**EXPLANATORY MEMORANDUM TO THE SELECT COMMITTEE ON STATUTORY INSTRUMENTS**

**NATIONAL DEBT**
**The Government Stock (Consequential and Transitional Provision) (No 2) Order 2004 No.1662**

This explanatory memorandum is laid before the House of Commons, by Command of Her Majesty, and contains information for the Select Committee on Statutory Instruments.

HM Treasury is the Department responsible for the laying of this Instrument.

The Bank of England is currently responsible for maintaining the registers of Government stock, known as gilts. The Government Stock Regulations 2004 were laid in draft before both Houses of Parliament on 11 May 2004 and will authorise the appointment of a person other than the Bank of England to take over the administration of government stock and the registration of holders of stock. Those draft Regulations were the subject of a Memorandum to the Joint Committee on Statutory Instruments and to the House of Lords Merits Committee, dated 10 May 2004. They are due to be made on 30 June and to come into force on 1 July.

Because of those Regulations and the power to appoint persons other than the Bank of England for the administration of stock and the registration of holders, consequential amendments of primary and secondary legislation, and some transitional provisions, are required.

The Government Stock (Consequential and Transitional Provision) Order 2004 (S.I. 2004/1486) makes amendments, which are necessary in order to authorise the making of the Government Stock Regulations 2004. That Order was the subject of a Memorandum to the Joint Committee dated 8 June 2004 and is described briefly in the section below titled “Legislative Background”.

The **Government Stock (Consequential and Transitional Provision) (No 2) Order 2004** will make further consequential and transitional provision. It amends a wide range of primary and secondary legislation, which relates to the functions of the Bank of England in administering Government stock. It will replace references to the Bank of England with references to the “Registrar of Government Stock”, that is, the person appointed from time to time in accordance with the Government Stock Regulations 2004. The first person to be appointed is in fact the Bank.

This Order also replaces references to the Government Stock Regulations 1965 with references to the 2004 Regulations. Finally, it makes transitional provision to ensure the continuing validity of things done in the course of the administration of stock, first when the Bank ceases to operate under the current statutory regime and is appointed under the 2004 Regulations as Registrar of Government Stock and then when a Registrar is appointed to take over from a previous Registrar.

**Legislative Background**

The Bank of England has a statutory duty to act as registrar for UK government stock, under section 47 of the Finance Act 1942 and the Government Stock Regulations 1965, which were made under that section. Section 140 of the Finance Act 2002 has now amended section 47 of the 1942 Act to enable the Treasury to make Regulations for the transfer of the provision of UK government stock registration services from the Bank of England to a person or persons appointed in accordance with those Regulations.

Section 140 of the Finance Act 2002 also authorises the Treasury to make consequential and transitional provision, by order, in consequence of the amendments made by section 140 of the

Finance Act 2002. An Order under section 140 may amend both primary and secondary legislation.

The Government Stock (Consequential and Transitional Provision) Order 2004 was made and laid before the House of Commons on 8 June. It amends section 47 of the Finance Act 1942 by replacing references to the Bank of England with references to the person or persons appointed under regulations made under section 47 of the 1942 Act as amended. The Government Stock Regulations 2004 will be the first such Regulations. The Order comes into force on 29 June for the purpose of authorising the Government Stock Regulations 2004 to be made and for all other purposes on 1 July 2004. It also makes transitional provision deeming the Bank of England to be the first person appointed under those Regulations.

This Order applies to all of the UK.

**European Convention on Human Rights**

This Statutory Instrument is compatible with the European Convention on Human Rights.

**Matters of special interest to the Select Committee**

The Government Stock (Consequential and Transitional Provision) (No 2) Order 2004 is made on 30 June 2004 and is to come into force on 1 July 2004. The Treasury apologises to the Committee for this breach of the “21 day” rule. It is necessary to bring into force at the same time both the Government Stock Regulations 2004 and this Order, which makes amendments and transitional provision in consequence of those Regulations. If the two instruments were not synchronised in this way, there would be inconsistency in the primary and secondary legislation applicable to Government stock.

The Government Stock Regulations are subject to the “40 day negative draft” procedure, under section 47(3) of the Finance Act 1942. They were laid in draft during sitting hours on 11 May and, allowing for the Whitsun recess, the 40 days end on 29 June so that the Regulations are to be made on 30 June to come into force on 1 July.

The Government Stock (Consequential and Transitional Provision) (No 2) Order is being made under section 140 of the Finance Act 2002 and is subject to the “negative resolution” procedure. However, it has proved impossible to make the Order while the Government Stock Regulations were lying in draft. The amendments to both primary and secondary legislation, which this Order makes, need to use and refer to terms, which will only be introduced into legislation when those Regulations are made. Therefore this Order is being made and laid at the same time as those Regulations are made.

Furthermore, the date of 1 July for their coming into force is determined by imperatives regarding the contract to be made with the company, which is to be appointed to succeed the Bank of England. At present, of course, the administration of Government stock is a statutory function of the Bank and a contract for the appointment of a different person could not properly be made until the legislative position is changed. That contract in any case needs to be entered into as early as possible and well in advance of the projected succession date.

This is so because it is necessary to provide certainty for the project and ensure that all parties are committed to the new arrangements, in time for all the functions involved in the administration of stock to be carried out and tested by the new appointee and for any necessary system adjustments to be made. This “migration testing” involves crucial testing of the computer software, which underpins the stock administration and registration functions. Testing needs to be done sufficiently early to allow time for any resulting changes to be made and further tested. It also involves third parties whose resource commitment has had to be scheduled well in advance.

The Select Committee will see below that this Order does not call for a Regulatory Impact Assessment and has no impact on stockholders or indeed persons other than the intended appointee and the Bank of England. Both of them are fully aware of the changes to be made and have been consulted and informed during the drafting process. Indeed the Bank has provided considerable assistance with the research needed to establish which provisions of the current legislation, which extends back into the nineteenth century, have continuing effect and have needed to be amended.

In the circumstances the Treasury has concluded that it is necessary to adopt the timetable described above but confirms that it fully recognises the importance of complying with the “21 day rule”.

**Policy Background**

Government stock, also known as gilts, can be bought and sold both by private individuals and institutions. Each individual holding must be entered on a register, which records details of each holder and the amount and type or types of stock which he or she holds. Details are also kept of transactions relating to such stock. The register provides the basis for the payment of dividends. The Bank of England has traditionally been responsible for the administration of such a register.

The Treasury and the Bank agreed in the late 1990s that the registrar function should no longer be carried out by the Bank but contracted out to the private sector. Section 140 of the Finance Act 2002 therefore gave the Treasury the power to make regulations for the appointment of another person to take over the administration of the register of Government stock.

The amendments to be made by this Order will ensure that the full range of functions involved in the administration of stock and keeping of the register of stock can be carried out by the person appointed by the Treasury.

This Order will have no regulatory impact on business, nor upon those who have holdings registered on the register of stock. It is intended that holders of stock will be advised of the change of identity of the registrar before such an appointment takes effect.

Should the Committee have any queries about this Order, it should contact David Curtis at the following address: -

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**HM TREASURY**
**30th June 2004**