EXPLANATORY MEMORANDUM TO THE

THE LEASEHOLD VALUATION TRIBUNAL (PROCEDURE) (AMENDMENT) (ENGLAND) REGULATIONS 2004

2004 No. 3098

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.

2. Description

2.1 These Regulations amend the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (S.I. 2003/2099) ("the Procedure Regulations").

2.2 The amendments made by regulations 3, 4(b), 7 and 8(c) are necessary because of the coming into force (on 28 February 2005) of section 168 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The amendments add applications under section 168(4) of the 2002 Act to the applications to which the Procedure Regulations apply, and specify the particulars and documents that are to be included with an application under section 168(4).

2.3 The amendment made by regulation 4(a) has effect as regards applications to a leasehold valuation tribunal under section 20ZA(1) of the Landlord and Tenant Act 1985. Applications under that provision are for permission to dispense with all or any of the consultation requirements relating to works and agreements for which contributions may be recovered by way of service charges. The effect of the amendment is to remove the requirement (imposed by regulation 3(3) of, and paragraph 2(3) of Schedule 2 to, the Procedure Regulations) to provide a copy of the lease when making an application under section 20ZA(1).

2.4 The amendment made by regulation 5 enables a leasehold valuation tribunal to determine an application without an oral hearing where it has given at least 28 days' notice to the applicant and the respondent and neither of them has asked for an oral hearing. (Regulation 13(3) of the Procedure Regulations, which enables the tribunal to decide at any time before an application has been determined that it should be the subject of an oral hearing, and allows either of the parties to request an oral hearing at any time before the application has been determined, is unaffected by this amendment.)

2.5 The amendments made by regulation 6 introduce greater flexibility as regards the giving by a leasehold valuation tribunal of notice that an inspection is to be made.

2.6 The amendments made by regulation 8(a) and (b) require the production of a copy of the lease with certain applications relating to enfranchisement or lease extension, and with applications under Part 4 of the Landlord and Tenant Act 1987 for the variation of a lease.

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

3. None

4. Legislative Background

4.1 Section 168 of the 2002 Act prevents a landlord from serving a notice to forfeit a lease for breach by a tenant of a covenant or condition in the lease, unless the tenant admits the breach, it has been finally determined that the breach has occurred. Under subsection (4) of that section, a landlord may apply to a leasehold valuation tribunal for a determination that a breach of covenant or condition has occurred.

4.2 In addition to the definitions contained in regulation 2 of the Procedure Regulations, material relevant to the term "parties" will be found in regulation 6 (request to be treated as an applicant or respondent): see, in particular, paragraphs (5) and (6).

5. Extent

5. The Regulations apply in relation to England, as do the Procedure Regulations.

6. European Convention on Human Rights

6. Not applicable.

7. Policy Background

7.1 Leasehold Valuation Tribunals (LVTs), which are now, for administrative purposes, part of the Residential Property Tribunal Service, were established by the Housing Act 1980. Since that time a role has been developed for LVTs of providing an accessible and relatively informal means of resolving disputes that arise from the landlord and tenant relationship. The extent of the LVTs' jurisdiction has been increased over the years and it has been the Government's policy that, where possible, LVTs should be available to determine disputes of this nature.

7.2 The 2002 Act has further increased the jurisdiction of the LVTs. This has included conferring exclusive jurisdiction upon LVTs for the determination of applications under section 168(4) of the 2002 Act. The amendments made by regulations 3, 4(b) and 7 of these Regulations supplement that new jurisdiction.

7.3 The Government is interested in ensuring that the Procedure Regulations work efficiently, and that excessive and unnecessary burdens are not placed upon the parties or the LVT. With this in mind, and after discussion with the LVTs about the operation of the Procedure Regulations, it has been

decided to make additional amendments. Details of those amendments are given in paragraphs 2.3 to 2.6 above.

8. Impact

8. A Regulatory Impact Assessment has not been prepared as the effect of the Regulations on business, charities and the public sector is expected to be neutral.

9. Contact

9. Chris Humphreys at the Office of the Deputy Prime Minister (Tel: 0207 944 3552 or e-mail chris.humphreys@odpm.gov.uk) can answer any queries regarding the instrument.

24th November 2004