

House of Commons
Regulatory Reform Committee

**DRAFT REGULATORY REFORM
(CREDIT UNIONS) ORDER 2003**

**DRAFT REGULATORY REFORM
(ASSURED PERIODIC TENANCIES)
(RENT INCREASES) ORDER 2003**

Sixth Report of Session 2002–03

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Sixth Report of Session 2002–03

*Report, together with
Proceedings of the Committee and Appendix*

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REGULATORY REFORM COMMITTEE

The Regulatory Reform Committee is appointed to consider and report to the House on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any “subordinate provisions order” made under the same Act.

Current membership

Mr Peter Pike (*Labour, Burnley*) (Chairman)
Mr Russell Brown (*Labour, Dumfries*)
Mr Brian Cotter (*Liberal Democrat, Weston-Super-Mare*)
Mr Jeffrey M. Donaldson (*Ulster Unionist Party, Lagan Valley*)
Mr Paul Goodman (*Conservative, Wycombe*)
Mr Dai Havard (*Labour, Merthyr Tydfil and Rhymney*)
Mr Andy King (*Labour, Rugby and Kenilworth*)
Mr Mark Lazarowicz (*Labour, Edinburgh North and Leith*)
Mr Andrew Love (*Labour/Co-op, Edmonton*)
Mr John MacDougall, (*Labour, Central Fife*)
Mr Chris Mole (*Labour, Ipswich*)
Mr Denis Murphy (*Labour, Wansbeck*)
Dr Doug Naysmith (*Labour/Co-op, Bristol North West*)
Mr Andrew Rosindell, (*Conservative, Romford*)
Mr Anthony Steen (*Conservative, Totnes*)
Mr Brian White (*Labour, Milton Keynes North East*)

Mrs Claire Curtis-Thomas was also a Member of the Committee during its consideration of the Draft Regulatory Reform (Credit Unions) Order 2003.

Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No 141, available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Committee’s website http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm. A list of reports of the Committee in the last Parliament may be found at the back of this report.

Contacts

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SIXTH REPORT

The Regulatory Reform Committee has agreed to the following Report:

I

DRAFT REGULATORY REFORM (CREDIT UNIONS) ORDER 2003

Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Credit Unions) Order 2002 in accordance with Standing Order No. 141. We recommend unanimously that the draft order be approved.

Introduction

2. On 16 December 2002 the Government laid the draft order before Parliament, together with an explanatory statement from HM Treasury (the Department).¹ We have already reported on the proposal for this order, which would amend the Credit Unions Act 1979 by removing two restrictions on credit unions and amending the regulation of the name “credit union”. The Act would be amended in order to:

- allow credit unions to charge fees for providing additional basic services
- make the common bond requirements, governing admission to membership, more flexible
- establish appropriate regulation on the use of the name “credit union”.

3. The House has instructed us to examine the draft order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee or to any other representations made during the period for parliamentary consideration.² Our discussion of matters arising from our examination is set out below.

Findings of our previous report

4. We were satisfied that the draft order met all but one of the criteria against which we are required to judge it. The one outstanding concern we had about the proposal related to a defectively drafted provision, new section 1(3B), as inserted by article 3 of the draft order. We considered that the drafting of this provision was ambiguous and could be improved. Consequently, we recommended that a minor amendment should be made to the draft order and that the amended draft order should be laid before the House.

5. The Department agreed with us that the drafting of new section 1(3B) could be improved. It suggested replacing the phrase “all of whom fulfil” with the phrase “each of whom fulfils”. We supported this suggestion.

¹ Copies of the draft order are available to Members of Parliament from the Vote Office and to members of the public from the Department. The draft order is also available on the Cabinet Office web site <http://www.cabinet-office.gov.uk/regulation/act/proposals.htm>.

² Standing Order No. 141(7)

The Department's response to our report

6. Only one significant amendment has been made to the draft order since the proposal was laid on 18 July 2002. In accordance with our recommendation that new section 1(3B) would benefit from a minor amendment, that provision has been amended so that the phrase "all of whom fulfil" now reads "each of whom fulfils". Several minor technical amendments have also been made to the draft order.

7. On the basis of the explanatory statement, we are satisfied that the responsible Minister has had due regard to our previous report on the proposal for the draft order.

Other representations

8. The Department states, in the explanatory statement, that it is not aware of any other representations made during the period for Parliamentary consideration.

Recommendation

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

II

DRAFT REGULATORY REFORM (ASSURED PERIODIC TENANCIES) (RENT INCREASES) ORDER 2003

Report under Standing Order No. 141

10. The Regulatory Reform Committee has examined the draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 in accordance with Standing Order No. 141. We recommend unanimously that the draft order be approved.

Introduction

11. On 13 January 2003 the Government laid the draft order before Parliament, together with an explanatory statement from the Office of the Deputy Prime Minister (the Department).³ We have already reported on the proposal for this order, which would amend section 13 of the Housing Act 1988 by amending the existing procedure for assured periodic tenancies so as to allow landlords to set a fixed day for rent increases.

12. The House has instructed us to examine the draft order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible Minister has had regard to any resolution or report of the Committee or to any other representations made during the period for parliamentary consideration.⁴ Our discussion of matters arising from our examination is set out below.

Findings of our previous report

13. We were satisfied that the proposal met the criteria against which we are required to judge it. We recommended that a draft order in the same terms as the proposal be laid before the House, provided that the Minister's statement accompanying the draft order contained a particular confirmation that we sought. This confirmation related to the Department's assessment of the increases or reductions in costs or other benefits likely to result from the implementation of the draft order; our reasons for requiring such a confirmation are discussed further, below.

14. Additionally, we requested further information from the Department relating to whether the Department had taken appropriate account of consultation responses. We asked the Department to provide us with a copy of the revised form prescribed for landlords giving notice of a new rental to assured periodic tenants. A copy of the revised form was not available at the time at which we reported to the House because it was to be prescribed by way of an amendment to The Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997; the amendment was not yet available.⁵ We asked to see a copy of the form as soon as possible, and in any case prior to the Minister laying the draft order before Parliament.

³ Copies of the draft order are available to Members of Parliament from the Vote Office and to members of the public from the Department. The draft order is also available on the Cabinet Office web site <http://www.cabinet-office.gov.uk/regulation/act/proposals.htm>.

⁴ Standing Order No. 141(7)

⁵ The 1997 regulations (SI 1997/194) were amended by The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2002 (SI 2002/337).

Costs and benefits

15. The confirmation we sought arose from our assessment that the Department had provided insufficient evidence that the proposed draft order had been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation. The draft order would allow two possible methods for setting rent increases; we considered that the Department had not properly estimated the increases or reductions in costs or other benefits which could result from the proposal being implemented by the second of these two methods. Under this method, a landlord could choose to set rent increases by applying the minimum 52 week period—in other words, by increasing rent at the first possible opportunity each year.

16. The Department considered it was unlikely that any landlords would choose to adopt this method of setting rent increases because the method would create an administrative burden and there would be little or no advantage to landlords in terms of gaining increased rent sooner. Consequently, it estimated only those increases or reductions in costs or other benefits which could arise from the first method of setting rent increases, whereby landlords would establish a fixed day for annual rent increases.

17. Although we considered the Department's assessment of the increases or reductions in costs or other benefits likely to result from the proposal's implementation to be incomplete, we concluded that the aspect of the proposal which had not been the subject of appropriate estimates was relatively minor. We were therefore content for the proposal to proceed to draft order stage, provided that the Minister's statement accompanying the draft order confirmed the Department's opinion that no landlords, or only very few landlords, would be likely to apply the minimum 52 week period and increase rent at the first possible opportunity.

Adequate consultation: taking appropriate account of consultation responses

18. We asked the Department to provide us with a copy of the revised form prescribed for landlords giving notice of a new rental because, during the consultation process, two registered social landlords raised concerns about the current prescribed form. Respondents were concerned that the form was not user-friendly, did not allow variable service charge amounts to be included and did not take account of the "Supporting People Programme". The Department undertook to consider these comments when revising the form to take account of the proposal.

19. We considered the form to be important because it is the principal means by which most of the people affected by the proposal, particularly tenants, would be informed of the effects of the proposal. We wanted to ensure that, if the proposed order were to be made, the form will provide an effective explanation to the layperson of the order's legal effect, particularly given the complexity of the order.

The Department's response to our report

20. No changes have been made to the draft order since the proposal was laid on 16 October 2002.

Costs and benefits

21. The Department has provided the confirmation that we requested. It states that it remains the Department's opinion that landlords will, in practice, opt to increase rents on a fixed date each year. The Department bases its assessment on reasons similar to those set out in paragraph 16 above.

22. The Department notes that, during the consultation process, it did not ask landlords whether they would consider increasing rent at the first possible opportunity. We consider it is unfortunate that the Department did not seek this information. However, we accept the Department's assessment that landlords are likely to adopt the first method of setting rent increases, whereby landlords would establish a fixed day for annual rent increases.

Adequate consultation: taking appropriate account of consultation responses

23. The Department provided us with a copy of the revised form prior to laying the draft order.⁶ It also responded to the concerns raised by the two registered social landlords during consultation.⁷

24. Having examined the revised form, we are satisfied with its explanation of the order's legal effect. Note 15 of the revised guidance note for landlords adequately explains the effect of the anniversary rule, as it would be amended by the draft order. We are also satisfied with the Department's reasons for not adopting the changes to the form suggested by the two registered social landlords.

25. On the basis of the explanatory statement and the additional information provided to us prior to the laying of the draft order before Parliament, we are satisfied that the responsible Minister has had due regard to our previous report on the proposal for the draft order.

Other representations

26. The Department states, in the explanatory statement, that it is not aware of any other representations made during the period for Parliamentary consideration.

Recommendation

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

⁶ See the Appendix; the revised form is prescribed in The Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2003, which are currently in draft form but which will be made shortly, provided that the draft order is made.

⁷ Appendix

Appendix

Letter from the Office of the Deputy Prime Minister to the Committee

The Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 Further Information

Paragraph 6.1 of the paper enclosed with my letter of 13 November 2002 (which responded to questions from the Committee about the proposed order to change the rules on the timing of rent increases) promised to provide the Committee with two further items of information in advance of the laying of the draft order at the second stage of scrutiny. This letter:

- Encloses 25 copies of the draft Regulations which provide for two new prescribed forms for landlords to use in England to notify rent increases under section 13 (2) of the Housing Act 1988; and
- Responds to the two consultation comments about the current prescribed form applying in England.

Proposed new prescribed forms for use in England

We propose two new forms to replace the current form, 4A, which was prescribed for use in England in February 2002 in the Assured Tenancies and Agricultural Occupancies (Forms) (Amendment) (England) Regulations 2002; SI 2002 No. 337. The first form, 4B, will be for use by landlords in proposing a new rent for an assured periodic tenancy. It incorporates the replacement (subject to Parliamentary approval of the draft regulatory reform order) of the anniversary rule for these tenancies by a provision that rent increases take place not less than 52 weeks after the start of a tenancy or the date of the last increase, with a 53 week condition applying intermittently. The main alterations to the form to reflect the change in the timing rule are the addition of a new paragraph 3 in the form itself and note 15 which describes the new rule. The second form, 4C, will be for use by landlords or licensors proposing a new rent or licence fee for an assured agricultural occupancy. This continues to reflect the anniversary rule. The National Assembly for Wales is separately prescribing forms for use for premises in Wales. In the meantime the draft Regulations provide for Form 4 to remain the prescribed form for use in Wales. The forms enclosed with this letter are almost finalised. We are though considering including some additional wording in note 11 to Form 4B and note 10 to Form 4C to provide landlords with a definition of service charges and some further clarification of the circumstances when charges should be included in the tables in the new forms.

Consultation comments about form 4A

Bromford Carinthia Housing Association suggested that the table in the form should make provision for the inclusion of variable service charges so that tenants received one notification of the *actual* total rent charged. A variable service charge does not count as part of the rent for the purposes of section 13 of the Housing Act 1988. Such charges are subject to different legal rules and procedures, under the relevant provisions of the Landlord and Tenant Act 1985. These provisions include requirements about consulting tenants, and dealing with requests for information (sections 20-25 of the 1985 Act). Therefore it would be inappropriate for variable service charges to be included in the new prescribed forms which are only used to notify rent increases. In addition, a landlord may include information about charges other than rent in a covering letter or separate attachment to the prescribed form. We are not therefore adopting this suggestion.

Bedford Citizens Housing Association suggested that the table in the form should make provision for the inclusion of charges under the Supporting People programme, which is to be introduced from 1 April this year. Neither private sector tenants nor the vast majority of tenants of registered social landlords (RSLs) whose rents are increased under the section 13 statutory notice procedure will be subject to charges under the Supporting People programme. The majority of RSLs will receive grant from local authorities for the support services they will provide under the programme. Only in the few cases where an RSL tenant pays part or all of the cost of the support services and their tenancy agreement includes a condition that charges for support services are to be included in rent, will it be appropriate to include these charges on the form. In practical terms, it is preferable in these few cases for these charges to be included within the fixed service charges in the table in the form, rather than providing for a separate category of charges which will only apply to a very few tenants. The National Housing Federation will continue to encourage RSLs to provide a breakdown and explanation of the various charges which constitute the "fixed service charges" in a covering letter to accompany the form. We are not therefore adopting this suggestion.

I hope this further information is helpful to the Committee.

8 January 2003

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

TUESDAY 20 JANUARY 2003

Mr Peter Pike in the Chair

Mr Russell Brown
Mr Brian Cotter
Mr Dai Havard

Mr Chris Mole
Dr Doug Naysmith
Mr Andrew Rosindell

The Committee deliberated.

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.—(*The Chairman.*)

Paragraphs 1 to 27 read and agreed to.

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

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

A paper was ordered to be appended to the Report.

Ordered, That the Appendix to the Report be reported to the House.—(*The Chairman.*)

[Adjourned till Tuesday 28 January 2003 at half past Nine o'clock

**LIST OF COMMITTEE REPORTS PUBLISHED IN THE
PREVIOUS SESSION OF PARLIAMENT**

The following reports were published during the previous Session of Parliament by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee. All reports are available from The Stationery Office.

Session 2001–02

Report	Title	HC number
First	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2001	265
Second	Draft Regulatory Reform (Special Occasions Licensing) Order 2001	388
Third	Draft Deregulation (Disposals of Dwelling-Houses By Local Authorities) Order 2001	449
Fourth	Proposal for the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	583
Fifth	<ul style="list-style-type: none"> • Draft Deregulation (Restaurant Licensing Hours) Order 2002 • Draft Deregulation (Bingo and other Gaming) Order 2002 • Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002 	599
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	<ul style="list-style-type: none"> • Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002 • Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002 	677
Eighth	Proposal for the Regulatory Reform (Carer's Allowance) Order 2002	691
Ninth	<ul style="list-style-type: none"> • Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002 • Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002 	708
Tenth	<ul style="list-style-type: none"> • Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 • Draft Regulatory Reform (Carer's Allowance) Order 2002 	807
First Special Report	Further report on the Handling of Regulatory Reform Orders	389

The following Reports were published by the Regulatory Reform Committee during the last Session of Parliament under its current name. All reports are available from The Stationery Office.

Session 2001–02

Report	Title	HC number
Eleventh	Draft Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	867
Twelfth	Proposal for the Regulatory Reform (Removal of the 20 Member Limit) Order 2002	1104
Thirteenth	Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003	1247
Fourteenth	Draft Regulatory Reform (Removal of 20 Member Limit in Partnerships Etc.) Order 2002	1303
Second Special Report	The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001-02	1029
Third Special Report	The Handling of Regulatory Reform Orders (III)	1272

The following reports have been published during this Session of Parliament.

Session 2002–03

Report	Title	HC number
First	<ul style="list-style-type: none"> • Proposal for the Regulatory Reform (Credit Unions) Order 2002 • Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002 	82
Second	Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003	182
Third	Proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	183
Fourth	Draft Regulatory Reform (Special Occasions Licensing) Order 2002	193

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