

EXPLANATORY MEMORANDUM TO
THE PARLIAMENTARY COMMISSIONER (No.2) ORDER 2005
2005 No. 3430

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Parliamentary Commissioner (No.2) Order 2005 updates the list of departments and public bodies within the jurisdiction of the Parliamentary Commissioner for Administration, otherwise known as the Parliamentary Ombudsman. The Order updates Schedule 2 to the Parliamentary Commissioner Act 1967 which lists the Government departments and certain other public bodies within the jurisdiction of the Ombudsman. It also effectively acts as a consolidation Order, incorporating all amendments made since the schedule was last replaced, and therefore provides an alphabetical list of all the bodies currently listed as within the Ombudsman's jurisdiction.

2.2 This Order also amends paragraph 2 of Schedule 3. Schedule 3 sets out matters that are not subject to investigation by the Ombudsman.

2.3 This Order also amends Schedule 4 to bring that schedule up to date. Schedule 4 lists a number of tribunals whose administrative staff fall within the jurisdiction of the Ombudsman.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 As set out in paragraphs 2.1 to 2.3 the purpose of this Order is to update Schedules 2, 3 and 4 of the Parliamentary Commissioner Act 1967.

5. **Extent**

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Parliamentary Secretary, Cabinet Office has made the following statement regarding Human Rights:

In my view the provisions of the Parliamentary Commissioner (No.2) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 Under the Parliamentary Commissioner Act 1967, as amended by the Parliamentary and Health Service Commissioners Act 1987 and the Parliamentary Commissioner Act 1994, the Parliamentary Commissioner for Administration investigates complaints of maladministration against Government Departments and certain other public bodies. Schedule 2 to the 1967 Act lists almost all the Government departments and bodies currently within the Ombudsman's jurisdiction. Schedule 4 to the 1967 Act lists a number of tribunals whose administrative staff fall within the Ombudsman's jurisdiction provided they are drawn from or supported in specified ways by departments or authorities listed in Schedule 2. The Ombudsman's jurisdiction is updated annually by amending Schedules 2 and 4 by an Order in Council. This Order is part of that process.

7.2 To be considered for inclusion in Schedule 2 by Order in Council any body under consideration must meet the relevant criteria as set out in Section 4 of the 1967 Act. Section 4(3) of the 1967 Act provides that an Order in Council may only insert an entry in Schedule if it relates to:

- a government department; or
- a corporation or body whose functions are exercised on behalf of the Crown; or
- it relates to a corporation or body—
 - which is established by virtue of Her Majesty's prerogative or by an Act of Parliament or on Order in Council or order made under an Act of Parliament or which is established in any other way by a Minister of the Crown in his capacity as a Minister or by a government department;
 - at least half of whose revenues derive directly from money provided by Parliament, a levy authorised by an enactment, a fee or charge of any other description so authorised or more than one of those sources; and
 - which is wholly or partly constituted by appointment made by Her Majesty or a Minister of the Crown or government department.

To summarise all Government departments (including Executive Agencies) and public bodies (NDPBs) should be brought within the Ombudsman's jurisdiction unless there are compelling reasons for not doing so.

7.3 Schedule 3 of the Parliamentary Commissioner Act 1967 sets out matters that the Ombudsman can not investigate. Following a request from the Ombudsman we have amended paragraph 2 of Schedule 3. Paragraph 2 is set out below:

“Action taken, in any country or territory outside the United Kingdom, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of the United Kingdom, or any other officer of the Government of the United Kingdom other than action which is taken by an officer (not being an honorary consular officer) in the exercise of a consular function on behalf of the Government of the United Kingdom.”

We have amended this paragraph in order to allow the Ombudsman to investigate complaints against officials who operate in UK control zones and supplementary control zones abroad, for example, the Eurostar terminals at Paris and Brussels. During the consultation process a further anomaly was identified in that the Ombudsman is also unable to investigate the actions of UK sea fisheries officers who legally operate outside UK waters. This has also been addressed in the Order.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There will be no impact on the public sector.

9. Contact

Paul Ballinger at the Cabinet Office Tel: 020 7276 2473 or e-mail: paul.ballinger@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.