisation of public sector Ombudsmen in England<sup>4</sup>. Following the review, the Government carried out a wide consultation on its recommendations<sup>5</sup> and as a result, announced in July 2001 that it accepted the review's main recommendations for the establishment of an independent unified body with a collegiate structure to replace the separate Parliamentary Ombudsman, Health Service Ombudsman and Local Government Ombudsman, and for removal of the "MP filter". It stated that reform would be considered when Parliamentary time allowed.

27. Following her appointment in November 2002, the current Parliamentary Ombudsman and Health Service Ombudsman, Ann Abraham, in evidence to the Public Administration Select Committee in 2003, said that the constraints in existing legislation

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<sup>3</sup> The Local Government Ombudsman's 2004-5 annual report can be accessed at <http://www.lgo.org.uk/annual.htm>

<sup>4</sup> *Review of the Public Sector Ombudsmen in England*, April 2000. The report of the review can be accessed at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/publications/pdf/ombudsmenreview.pdf](http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/ombudsmenreview.pdf)

<sup>5</sup> *Review of the Public Sector Ombudsmen in England: A Consultation Paper*, June 2000. The consultation paper can be accessed at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/publications/pdf/Consultation.pdf](http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/Consultation.pdf)

prevented the Ombudsmen from providing a seamless, accessible and responsive service. She suggested refocusing the reform agenda onto exploring how the public sector Ombudsmen could work more collaboratively under existing statutory arrangements to create a more coherent Ombudsman system, suggesting that the removal of the formal and informal obstacles that hindered the flexible, timely and appropriate resolution of complaints, was the key to a modern and comprehensive Ombudsman service.

28. In its response<sup>6</sup> to the Public Administration Select Committee's 2003 report, "*Ombudsman Issues*", the Government set out its support for this approach, and stated its commitment to work with the public sector Ombudsmen to address the constraints on collaborative working. The response stated:

"The Government is keen to explore – working closely with the Ombudsman community – what more can be done under existing statutory arrangements to promote joint working between Ombudsmen and ensure that Ombudsman arrangements are fit for purpose. This is important work. We share the commitment of the Ombudsman to delivering an accessible, flexible and comprehensive Ombudsman service. We recognise that there are constraints on joint working which must be addressed as part of this work and through our ongoing dialogue with the Ombudsman."

29. Since 2001, the public sector Ombudsmen have made a number of administrative changes to facilitate closer working and co-operation between them and their offices with the aim of providing an efficient "one-stop shop" service to complainants. However, the current legislation limits what they are able to achieve. For example, the public sector Ombudsmen are currently unable to investigate jointly a complaint that involves issues that fall within more than one of their individual jurisdictions. This effectively means that two, possibly three, separate investigations are required to resolve a complaint. This clearly fails to provide a single point of reference for the complainant, is inefficient and costly, causes duplication and delay, and creates unnecessary burdens for the complainant and the Ombudsmen and their staff.

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<sup>6</sup> *Government Response to the Public Administration Select Committee's Third Report of Session 2002-03 "Ombudsman Issues"*, July 2003, Cm 5890. The report can be accessed at [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/publications/pdf/govresponse.pdf](http://www.cabinetoffice.gov.uk/propriety_and_ethics/publications/pdf/govresponse.pdf)

30. At the end of 2003, Ann Abraham and Tony Redmond, met the then Minister for the Cabinet Office, Douglas Alexander MP, and the then Minister for Local Government, Nick Raynsford MP, to discuss what the Ombudsmen considered to be the key legislative constraints to collaborative working. These included removal of the burden of restrictions on collaborative working, consultation, joint investigations and joint reports, complaint resolution and removal of the “MP filter” system.

31. The Government agreed to assess the options for taking forward these proposals, including considering the option of pursuing them other than through primary legislation. Following this assessment, the Government takes the view that, with the exception of the removal of the “MP filter”, it would be possible to effect the changes that the Ombudsmen are seeking by means of a Regulatory Reform Order under the provisions of the Regulatory Reform Act 2001. This Act enables the Government to reform primary legislation which has the effect of imposing burdens that affect persons in the carrying on of any activity. The word “burden” is a specific technical term in this context, and means a legal burden as set out in section 2 of the Act. The proposed reforms are described in detail in the following sections. The Government takes the view that a Regulatory Reform Order would not be an appropriate vehicle for removal of the “MP filter”.

## **THE CURRENT RESTRICTIONS IN LEGISLATION**

32. The legislation governing the operation of the public sector Ombudsmen restricts their ability to work collaboratively.

33. The relevant legislation is the Parliamentary Commissioner Act 1967 (as amended), which covers the Parliamentary Ombudsman; the Local Government Act 1974 (as amended) which covers the Local Government Ombudsman; and the Health Service Commissioners Act 1993 (as amended), which covers the Health Service Ombudsman.

34. The Government has reviewed the provisions of the current legislation and is satisfied that the restrictions set out in the legislation are sufficiently tightly drawn to limit collaborative activities such as consultation, undertaking joint investigations and issuing joint reports. For example, section 11(2) of the Parliamentary Commissioner Act 1967, section 32(2) of the Local Government Act 1974, and section 15 of the Health Service Commissioners Act 1993 all contain parallel provisions restricting disclosure of information except for the purposes of solo investigations and reports about investigations undertaken under the respective Acts, and for the purposes of certain judicial and criminal proceedings. Although section 33 of the Local Government Act 1974 contains provisions for consultation between the Ombudsmen, the power to share information is limited to “during the course of an investigation”. This prevents the sharing of information before an investigation starts and once it has ended. This means, for example, a Local Government Ombudsman having received a complaint which he cannot investigate because it is within the jurisdiction of the Parliamentary and Health Service Ombudsman, is unable to pass the complaint directly to that Ombudsman. The same restriction applies once an investigation has been concluded even though the possibility of a complaint to another Ombudsman does not emerge until then or later.

35. These restrictions effectively mean that the Ombudsmen are unable to share information other than in the course of an investigation, or to undertake joint investigations and produce joint reports on cases that straddle more than one of their jurisdictions. This situation imposes burdens on the Ombudsmen who have to work independently on the same complaint, and 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 case. It also creates burdens for 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.

## **THE PROPOSED REFORMS**

36. The Government attaches the highest importance to providing effective and efficient public services. It therefore wishes to support and assist the public sector Ombudsmen to achieve a more modern, responsive and co-ordinated complaints handling service to the users of public services. The Government therefore proposes that the statutory powers of the Parliamentary Ombudsman, Health Service Ombudsman and Local Government Ombudsman should be amended to remove or reduce the legislative restrictions on their ability to work collaboratively. The proposed changes, would simplify and streamline the complaints process for complainants, increase accessibility to services, remove unnecessary bureaucracy, and make available to the Ombudsmen alternative means to resolve complaints (as have been provided in more recently created Ombudsman schemes). The changes are detailed below.

### **Proposal 1 – Power to Work Collaboratively**

37. This proposal would amend all three Acts to enable the public sector Ombudsmen to consult each other, share information, and work together on cases and issues that are relevant to more than one of their individual jurisdictions. Principally, this proposed power would allow the Ombudsmen to undertake joint investigations of complaints where this is appropriate to the circumstances of the case, and to issue joint reports.

38. This proposal would remove existing burdens on the Ombudsmen caused by the limitations of the current legislation. At present, when a complaint raises issues that fall within more than one of their individual jurisdictions, it is necessary for the relevant Ombudsmen to undertake separate investigations. This situation causes duplication of effort for the Ombudsmen and their staff, and is a burden on public resources. It also creates a burden for the complainant who has to deal with more than one Ombudsman, and may experience delays in the investigation process. The proposed reform would remove these burdens and enable the Ombudsmen to perform their existing functions more effectively. It would also permit them to offer a more streamlined and efficient service for complainants.

## **Safeguards**

39. In order to preserve necessary protection and rights and freedoms, as required under the Regulatory Reform Act, the complainant would be asked to give his or her consent to joint working on the investigation of their complaint. This would leave open the option for a complainant to ask for separate investigations by each of the relevant Ombudsmen if they so wished. The requirement on the Ombudsmen to seek the complainant's consent before embarking on joint working is a new burden imposed on them by this proposal. However, under the existing arrangements the Ombudsman receiving a complaint that covers more than one jurisdiction is already required to write a letter to the complainant advising him or her of the need to approach another Ombudsman. Therefore, there is no substantive additional burden created by this proposal.

40. Under the proposal, collaborative working would not provide powers for the Ombudsmen to assume control over, or take responsibility for each other's jurisdictions. Each individual Ombudsman would remain responsible and accountable for the work on the part of the complaint that fell within their own particular jurisdiction within the context of their individual legislative frameworks. But there will be provision for the Ombudsmen to delegate functions such as the collection of evidence to a single member of staff (see proposal 2 below). From the complainant's perspective the collaborative working provisions would enable them to receive a complete investigation of all aspects of their case, and to receive a single report on the outcome of the investigation.

41. The proposed amendment to the Parliamentary Commissioner Act 1967 would include a requirement for the Parliamentary Ombudsman to ensure that in circumstances where she was approached by one of the other public sector Ombudsmen to work collaboratively on the investigation of a complaint, and the Parliamentary Ombudsman agreed that the case was appropriate for collaborative working, the case was referred to her by a Member of Parliament. This would ensure consistency with the existing legislative provisions set out at section 5 of the Parliamentary Commissioner Act 1967 that require complainants to submit a written complaint to a Member of Parliament and ask for referral to the Parliamentary Ombudsman.

42. In practice, this would mean that when seeking consent to collaborative working

in such cases, the complainant would be advised that the case would have to be referred via a Member of Parliament in order to meet the requirements of the 1967 Act, and this would amount to a new burden on the complainant in the meaning of the Regulatory Reform Act. The Parliamentary Ombudsman would, however, facilitate the referral process to minimise any additional burden on the complainant, generally by contacting the complainant's Member of Parliament directly to ask them to refer the complaint. To the extent that this aspect of the proposals imposes a new burden on complainants, the Government believes that it is proportionate and consistent with the existing legislation. In addition, having regard to the benefits which improved collaborative working should bring for complainants; it is considered that the proposal achieves a fair balance and that it is desirable that the change should be made.

### **Proposal 2 – Delegation of powers**

43. This proposal would amend all three Acts to align provisions to enable each of the public sector Ombudsmen to delegate their functions to each other's staff if required. This proposal would facilitate and support collaborative working between the Ombudsmen, and allow more efficient and streamlined work practices. For example, it would enable a single officer to interview witnesses, research files on behalf of two or more of the Ombudsmen, call for documentary evidence, obtain specialist professional advice, and produce a final report.

### **Safeguards**

44. The power to delegate would only be exercised in the context of collaborative working between Ombudsmen which is discussed in proposal 1 above. Importantly, the complainant would be asked to give his or her consent to collaborative working on the investigation of the complaint. So no necessary protections or rights or freedoms are lost.

### **Proposal 3 - Power to Issue Guidance**

45. The Parliamentary Ombudsman and the Health Service Ombudsman currently have no express power to issue guidance within their respective jurisdictions. They have power to investigate complaints and to make reports. The activities of the Ombudsmen are concerned with holding public bodies to account and exposing maladministration where it has occurred. In so doing, part of their function is to

encourage best practice in public administration. The absence of an express power to issue guidance, in the case of the Parliamentary Ombudsman and the Health Service Ombudsman, is a burden on these two Ombudsmen as it limits the extent to which they are able to communicate lessons which usefully might be learned by public bodies from individual investigations, thereby helping to avoid future complaints. It also limits their ability to be pro-active in issuing advice and guidance.

46. This proposal would amend the Parliamentary Commissioner Act, and the Health Service Commissioner's Act to enable the Parliamentary Ombudsman and Health Service Ombudsman to issue on their own account to bodies within their individual jurisdictions, advice and guidance on good administrative practice or any other matter in relation to which they have a function, and enable them to publish such advice and guidance. The Local Government Ombudsmen already have express powers to issue advice and guidance on good administrative practice through the Commission for Local Administration in England. However, the proposal would also amend the Local Government Act to align the powers of the public sector Ombudsmen. In the case of the Parliamentary and Health Service Ombudsman such guidance could be thematic, or specific to particular activities: for instance, it might cover the principles of good administration which should underlie the introduction of new initiatives, or advice based on trends seen in complaints about access to services from the National Health Service such as dentistry. Such advice and guidance would be aimed at helping organisations to improve the service they provide, and ultimately to reduce the number of complaints they receive. The Parliamentary Ombudsman and Health Service Ombudsman would consult with such bodies and persons as appears appropriate before issuing any such advice and guidance. This is in line with the provisions of the Local Government Act that requires the Local Government Ombudsman to consult "with the representative persons and authorities concerned" before issuing advice and guidance about good administrative practice.

47. Guidance issued under this proposal would be absolutely privileged for the purposes of the law of defamation, in line with the statutory protection which is currently afforded to publications made by the Ombudsmen.

### **Safeguards**

48. This proposal does not remove any necessary protections or prevent the exercise of any right or freedom which a person might reasonably expect to continue to

exercise. On the contrary, the Government believes that with an express power to issue guidance the Ombudsmen will be in a position to initiate pro-active preventative action to avoid maladministration on the part of public authorities in future cases and so offer enhanced protection to the citizen.

49. The requirement on the Ombudsmen to consult before issuing guidance, and then to send the guidance, constitute new burdens imposed on them. However, the Government believes that these new burdens are proportionate to the benefits which they will provide, and that, having regard to the expected benefits to complainants and public authorities, the requirements strike a fair balance between the interests of the Ombudsmen and the wider public interest, and that generally it is desirable that the change should be made.

#### **Proposal 4 – Alternative Resolution of Complaints**

50. Under their existing legislation, the powers of the public sector Ombudsmen are limited to the formal investigation of complaints and there is no specific provision for more informal or alternative means of resolving a complainant's grievance or dispute, for example, by mediation. The absence of such a provision is a burden on the public sector Ombudsmen which prevents them from providing a more effective and efficient service for complainants. It is a burden because the public sector Ombudsmen are obliged to conduct a formal investigation even though they might in a given case form the view that a less formal procedure would be a quicker and more cost effective way of resolving the issue which would clearly not only be to the benefit of the Ombudsmen but also the complainant who would benefit from a more informal and efficient process.

51. The Government's White Paper "*Transforming Public Services: Complaints, Redress and Tribunals*"<sup>7</sup> (July 2004) looked at the whole issue of dispute resolution between citizen and State as part of the Government's Public Sector Reform Programme. This proposal would amend all three Acts to give the Ombudsmen express powers to seek the resolution of a complaint in addition to, or instead of, conducting a formal investigation into the complaint. As with formal investigations, action taken by the Ombudsmen under this proposal must be taken in private in order to maintain the confidentiality of the process. The wording of the amendments is similar to provisions in the Public Services Ombudsman (Wales) Act 2005.

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<sup>7</sup> The White Paper can be accessed at <http://www.dca.gov.uk/pubs/adminjust/adminjust.htm>

52. The proposal is consistent with the Government's strategy for the reform of the administrative justice system (as announced in the 2004 White Paper) because it would enable the Ombudsmen to develop new means of resolving complaints (such as mediation or other forms of alternative complaint resolution) that more closely meet the particular needs of some complainants, whose priority is for an early, satisfactory outcome and not a long and detailed investigation. This alternative approach would provide the possibility, in appropriate cases, of swifter and more flexible and cost-effective management of some of the complaints handled by the Ombudsmen.

53. Examples where this approach might be appropriate could include disputes (for example, about social benefits or planning matters) where the complainant's main grievance is a lack of information or understanding of the reasons for the public authority's actions or decisions.

54. Any reports or other publications which are issued under this proposal would be absolutely privileged for the purposes of the law of defamation, in line with the statutory protection which is currently afforded to publications made by the Ombudsmen.

### **Safeguards**

55. The Government does not consider that it should be necessary for the Ombudsmen to obtain complainant consent for alternative complaint resolution. As with other aspects of complaints management, the way in which a complaint is managed and resolved should remain within the discretion of the Ombudsmen. The Government does not consider that this would cause a loss of necessary protection, or rights or freedoms, because in practice, if there had been an attempt to settle a matter through alternative complaint resolution and this method had failed, the Ombudsmen would treat the matter as not having been resolved, and would consider instituting a formal investigation if there were grounds for considering that this would help resolve the complaint. If, after a formal investigation, any injustice was still not remedied, it would remain open to the Ombudsmen to use their existing powers to take further action. In the Local Government Ombudsman's case this could involve issuing a further report and requiring the council to publicise this and its reasons for non-compliance, and in the case of the Parliamentary and Health Service Ombudsman by laying a special report before Parliament. Equally, it would be open to the Ombudsmen to proceed to an investigation and report if, in the course of the alternative procedure, substantial

issues of wider concern became evident.

56. The proposal that alternative procedures, for example mediation, be conducted in private amounts to a new burden on the Ombudsmen. The Government believes that this is proportionate to the benefits that are expected to flow from it – namely protecting the parties' right to confidentiality and encouraging the parties to engage in frank and open exchange on the issues under consideration. The Government believes that it is desirable that such proceedings are conducted in private, and that the policy strikes a fair balance between the interests of the Ombudsmen and the public interest. In practice, there is no substantive additional burden created by this proposal as in the absence of the possibility to undertake mediation or some other form of alternative dispute resolution, the Ombudsmen would undertake a full formal investigation, which would be conducted in private.

#### **Proposal 5 – Exhaustion of Remedies**

57. This proposal would amend the Local Government Act 1974 and the Local Government Ombudsman's procedures for undertaking solo investigations. The proposal would enable the Local Government Ombudsman to investigate a complaint that has not previously been notified to the authority concerned in the small number of cases where the Ombudsman is convinced that no benefit would be achieved in requiring that the case first be considered by the authority. This could arise when there is a matter of urgency, for example, because of the state of health of the complainant or where there is an irretrievable breakdown in trust or confidence between the complainant and the body about which he or she is complaining. In this situation the requirement in the 1974 Act to notify the authority concerned is a burden on the Local Government Ombudsman. This proposal would bring the Local Government Ombudsman into line with the Parliamentary Ombudsman and Health Service Ombudsman, and would mean that joint investigations involving the Local Government Ombudsman would not be held back by having to wait until the authority had investigated the complaint.

58. In addition, this provision would enable an authority to refer a complaint directly to the Local Government Ombudsman without investigation in cases where, for example, there was a history of dissatisfaction on the part of the complainant in the authority's ability to resolve earlier complaints.

## **Safeguards**

59. This proposal does not in our view raise issues of necessary protections, nor does it prevent the exercise of any right or freedom which a person might reasonably expect to continue to exercise. It is only to be used in exceptional circumstances along the lines set out in paragraph 57 above.

## **Costs and Savings**

60. The proposals would not impose any significant costs on individuals or organisations. The proposals would enable efficiency savings to be achieved, in a number of cases. Evidence from a pilot project which has been conducted by the Health Service Ombudsman, with one of the Local Government Ombudsmen, suggests that there may be more than 50 complaints per year – typically covering mental health services, NHS funding of long term care, assessments of need of elderly people and those with disabilities, or child protection matters – where joint investigations are appropriate and would reduce duplication of procedures.

61. The Government would welcome views on potential savings, and the view that the proposals would not impose any significant costs on individuals or organisations.

## **Subordinate Provisions**

62. The proposals do not contain any subordinate provisions in the meaning of section 4 of the Regulatory Reform Act.

63. Comments should be sent by **Friday 18 November 2005** at the latest to:

Ms Sally Pugh  
Propriety and Ethics Team  
Cabinet Office  
Room 118  
70 Whitehall  
London SW1A 2AS

Tel: 020 7276 2472      Fax: 020 7276 2495  
Email: [ombudsmenreform@cabinet-office.x.gsi.gov.uk](mailto:ombudsmenreform@cabinet-office.x.gsi.gov.uk)

Printed copies of the consultation document may also be requested from the above contact. The consultation document can also be accessed on-line at: [http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/parliamentary\\_ombudsman/ombudsmenreform.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/parliamentary_ombudsman/ombudsmenreform.asp)

**LIST OF ORGANISATIONS AND INDIVIDUALS CONSULTED**

Government Departments (including Executive Agencies) within the jurisdiction of the main public sector Ombudsmen

Non-Departmental Public Bodies within the jurisdiction of the main public sector Ombudsmen

NHS Bodies (all bodies mentioned in section 2 of the Health Service Commissioners Act 1993)

Local Authorities (all authorities and other bodies mentioned in section 25(1) of the Local Government Act 1974)

Local Government Association

British & Irish Ombudsman Association

Standards Board for England

National Audit Office

Audit Commission

Current and recent members of the Public Administration Select Committee

Current and recent members of the Health Select Committee

Current and recent members of the Select Committee on the Office of the Deputy Prime Minister

Citizen's Advice (formerly NACAB)

National, Scottish, Northern Irish & Welsh Consumer Councils

Which (formerly the Consumers Association)

Advice UK (formerly the Federation of Independent Advice Centres)

Advice Services Alliance

National Council for Voluntary Organisations

Devolved Administrations:

First Minister, Scottish Parliament

Permanent Secretary, Scottish Executive

Scottish Public Services Ombudsman

First Minister, National Assembly for Wales  
Permanent Secretary, National Assembly for Wales  
Public Services Ombudsman for Wales  
Northern Ireland Ombudsman

Geoffrey Clifton-Brown MP

Lord Lester of Herne Hill QC

Lord Borrie QC

Lord Campbell-Savours

The Rt Hon the Lord Cope of Berkeley

Baroness D'Souza

Lord Goodhart QC

Lord Hughes of Woodside

The Rt Hon the Lord Mackay of Clashfern KT

The Rt Hon the Lord Maclennan of Rogart

The Rt Hon the Lord Naseby

Baroness Neuberger

## RESPONSE FORM FOR THE CONSULTATION PAPER ON REFORM TO PUBLIC SECTOR OMBUDSMEN SERVICES IN ENGLAND

If you would prefer to complete this response form electronically and return it by email, it can be accessed on-line at:

[http://www.cabinetoffice.gov.uk/propriety\\_and\\_ethics/parliamentary\\_ombudsman/ombudsmenreform.asp](http://www.cabinetoffice.gov.uk/propriety_and_ethics/parliamentary_ombudsman/ombudsmenreform.asp)

Respondent Details	Please return by Friday 18 November 2005 to:
Name:  Organisation:  Address:    Town/City:  County/Postcode:  Telephone:  Fax:  E-mail:	Ms Sally Pugh Propriety and Ethics Team Cabinet Office Room 118 70 Whitehall London SW1A 2AS  Tel: 020 7276 2472  Fax: 020 7276 2495  Email: <a href="mailto:ombudsmenreform@cabinet-office.x.gsi.gov.uk">ombudsmenreform@cabinet-office.x.gsi.gov.uk</a>

Tick this box if you are requesting non-disclosure of your response.

- a) Do the proposals put forward in this consultation exercise maintain necessary protections (as defined in para 11 above) for those affected, (see paras 39, 44, 48, 55, and 59 above)?**

Comments: [please comment on each of the proposals]

**b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom (as defined in para 11 above) which he or she might reasonably expect to continue to exercise, (as explained in paras 39, 44, 48, 55 and 59 above)?**

Comments: [please comment on each of the proposals]

**c) Proposals 1, 3 and 4 impose new burdens. Proposal 1 places a requirement on the Ombudsmen to seek the complainant's consent before embarking on joint working. Proposal 3 places a requirement on the Ombudsmen to consult before issuing guidance, and then to send the guidance. Proposal 4 has the effect of requiring the Ombudsmen to pursue alternative methods of resolving complaints.**

**Your views are sought on whether the tests of proportionality, fair balance and desirability (as defined in para 12 above) are satisfied, (as explained in paras 39 and 42 above [Proposal 1], para 49 above [Proposal 3], and para 56 above [Proposal 4]).**

Comments: [please comment on each of the proposals]

**d) Do you have any views on costs and savings as discussed in paras 60 and 61 of this consultation document (and as addressed in the Partial Regulatory Impact Assessment attached at Annex E)?**

Comments:

**e) Are there any other benefits that would be gained from these proposals? Do you have any other comments?**

Comments:

## REGULATORY REFORM PROPOSALS AND ORDERS - PARLIAMENTARY CONSIDERATION

### Introduction

1. These reform proposals in relation to the removal of certain restrictions on the main public sector Ombudsmen will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by introducing a Regulatory Reform Order under the Regulatory Reform Act 2001. Regulatory Reform Orders are subject to preliminary consultation and to extended Parliamentary scrutiny (by Committees in each House of Parliament) of any subsequently proposed Order. On that basis, the Minister invites comments on these reform proposals in relation to the removal of certain restrictions on the main public sector Ombudsmen as measures that might be carried forward by a Regulatory Reform Order.

### Regulatory Reform Proposals

2. This consultation document has been produced because the starting point for regulatory reform proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the Regulatory Reform Act, he or she must also lay a report for consideration by the Scrutiny Committees setting out a summary of:

- the burden imposed by the existing law;
- whether any of those burdens are proposed to be removed or reduced;
- how the proposals otherwise further the other objects of the Regulatory Reform Act (re-enacting proportionate burdens, introducing new but proportionate burdens, removing inconsistencies and anomalies);
- whether there is 'necessary protection' and how it is to be continued;
- how any reasonable expectation of the exercise of rights or freedoms is affected (if at all) and how the exercise can be continued;
- how new burdens (if any) are both proportionate and, taking the proposals as a whole, strike a fair balance between the public interest and the interests of the persons affected by the new burdens;
- whether an Order that imposes burdens is desirable in terms either of the burdens it removes or the other benefits it brings;
- whether any parts of the proposed Order are being designated as 'subordinate provisions', allowing them to be changed by less elaborate Parliamentary procedures in the future;
- what cost savings or increases are expected, and why;
- what other benefits there will be from the proposals;
- details of the consultation process;
- any representations received as a result of that consultation; and
- the changes made as a result.

4. On the day the Minister lays the proposals and report, the period for Parliamentary consideration begins. It lasts for 60 days, excluding Parliamentary

recesses of more than four days. If you want a copy of the proposals and the Minister's report, you will be able to get them either from the Government department concerned or by visiting the Cabinet Office's website at [http://www.cabinetoffice.gov.uk/regulation/regulatory\\_reform/act/proposals.asp](http://www.cabinetoffice.gov.uk/regulation/regulatory_reform/act/proposals.asp).

## Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise regulatory reform proposals and draft orders. This is done by the Scrutiny Committees.

6. Standing Orders in the Commons stipulate that the Committee there considers whether proposals:

- a. appear to make an inappropriate use of delegated legislation;
- b. remove or reduce a burden or the authorisation or requirement of a burden;
- c. continue any necessary protection;
- d. have been the subject of, and take appropriate account of, adequate consultation;
- e. impose a charge on the public revenues or contain 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 prescribe the amount of any such charge or payment;
- f. purport to have retrospective effect;
- g. give rise to doubts whether they are *intra vires*;
- h. require elucidation, are not written in plain English, or appear to be defectively drafted; or
- i. appear to be incompatible with any obligation resulting from membership of the European Union;
- j. prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;
- k. satisfy the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Act;
- l. satisfy the test of desirability set out in section 3(2)(b) of the Act;
- m. have been the subject of, and take appropriate account of, estimates of increases or reductions in costs or other benefits which may result from their implementation; or
- n. include provisions to be designated in the draft order as subordinate provisions; and in the case of the latter consideration the committee shall report its opinion whether such a designation should be made, and to what parliamentary proceedings any subordinate provisions orders should be subject.

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee could then be expected to report:

- whether the Minister should proceed to lay a draft order in the same terms as the original proposal, or
- whether amendment is necessary, or
- whether the order-making power should not be used (for example, because of the significance or sensitivity of the proposal).

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

- Regulatory Reform Committee in the Commons; and
- Delegated Powers and Regulatory Reform Committee in the Lords.

10. After the 60 days for Parliamentary consideration, the Minister can lay a draft order before both Houses, this time for the approval of Parliament.

11. Each of the Scrutiny Committees examines the draft order to see how far its views have been taken into account. They report, within 15 sitting days, whether the draft order should be approved or not, and it would then be for the relevant House itself to take its final decision.

12. The final draft order then has to be approved by both Houses of Parliament before becoming law.

### **How to make your views known**

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Regulatory Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee House of Lords London SW1A 0PW  Tel: 0207 219 3103 Fax: 0207 219 2571 <a href="mailto:DPDC@parliament.uk">DPDC@parliament.uk</a>	Regulatory Reform Committee House of Commons 7 Millbank London SW1P 3JA  Tel: 020 7219 2830/2833/2837 Fax: 020 7219 2509 <a href="mailto:regrefcom@parliament.uk">regrefcom@parliament.uk</a>
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### **Non-disclosure of responses**

17. Section 7 of the Act provides what should happen when someone responding to the consultation exercise on a proposed order requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too.

Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

### **Information about Third Parties**

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of regulatory reform orders.

**Better Regulation Executive  
Cabinet Office**

## **CONSULTATION CRITERIA**

The criteria in the "[Code of Practice on Consultation](#)" published by the Cabinet Office apply to all UK national public consultations.

Though the Code does not have legal force, and cannot prevail over statutory or other mandatory or external requirements (e.g. under European Community law) it should otherwise generally be regarded as binding on UK Departments and their agencies unless Ministers conclude that exceptional circumstances require a departure from it.

The six consultation criteria are:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

**Better Regulation Executive  
Cabinet Office**

## **PARTIAL REGULATORY IMPACT ASSESSMENT**

### **1. Title of proposal**

Reform of Public Sector Ombudsmen Services in England.

### **2. Purpose and intended effect**

#### **(i) Objective**

The objectives of these proposals are to remove the legal restrictions which prevent the main public sector Ombudsmen from:

- consulting each other and working collaboratively on cases and issues that are relevant to more than one of their individual jurisdictions;
- delegating their functions to each other's staff;
- issuing advice and guidance on good administrative practice and other matters;
- seeking to resolve a complaint without having to conduct a formal investigation; and
- in the case of the Local Government Ombudsman, allowing him to investigate some cases which have not first been referred to a local authority.

Taken together these proposals will help to improve the overall delivery of public services.

#### **(ii) Background**

The Parliamentary Ombudsman, Local Government Ombudsmen (three covering different geographical areas of England), and the Health Service Ombudsman undertake independent investigations into complaints from citizens about their respective jurisdictions of Government Departments, local authorities, and the National Health Service, (and related other public bodies in these areas). All were created by statute, and operate under statutory provisions. They are impartial in their dealings with complainants and those complained about.

The Parliamentary Ombudsman and Local Government Ombudsmen investigate complaints that injustice has been caused by maladministration on the part of Government Departments, local authorities, and certain other public bodies. The Health Service Ombudsman investigates complaints that a hardship or injustice has been caused by the failure of the National Health Service (NHS) to provide a service, by a failure in service or by maladministration.

Before submitting a complaint to any of the public sector Ombudsmen, in most cases a complainant must first have given the relevant Department, National Health Service body, local authority or other public body concerned an opportunity to deal with a complaint against it, using the organisation's own complaints procedure. If the complainant is not satisfied with the action taken, he or she can make a written complaint to the appropriate Ombudsman. The relevant governing legislation allows complainants to have direct access to the Local Government Ombudsmen and Health Service Ombudsman, but complaints to the Parliamentary Ombudsman must be made via a Member of Parliament.

The Government and the Ombudsmen wish to remove some legal restrictions on how the main public sector Ombudsmen work in order to modernise the system. This will enable them to provide a more accessible, flexible and modern complaints handling service for complainants as an integral component of improving public service delivery.

### **(iii) Risk assessment**

The broad reason behind the proposed changes is the Government's aim to improve the delivery of public services. A key part of improving public services is to ensure that the public have access to a modern, efficient and cost-effective complaints handling process.

The Government believes that the main public sector Ombudsmen have a vital role to play in contributing to the improvement of public services. The Government recognises that this may only be achieved if the Ombudsmen are able to benefit from changes to enable them to make their working practices more streamlined and efficient.

Not making these reforms would mean that the Ombudsmen would be restricted in the service they could provide to the public. The public would not have access to a modern, cost-effective and responsive complaints handling system. Complaints will take longer to investigate. For those individuals whose complaints come within the jurisdiction of more than one Ombudsman, they are currently required to make a series of complaints to the relevant Ombudsman. Aside from discouraging some from using the Ombudsmen service, even if they feel they have suffered an injustice, it is inefficient, bureaucratic and wasteful of public resources.

## **3. Options**

The Government has a long-standing commitment to take forward Ombudsman reform, dating back to the *Review of the Public Sector Ombudsmen in England* (Philip Collcutt 1999/2000). The Government considered how to best implement the Collcutt Report's recommendations. Following her appointment in November 2002, the current Parliamentary and Health Service Ombudsman recognised that there was unlikely to be an early opportunity to take forward these reforms by primary legislation because of pressures on Parliamentary time. This was confirmed by the Government.

The option of primary legislation for all these proposals has therefore been discounted.

### **(i) Enable Ombudsmen to consult each other and work collaboratively on cases**

The options that have been considered are:

- (a) The Ombudsmen continue to be restricted to working independently of each other (do nothing)

Under this option the Ombudsmen would continue to be restricted from providing a joined up service where complaints straddle more than one jurisdiction. This is a burden for the Ombudsmen, their staff and the public. The Government's policy to improve the delivery of public services would not be met. The option of doing nothing has therefore been discarded.

- (b) The restriction on the Ombudsmen to work collaboratively is lifted.

The limitations of the current legislation are a burden on the Ombudsmen and prevent them from working collaboratively. At present, when a complaint raises

issues that fall within more than one of their individual jurisdictions, it is necessary for the relevant Ombudsmen to undertake separate investigations. This situation is a burden on the Ombudsmen as it causes duplication of effort for them and their staff, and is a burden on public resources. The proposed Regulatory Reform Order would remove these burdens and enable the Ombudsmen to perform their existing functions more effectively. It would also permit them to offer a more streamlined and efficient service for complainants; essentially a one-stop shop.

## **(ii) Delegation of powers**

The current legislative restrictions, in addition to not allowing collaborative working between the three Ombudsmen, also do not allow the Parliamentary Ombudsman and the Health Service Ombudsman to delegate their powers to the staff of the Local Government Ombudsman, and do not allow the Local Government Ombudsman to delegate his powers to the staff of the Parliamentary Ombudsman or Health Service Ombudsman. This restricts efficient and cost effective working practices.

The options that have been considered are:

### **(a) Maintain the current restriction (do nothing)**

Not removing this restriction from the Ombudsmen would continue to constrain how complaints put to them are investigated. This is inefficient, time-consuming and costly. Leaving the restriction in place is out of step with the Government's policy of improving the delivery of public services. The do nothing option is therefore discarded.

### **(b) Remove the current restriction**

Both the Parliamentary Ombudsman and the Health Service Ombudsman are legally restricted from being able to delegate their powers to Local Government Ombudsmen's staff and the Local Government Ombudsman is restricted from delegating his powers to the staff of the Parliamentary or Health Service Ombudsmen. The proposed RRO would remove this restriction and ensure more efficient investigation of complaints.

## **(iii) Issue advice and guidance**

The Ombudsmen are currently restricted through legislation from issuing guidance and advice on good administrative practice and other matters. This is a burden on them because it prevents them from performing their functions as fully and properly as they might.

The options that have been considered are:

### **(a) Maintain the current restriction (do nothing)**

The current restriction means that the Ombudsmen are not able to take sufficient proactive action to help improve public services and thereby reduce the number of complaints. This is not in line with Government policy and therefore the do nothing option has been discarded.

### **(b) Remove the current restriction**

Removal of the current restriction by the proposed RRO would remove the burden

from the Ombudsmen that they can not be sufficiently proactive in improving public services through being able to issue advice and guidance on good administrative practice and other matters. This would enable the Ombudsmen to issue guidance and advice to encourage best practice. This should help reduce the number of complaints with the aim of providing a more efficient service to the benefit of the Ombudsmen, the organisations within their jurisdictions and the public.

#### **(iv) Alternative dispute resolution procedures**

Under their existing legislation, the powers of the public sector Ombudsmen are restricted to the formal investigation of complaints and there is no specific provision for more informal or alternative means of resolving a complainant's grievance or dispute. This is inconsistent with the Government's strategy for the reform of the administrative justice system (as announced in its 2004 White Paper: Transforming Public Services: Complaints, Redress and Tribunals) because it does not permit the Ombudsmen to develop new means of resolving complaints (such as mediation or other forms of alternative complaint resolution) that more closely meet the particular needs of some complainants, whose priority is for an early, satisfactory outcome and not a long and detailed investigation.

The options that have been considered are:

(a) Maintain the current restriction (do nothing)

Maintaining the current restriction would not remove the burden of Ombudsmen only being able to undertake formal investigations into complaints. They would continue to be barred from using other means of resolving disputes, which may be more efficient and effective. This is not in line with Government policy and therefore the do nothing option has been discarded.

(b) Remove the current restriction

Removal of the current restriction by the proposed RRO would remove the burden from the Ombudsmen that they can not resolve disputes except by investigation. A formal investigation may not always be the most efficient or cost-effective means of resolving a dispute. Developing alternative and more effective dispute resolution procedures would be in line with Government policy.

#### **(v) Exhaustion of remedies**

The Local Government Ombudsman is currently restricted by legislation to investigating complaints that have first been investigated by the relevant local authority. This restricts him from investigating the small number of complaints where he believes that no benefit would be achieved in requiring that the case first be considered by the council. This could arise where there is a matter requiring urgent consideration because of, for example, the state of health of the complainant. It could also arise in circumstances where there is an irretrievable breakdown in trust or confidence between the complainant and the body about which he or she is complaining. The proposal would mean that joint investigations involving the Local Government Ombudsman would not be held back by having to wait until the authority had investigated the complaint. In addition, this provision would enable an authority to refer a complaint directly to the Local Government Ombudsman without investigation in cases where, for example, there was a history of dissatisfaction on the part of the complainant in the authority's ability to resolve earlier complaints.

The options that have been considered are:

(a) Maintain the current restriction (do nothing)

Not removing the restriction would mean that urgent complaints, such as those set out above, would continue not to be resolved quickly. This would be to the detriment of the complainant, but would also undermine the authority of the Ombudsmen who would not be seen as responsive to the needs of the public. This is not in line with Government policy to improve the provision of effective public services and therefore, the do nothing option has not been pursued.

(b) Remove the current restriction

The proposed RRO would remove the restriction on the Local Government Ombudsman from being able to investigate complaints that have not first been investigated by a local authority. Removing the restriction would enable the Ombudsman to provide a more responsive service.

#### **4. & 5. Costs and benefits**

The benefits that arise out of these proposals have yet to be fully quantified on a financial basis but they do clearly present a range of benefits which are set out below. Any financial information about the benefits that is gained from the consultation process will be incorporated into the Regulatory Impact Assessment.

The economic benefits of these proposals will be seen in more efficient and cost-effective complaints handling procedures. The Ombudsmen will be able to share resources more effectively, and this in time could result in savings by the Ombudsmen. By removing out dated restrictions from the working practices of the Ombudsmen the public will benefit from a more modern, responsive and cost effective complaints handling process where they believe they have suffered an injustice. The public will know that if they make a complaint to one Ombudsman that it will be fully investigated even if it falls within the jurisdiction of another Ombudsman. Currently the complainant would be advised to resubmit the complaint to a different Ombudsman – this was costly both to the Ombudsmen and the public.

There will also be social benefits. By removing restrictions from the Ombudsmen on how they respond to complaints and allowing them to improve the valuable service they provide, the public's confidence in the Ombudsmen's services will improve. Their confidence in being able to tackle maladministration in the public services will also improve.

Over time removing these restrictions should contribute to the overall improvement of public services. The economic and social benefits of these have not been calculated.

The proposals would not impose any significant costs on the Ombudsmen. In fact they would enable efficiency savings to be achieved, in a number of cases. Evidence from a pilot project which has been conducted by the Health Service Ombudsman, with one of the Local Government Ombudsmen, suggests that there may be more than 50 complaints per year – typically covering mental health services, NHS funding of long term care, assessments of need of elderly people and those with disabilities, or child protection matters – where joint investigations are appropriate and would reduce duplication of procedures and effort with the ultimate goal of providing a more joined up and less bureaucratic service to complainants.

Environmental benefits – not applicable to these proposals.

## **6. Equity & fairness**

These proposals will result in a more accessible and efficient complaints handling process, and one that is more accessible to those who may currently be deterred from using the Ombudsmen's service because they see it as slow, complicated and bureaucratic. The Government wants to ensure that all sections of society have access to a modern and efficient complaints resolution process. It acknowledges that a good complaints resolution process leads to improved provision of services, which will be of benefit to all in society.

## **7. Consultation with small business: the Small Firms' Impact Test**

Not applicable to these proposals which relate to the main public sector Ombudsmen.

## **8. Competition assessment**

Not applicable to these proposals. The proposals relate to the main public sector Ombudsmen and would not have an impact on competition.

## **9. Enforcement & sanctions**

These proposals relate to how the main public sector Ombudsmen handle complaints in the most efficient and effective way. There are no enforcement or sanction issues.

## **10. Monitoring & review**

It is proposed that the effectiveness of the Public Sector Ombudsmen Services RRO will be reviewed 3 years after its implementation. This will show whether the removal of the restrictions on the Ombudsmen has resulted in better handling of complaints. This post-implementation review will be carried out jointly between the Cabinet Office and the main public sector Ombudsmen.

A number of indicators will be used to monitor success:

- complaints handled more efficiently and speedily;
- cost savings in the handling of complaints;
- raised public satisfaction in the Ombudsmen's services.

## **11. Consultation**

### **(i) Within Government**

The main public sector Ombudsmen, the Office of the Deputy Prime Minister, the Department of Health and the devolved administrations have all been consulted in preparing these proposals. They and other Government Departments will be consulted further.

### **(ii) Public consultation**

A wide number of public sector organisations and public advice organisations will be consulted as a matter of course. A full list is detailed in the consultation document at [Annex A](#).

**12. Summary & recommendation**

<b>Option</b>	<b>Total cost per annum: economic, environmental, social</b>	<b>Total benefit for annum: economic, environmental, social</b>
1.		
2.		
3.		
4.		
5.		

**13. Declaration**

*I have read the regulatory impact assessment and am satisfied that the benefits justify the costs*

**Signed .....**

**Date**

**Minister's name, title, Department**

Contact point: