

2004 No. 2359

**LOCAL GOVERNMENT, WALES
REGULATORY REFORM**

**The Regulatory Reform (Local Commissioner for Wales)
Order 2004**

Made - - - - - *23rd September 2004*

Coming into force - - - *24th September 2004*

Whereas

- (a) the Secretary of State for Wales (“the Secretary of State”) consulted—
 - (i) such organisations as appeared to him to be representative of interests substantially affected by his proposals for this Order,
 - (ii) the statutory bodies whose functions are related to his proposals,
 - (iii) the National Assembly for Wales, and
 - (iv) such other persons as he considered appropriate;
- (b) following that consultation the Secretary of State considered it appropriate to proceed with the making of this Order;
- (c) a document containing the Secretary of State’s proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001^(a) and the period for Parliamentary consideration under section 8 of that Act expired;
- (d) the Secretary of State had regard to the representations made during that period and in particular to the Sixth Report of Session 2003–04 of the House of Lords Delegated Powers and Regulatory Reform Committee;
- (e) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the Secretary of State’s proposals in the light of them;
- (f) the draft was approved by resolution of each House of Parliament; and
- (g) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

Now therefore the Secretary of State, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001, hereby makes the following Order:

Citation, commencement and extent

- 1.—(1) This Order may be cited as the Regulatory Reform (Local Commissioner for Wales) Order 2004.
- (2) This Order extends to England and Wales only.
- (3) This Order shall come into force on the day following its making.

^(a) 2001 c. 6.

Amendment of the Local Government Act 1974

- 2.—(1) The Local Government Act 1974(a) is amended as follows.
- (2) In section 23 (the Commissions for Local Administration),
- (a) omit subsection (2A)(b);
 - (b) in subsection (3)(c) omit “, the Welsh Administration Ombudsman”; and
 - (c) after subsection (3), insert—
“**(3A)** Where the person who is the Welsh Administration Ombudsman is not appointed as a member of the Commission for Local Administration in Wales under subsection (4)—
 - (a) he shall be a member of that Commission by virtue of his office; but
 - (b) he shall not be a “Local Commissioner” within the meaning of this Part.”.
- (3) After section 32 (law of defamation and disclosure of information) insert—

“Use of information by Local Commissioner in other capacity

- 32A.**—(1) Section (2) applies where—
- (a) a Local Commissioner for Wales also holds the office of Welsh Administration Ombudsman or of Health Service Commissioner for Wales (an “additional office”), and
 - (b) a person initiates a complaint to him as the holder of the additional office which relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to him as a Local Commissioner.

(2) Information obtained by a Local Commissioner for Wales or his officers in the course of or for the purposes of investigating a complaint made under this Part of this Act may be disclosed for the purposes of carrying out his functions in relation to the other complaint.”.

Amendment of the Health Service Commissioners Act 1993

- 3.—(1) The Health Service Commissioners Act 1993(d) is amended as follows.
- (2) In section 17 (use of information by Commissioner in other capacity),
- (a) in subsection (1), for “either” substitute “any” and after “Health Service Commissioner,” insert “the office of a Local Commissioner for Wales,”; and
 - (b) after subsection (2), insert—
“**(3)** In this section “Local Commissioner for Wales” means a Local Commissioner (within the meaning of Part 3 of the Local Government Act 1974) who is a member of the Commission for Local Administration in Wales.”.

Amendment of the Government of Wales Act 1998

- 4.—(1) The Government of Wales Act 1998(e) is amended as follows.
- (2) In Schedule 9, in paragraph 26 (use of information by the Welsh Administration Ombudsman),
- (a) in subparagraph (1)(a), after “Health Service Commissioner”, insert “or as a Local Commissioner for Wales”; and
 - (b) after subparagraph (2), insert—
“**(3)** In this paragraph “Local Commissioner for Wales” means a Local Commissioner (within the meaning of Part 3 of the Local Government Act 1974) who is a member of the Commission for Local Administration in Wales.”.

23rd September 2004

Peter Hain
Secretary of State for Wales

(a) 1974 c. 7.
(b) Section 23(2A) was inserted by Schedule 12, paragraph 12(2), to the Government of Wales Act 1998 (c. 38).
(c) Section 23(3) was amended by Schedule 12, paragraph 12(3), to the said Act of 1998.
(d) 1993 c. 46. Section 17(1) was amended by Schedule 10, paragraph 13 to the Government of Wales Act 1998.
(e) 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order amends Part 3 of the Local Government Act 1974 (Local Government Administration) (“the 1974 Act”) and makes some consequential changes to the Health Service Commissioners Act 1993 and the Government of Wales Act 1998.

Part 3 of the 1974 Act makes provision, amongst other things, for membership of the Commission for Local Administration in Wales (“the Welsh Commission”) and for a Local Commissioner for Wales to investigate complaints of maladministration against certain local authorities and other bodies in Wales. A Local Commissioner for Wales may also investigate the conduct of local government members under Part 3, Chapter 3 of the Local Government Act 2000.

Main change

The Parliamentary Commissioner for Administration (see the Parliamentary Commissioners Act 1967) and Welsh Administration Ombudsman (see Schedule 9 to the Government of Wales Act 1998) are members of the Welsh Commission but previously could not act as a Local Commissioner for Wales.

Article 2(2) amends section 23 of the 1974 Act so as to remove the restriction on the Welsh Administration Ombudsman (but not the Parliamentary Commissioner for Administration) from acting as a Local Commissioner for Wales where the person who holds the office of Welsh Administration Ombudsman has been appointed to the Commission for Local Administration in Wales under section 23(4) after consultation with representatives of local authorities in Wales.

Consequential changes

Article 2(3) inserts a new section 32A into the 1974 Act. This is to provide that information acquired by a Local Commissioner for Wales can be used by him when acting as Welsh Administration Ombudsman or as the Health Service Commissioner for Wales.

Articles 3 and 4 make consequential amendments to section 17 of the Health Service Commissioners Act 1993 and to paragraph 26 of Schedule 9 to the Government of Wales Act 1998.

A consultation document was published by the Welsh Assembly Government on behalf of the Secretary of State for Wales in July 2003. Copies may be obtained from the Public Administration and Honours Unit, Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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