EXPLANATORY MEMORANDUM TO THE

THE LEASEHOLD HOUSES (NOTICE OF INSURANCE COVER) (ENGLAND) REGULATIONS 2004

2004 No.

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

2.1 Section 164 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") enables, in certain circumstances, a tenant of a long leasehold to avoid a lease requirement to insure his or her house with an insurer nominated or approved by the landlord. One of the circumstances is that he gives the landlord a "notice of cover" which must specify the name of the insurer, the risks covered by the policy, the amount and period of the cover, and such further information as may be prescribed by regulations. These Regulations prescribe additional information for inclusion in a notice of cover.

2.2 The Regulations also prescribe the form of notices of cover, and allow the use of forms that are substantially to the same effect as the prescribed form.

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

3. This is the first occasion on which the powers conferred by section 164 of the 2002 Act have been exercised.

4. Legislative Background

4. The Regulations are made under section 164 of the 2002 Act. Subsection (10) of that section defines "prescribed" as meaning prescribed by regulations made by the appropriate national authority. The term "appropriate national authority" is defined in section 179(1) of the 2002 Act.

5. Extent

5.1 The Regulations apply in respect of houses in England that are held on a long lease.

5.2 The power to make regulations under section 164 of the 2002 Act, as respects Wales, resides with the National Assembly for Wales (see section 179(1)).

6. European Convention on Human Rights

6. Not applicable.

7. Policy Background

7.1 About 800,000 houses in England are held on long leases (mainly leases granted for an initial term of more than 21 years), of which around three-quarters are in the North of England. Long leases of houses usually contain a clause requiring the leaseholder to insure the building against fire and other damage with an insurer either nominated or approved by the landlord.

7.2 Due to their relatively small interest in the property and the fact that they do not have to pay the premiums, landlords may have little or no incentive to choose an insurer that provides best value for money. In addition, "nominated insurer" clauses also give landlords the opportunity to make money by way of commission received from the chosen insurer. The higher the premium, the higher the commission for the landlord. This practice of nominating insurers who provide the landlord with the highest commission is particularly prevalent in cases where a landlord has a large portfolio of long leasehold houses. Where shorter leases are concerned (leases granted for an initial term of 21 years or less), no evidence or representations were received to indicate that this practice was prevalent.

7.3 Following evidence indicating that freeholds of low value houses were being bought up in order to exploit the nominated insurer clauses, section 164 of the 2002 Act was enacted to address the situation. Consideration was given to banning nominated insurer clauses completely. However, it was recognised that landlords have a legitimate interest to protect. ODPM believes that, in enacting section 164 of the 2002 Act, Parliament has struck a fair balance between the interests of landlords and long leaseholders.

7.4 A Consultation Paper was issued in May 2003, together with an early draft of the Regulations. The Consultation Paper was deposited in the Library of both Houses of Parliament and sent to a wide range of bodies on ODPM's standard consultation lists.

7.5 There were 35 responses, all of which indicated that the respondent was, broadly, content with the proposals for giving full effect to section 164 of the 2002 Act. Responses were received from long leaseholders, property managers, landlords, professionals and bodies representing those interests. Most of the comments related to the additional information that should be provided by the tenant in the notice of insurance cover that is to be given to the landlord. A selection of the requests made appears below, with an indication of ODPM's response:

- The name and address of the broker or other intermediary should be included. Not included because the purpose of the notice is to show that reputable insurance cover has been obtained and that it will protect the landlord's interests. The identity of the broker or other intermediary is irrelevant;

- Details of any no claims discount should be included. Not included because this would be an unwarranted invasion of the leaseholder's privacy;

- The policy type should be included. Not included because it is not relevant to the protection of the landlord's interests;

- Any policy excesses applicable should be included. Included because this may have some relevance if a claim is made and the leaseholder declines to pay the excess.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this Memorandum.

8.2 The impact on the public sector is regarded as minimal, if it affects this sector at all. This is because, while local authorities hold some houses let on long leases, ODPM understands that authorities already allow their leaseholders to use their own insurer, and do not insist on invoking any 'nominated insurer' clause, should there be one in the lease.

8.3 The number of long leaseholds in the public sector is not known because ODPM's Survey of English Housing identifies the approximate total number of leasehold houses but does not distinguish between the private and public sectors because the houses are all regarded as owner-occupied. However, of approximately 800,000 houses in England that are held on long leases, ODPM believes that the number in the public sector is extremely small. This is because, under the 'right to buy' legislation, a public sector tenant who qualifies for the right to buy their house would normally buy the freehold rather than a lease.

9. Contact

Ian Fuell at the Office of the Deputy Prime Minister (Tel: 0207 944 3463 or e-mail ian.fuell@odpm.gov.uk) can answer any queries regarding the instrument.

24th November 2004