

EXPLANATORY MEMORANDUM TO
THE PARLIAMENTARY COMMISSIONER ORDER 2008
2008 No. 3115

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 Order 2008 ('the Order') makes three amendments to the Parliamentary Commissioner Act 1967 ('the Act').

- 2.2 Firstly, the Order substitutes a new Schedule 2 to the Act. Schedule 2 lists the government departments and non-departmental public bodies within the jurisdiction of the Parliamentary Ombudsman.

- 2.3 Secondly, the Order amends paragraph 8 of Schedule 3 to the Act by removing a number of bodies that are no longer in existence from that paragraph. Schedule 3 sets out matters that are not subject to investigation by the Ombudsman.

- 2.4 Finally, the Order also amends Schedule 4 to the Act by removing the entry for the Mental Health Tribunal for Wales. Schedule 4 lists a number of tribunals whose administrative staff fall within the jurisdiction of the Parliamentary Ombudsman.

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

- 3.1 None.

4. **Legislative Background**

- 4.1 This Order is to be made in pursuance of sections 4(2), 5(4) and 5(9) of the Parliamentary Commissioner Act 1967.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Secretary, Cabinet Office (Tom Watson) has made the following statement regarding Human Rights:

In my view the provisions of the Parliamentary Commissioner Order 2008 are compatible with the Convention rights.

7. Policy background

7.1 Under the provisions of the Parliamentary Commissioner Act 1967, as amended by the Parliamentary and Health Service Commissioners Act 1987 and the Parliamentary Commissioner Act 1994, the Parliamentary Ombudsman investigates complaints of maladministration against government departments and certain other public bodies. Schedule 2 to the 1967 Act lists the government departments and other 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 that they are drawn from or supported in specified ways by those departments or other bodies listed in Schedule 2. The Parliamentary Ombudsman's jurisdiction is updated on an annual basis. This Order is part of that process.

7.2 To be eligible 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 2 if:

(a) it relates to:

- a government department; or
- a corporation or body whose functions are exercised on behalf of the Crown; or

(b) it relates to a corporation or body -

- which is established by virtue of Her Majesty's prerogative or by an Act of Parliament or an 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.

7.3 As a matter of policy, all government departments (including executive agencies) and non-departmental public bodies should be brought within the Ombudsman's jurisdiction unless there are compelling reasons for not doing so.

7.4 The Order brings the list of departments and bodies in Schedule 2 to the 1967 Act up to date; and removes from Schedule 4 a tribunal whose administrative staff are not drawn from or supported by any department or body in Schedule 2.

7.5 Schedule 3 to the Parliamentary Commissioner Act 1967 sets out matters that the Ombudsman cannot investigate. We have amended paragraph 8 as the references in this paragraph are out of date.

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 wider public sector.

9. Contact

Paul Ballinger at the Cabinet Office Tel: 020 7276 2462 or e-mail: paul.ballinger@cabinet-office.x.gsi.gov.uk can answer any queries regarding the instrument.