EXPLANATORY MEMORANDUM TO THE

HOUSING (RIGHT TO BUY) (INFORMATION TO SECURE TENANTS) ORDER 2005

2005 No. 1735

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

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

2. Description

Landlords of secure tenancies are required to provide their tenants with information about matters specified in an order made by the Secretary of State. This Order specifies those matters and the times at which the information must be published and copies supplied to secure tenants.

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

This Order is the Secretary of State's first use of the powers conferred by sections 121AA and 121B of the Housing Act 1985 ("the Act").

4. Legislative Background

4.1. Part 5 of the Act gives secure tenants the right to buy their homes subject to conditions and exclusions. Landlords have previously had a duty under section 104 of the Act to provide general information about the terms of their secure tenancies, including the right to buy. Chapter 1 of Part 6 of the Housing Act 2004 ("the 2004 Act") has amended various of the right to buy provisions in the Act. Section 189 of the 2004 Act, which came into force on 18 January 2005, has added the requirement that social landlords provide their secure tenants with information to help them decide whether to exercise the right to buy, by inserting two new sections, 121AA and 121B, into the Act.

4.2. Section 121AA gives the Secretary of State power by order to specify matters on which information is to be given, and sets out the requirement to prepare a document containing information on the specified matters and to keep the document up to date. Section 121B stipulates that the document must be published and must be supplied to tenants at times to be prescribed by the Secretary of State, and gives the Secretary of State the power by order to prescribe those times. In both cases the order is subject to the negative resolution procedure.

4.3. The matters that may be specified are those which the Secretary of State considers that it would be desirable for secure tenants to have information about when considering whether to exercise the right to buy or the right to acquire on rent to mortgage terms (for so long as the latter exists - see paragraph 4.5).

4.4. The schedule to the Order specifies the matters which are currently considered to be those which should be drawn to the attention of secure tenants who may wish to exercise their right to buy or right to acquire on rent to mortgage terms. The Order also provides that the information must be supplied as soon as possible to new and existing tenants, when the document is revised, and in any case at least every 5 years. Under section 121AA(4) revision is required when the landlord considers this necessary to ensure that the information contained on the specified matters is kept up to date so far as is reasonably practicable and reflects any changes in the matters specified.

4.5. Section 190 of the 2004 Act adds a new section 142A to the Act, which provides that the right to acquire on rent to mortgage terms will cease to be exercisable from 18 July 2005. Notices under section 144 of the Act of an intention to exercise that right served before 18 July 2005 will continue to be effective.

4.6. By virtue of section 171C(1) of the Act and section 17 (2) of the Housing Act 1996, Part 5 of the Act applies to tenants who have a preserved right to buy or the right to acquire their home. Information on the matters specified by the Secretary of State must therefore also be published and supplied to such tenants by their current landlords in accordance with this Order.

5. Extent

This instrument applies to England.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1. The Housing Act 1980 first conferred on the secure tenants of certain landlords a right to buy their homes, subject to specific exceptions. The provisions relating to this right to buy are now contained in Part 5 of the Act. Since 1980, 1.7 million properties have been sold under the right to buy; 430,000 since 1997. Some secure tenants who have bought their homes under the right to buy have subsequently found themselves in financial difficulties. For example, some flat owners (leaseholders) have found it difficult to pay service charge bills arising from major works of repair and refurbishment carried out by their landlords. In 1997, the Government empowered landlords to reduce or waive such charges in certain circumstances. However, the issue has recently arisen again; there has been media coverage of concerns expressed by Shelter and by some Members of Parliament. There is also evidence that some house owners (freeholders) have found it difficult to keep their homes in good repair, to the detriment not only of themselves but of their neighbours and communities. The Government therefore concluded that the information required by section 104 of the Housing Act 1985 was insufficient to alert would-be buyers to the full responsibilities of home ownership.

7.2. New section 121AA of the Act therefore requires landlords to prepare a document that contains information for their secure tenants, both to give them outline information about the main features of the right to buy scheme and to help them decide whether to exercise the right to buy. The information must be about the matters specified by the Secretary of State. This Order accordingly specifies two categories of matters upon which information must be provided.

7.3. Paragraph 1 of the Schedule to the Order specifies 5 key features of the right to buy scheme which the document should explain in outline. These include the exceptions to the right to buy set out in Schedule 5 of the Act. Landlords are not required to explain any other features of the right to buy scheme.

7.4. Paragraphs 2 to 5 of the Schedule to the Order set out the main financial responsibilities of being a homeowner. The aim is to help tenants to make an informed decision in the light of these responsibilities. Costs such as heating and council tax are included because it is beneficial to tenants to have all likely kinds of outgoings on the prospective home listed together, to enable them to consider all the financial implications of buying.

7.5. The Order comes into force on 26th July 2005 and requires a landlord to publish the document within two months of that date. The Order therefore does not specify matters relating to the right to acquire on rent to mortgage terms because, under section 142A of the Housing Act 1985 (inserted by section 190 of the Housing Act 2004), this right will no longer exist after 18 July 2005.

7.6. The power to specify matters in an order preserves flexibility for the Secretary of State to respond to possible future changes in housing conditions and markets which might lead him to wish to specify different or additional matters. In addition, it will be the normal practice of the Secretary of State to advise landlords of significant changes relating to the specified matters, to assist their consideration of whether revision of the information on the matters is necessary.

7.7. If the aim of helping tenants make informed decisions is to be achieved, tenants need to receive the information in time to inform their decision whether or not to buy their homes. For this reason, this Order provides that the information should be given to:

- all existing tenants; and
- to each new tenant upon signing the tenancy.

7.8. Landlords will in addition be encouraged in guidance accompanying the Order to give a copy of the information document to any prospective tenant who is offered a secure tenancy, to help ensure awareness of possible exclusions from the right to buy at that point.

7.9. Given the significance of the decision whether or not to buy their homes, it is desirable that tenants should always have the most up-to-date information. This Order therefore also provides that the information should be sent to tenants again

if it is revised in any way, and that it should be sent to all tenants every five years, as a reminder.

7.10. During the passage of the Housing Bill, the Office of the Deputy Prime Minister consulted stakeholders in England on what information it would be reasonable to require landlords to provide and when, and on what kinds of information would be helpful for tenants. The consultation paper was sent to local authorities and registered social landlords, housing action trusts (established under Part 3 of the Housing Act 1988), the local government associations, the Housing Corporation, the National Housing Federation, the Chartered Institute of Housing, the Council of Mortgage Lenders, and tenants' organisations.

7.11. There were 75 responses to the consultation. Most of the respondents supported the Government's proposals and were content that information on the matters suggested in the consultation paper should be included in the document. This Order reflects the responses received.

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. The impact on the public sector is that there will be some additional work involved in preparing the document required by section 121AA of the Act and issuing it to tenants. It will be for each individual landlord to decide on the amount of information it will give in the document on each of the specified matters. Responses to the consultation paper suggested that providing this information may incur additional costs, but there was no consensus on how much. Some respondents considered that the impact would be slight. Others forecast additional costs of thousands of pounds per year. However no significantly onerous new duty has actually been imposed since landlords are already obliged by section 104 of the Act to supply their secure tenants once a year with a copy of published information on (among other things) the provisions of Part 5 of the Act (the right to buy). An authority supplying secure tenants with the current version of the document every 5 years can therefore add it to the published information required under section 104.

9. Contact

Diana Fergus at the Office of the Deputy Prime Minister can answer queries in respect of this Order. Contact details are as follows:

Tel: 020 7944 5499 or

e-mail: diana.fergus@odpm.gsi.gov.uk.