

House of Commons
Regulatory Reform Committee

**REGULATORY REFORM
(SCHEMES UNDER
SECTION 129 OF THE
HOUSING ACT 1988)
(ENGLAND) ORDER 2003**

Tenth Report of Session 2002–03

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*Report, together with
Proceedings of the Committee*

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

Mrs Claire Curtis-Thomas was a Member of the Committee until 9 January 2003, when she was discharged and Mr John MacDougall added.

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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TENTH REPORT

The Regulatory Reform Committee has agreed to the following Report:

DRAFT REGULATORY REFORM (SCHEMES UNDER SECTION 129 OF THE HOUSING ACT 1988) (ENGLAND) ORDER 2003

Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003 in accordance with Standing Order No. 141. We recommend unanimously that the draft order be approved.

Introduction

2. On 10 March 2003 the Government laid the draft order before Parliament, together with an explanatory statement from the Office of the Deputy Prime Minister (the Department).¹ We have already reported on the proposal for this order, which would amend section 129 of the Housing Act 1988 (the 1988 Act) by removing the requirement for local housing authorities in England to obtain approval from the Secretary of State where they wish to operate a cash incentive scheme.² A cash incentive scheme provides for payments to assist tenants in obtaining other accommodation.

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.³ Our discussion of matters arising from our examination is set out below.

Findings of our previous report

4. We were satisfied that the proposal met all but one of the criteria against which we are required to judge it, and we concluded that a draft order revised in the manner indicated by the Department should be laid before the House. The revisions were necessary to meet our concerns about the draft order; they ensured that the draft order would not re-enact section 129 of the 1988 Act in respect of Wales, which would have had the effect of imposing a burden on local housing authorities in Wales.

5. In discussing whether the proposal would continue any necessary protections, we signalled our interest in receiving the results of the Department's analysis of the impact of the draft order. We also expressed concerns about the quality of the Department's explanatory statement.

Re-enacting provisions that impose burdens in respect of Wales

6. We were not convinced by the Department's argument that the proposal would remove a burden only in relation to England and would not re-enact a provision having the effect of imposing a burden in respect of Wales. We did not accept that the Department was justified in seeking to distinguish the "circumstances applicable in Wales" from those

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

² Seventh Report of Session 2002-03, HC 436

³ Standing Order No. 141(7)

applicable in England. Furthermore, if the proposal were considered to be re-enacting section 129 in respect of Wales, we considered that the Department had not met the requirements of section 1(1)(b) of the Regulatory Reform Act 2001. Section 1(1)(b) requires the Department to demonstrate that a benefit would result from the re-enactment of section 129, and that this benefit would be proportionate to the burden arising from the re-enacted provision.

7. We raised these concerns with the Department. The Department responded by indicating its intention to revise the proposed draft order. On the basis of the Department's response, we were satisfied that, if the draft order was revised in the way indicated by the Department, then it would no longer re-enact a provision having the effect of imposing a burden on local housing authorities in Wales.

8. Despite reaching this conclusion, we expressed our concern that the Secretary of State appeared to have initially asserted that section 1(1)(b) of the Regulatory Reform Act was satisfied but then, upon subsequent questioning, had stated that he was not sufficiently well-informed to assess whether section 1(1)(b) was in fact satisfied. We indicated that we expected both the Department and the Secretary of State to ensure, in respect of any future proposals, that any assertion that a particular test of the Regulatory Reform Act is satisfied is based on adequate and convincing evidence.

Continuing necessary protection

9. We were satisfied that the proposal would continue the necessary protection provided by the 1988 Act. In the course of our consideration, we asked the Department whether it intended to undertake any monitoring of cash incentive schemes to establish whether local housing authorities are following good practice. The Department told us that, if the draft order were to be made, it intended to carry out an analysis of its impact over the following 18 months. We asked the Department to inform us of the results of any such analysis.

Quality of explanatory statement

10. We also raised concerns about the quality of the Department's explanatory statement. We described the explanatory statement as "unsatisfactory" because we considered that it addressed the requirements of section 6(2) of the Regulatory Reform Act in a muddled fashion and, in respect of requirements relating to burdens, undertook only a superficial analysis of whether these were in fact met.

The Department's response to our report

Re-enacting provisions that impose burdens in respect of Wales

11. The draft order has been amended to reflect the suggested amendments put before both Parliamentary Committees by the Department during "first stage" scrutiny. We note that the House of Lords Committee on Delegated Powers and Regulatory Reform expressed concerns similar to those raised by this Committee as regards the re-enactment of this provision.⁴ We are satisfied that the draft order, as amended, does not affect the application of section 129 to Wales and that the section 1(1)(b) test is therefore no longer applicable.

12. However, we note that the Department has not acknowledged our statement that we expected both the Department and the Secretary of State to ensure, in respect of any future proposals, that any assertion that a particular test of the Regulatory Reform Act is satisfied is based on adequate and convincing evidence. We trust that the Department and the

⁴ House of Lords, Tenth Report of the Delegated Powers and Regulatory Reform Committee, Session 2002-03, HL Paper 46

Secretary of State accept that two contradictory statements were made regarding this point, and that the later of these two statements suggested that the first statement was made to Parliament on the basis of insufficient information. **We repeat that we expect future representations from the Department and from the Secretary of State to be based on adequate and convincing evidence.**

Continuing necessary protection

13. The Department has undertaken to ensure that we will be notified of the results of the Department's intended analysis of the impact of the draft order, if it is made, at such time as the analysis takes place. **We look forward to being informed of the results of this analysis.**

Quality of explanatory statement

14. The Department has acknowledged that the explanatory statement reflected an insufficient analysis of the proposal. It states that it will endeavour to undertake a satisfactory analysis of any future proposals and reflect this analysis in any explanatory statement.

15. 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

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

Recommendation

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

PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

TUESDAY 18 MARCH 2003

Mr Peter Pike, in the Chair

Mr Dai Havard
Mr Mark Lazarowicz
Chris Mole

Mr Denis Murphy
Dr Doug Naysmith
Brian White

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 17 read and agreed to.

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

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

[Adjourned till Tuesday 25 March 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 previous 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 the present 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
Fifth	Proposal for the Regulatory Reform (Housing Management Agreements) Order 2003	328
Sixth	<ul style="list-style-type: none"> • Draft Regulatory Reform (Credit Unions) Order 2003 • Draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003 	329

Seventh	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	436
Eighth	Draft Regulatory Reform (Housing Management Agreements) Order 2003	520

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