

**EXPLANATORY MEMORANDUM TO THE
THE LANDLORD AND TENANT (NOTICE OF RENT) (ENGLAND)
REGULATIONS 2004**

2004 No. 3096

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 166 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) provides that a long leaseholder (a person holding under a term that was initially granted for not less than 21 years) is not liable to pay ground rent to his or her landlord unless the landlord has given notice that payment is due. Section 166(2) requires the notice to specify the amount due, the date on which the tenant is liable to make the payment and, if different, the date on which the tenant would have been liable to make the payment in accordance with the lease. These Regulations supplement those requirements and, accordingly, a notice demanding payment of ground rent must also contain:
 - the name of the leaseholder to whom the notice is given;
 - the period to which the demand for rent relates;
 - the name of the person to whom payment is to be made, and the address for payment;
 - the name of the landlord by whom the notice is given and, if not specified elsewhere in the notice, his address; and
 - information for leaseholders and landlords, in the form of notes.
 - 2.2 The Regulations also prescribe the form of rent demand notices.
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 166 of the 2002 Act have been exercised.
4. **Legislative Background**
 4. The Regulations are made under section 166 of the 2002 Act. Subsection (2) enables information in addition to that specified in paragraphs (a) to (c)

of that subsection to be prescribed. Subsection (9) 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 This instrument applies to England.

5.2 The power to make regulations under section 166 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 Most long residential leases (leases granted for an initial term of more than 21 years) require ground rent to be paid on a particular day, whether or not the landlord demands payment. There is evidence that a number of landlords do not bother to ask for the payment of ground rent, but then claim additional charges when leaseholders forget to pay the sum by the due date.

7.2 Such charges, commonly claimed in connection with processing or pursuing the late payment of rent, are often wholly disproportionate to the cost of, for example, sending out a reminder letter. Further letters will frequently threaten more costs and the prospect of legal proceedings, including forfeiture, if the charge and outstanding ground rent are not paid. Although the reasonableness of such charges can now be challenged at a leasehold valuation tribunal, it is considered that many leaseholders may feel that the cost and effort of doing so is disproportionate to the sums involved. It was therefore concluded that leaseholders should be entitled to be informed that ground rent is due, given a reasonable time to make payment, without being liable for further costs, and made aware of the possible consequences of non-payment.

7.3 A Consultation Paper was issued in October 2002, seeking views on proposals for the content of regulations for imposing restrictions upon the use of forfeiture for long residential leases and related prescribed forms and summaries. These proposals included a suggested format for the prescribed form of ground rent notice. The Consultation Paper was deposited in the Library of both Houses of Parliament. It was sent to the (approximately 1,000) individuals and organisations who had responded to the earlier Draft Commonhold and Leasehold Reform Bill and Consultation Paper, and to a wide range of bodies on the ODPM's standard consultation lists, including the 389 English local authorities and approximately 200 registered social landlords.

7.4 There were 77 respondents to the October 2002 Consultation Paper, of whom 52 expressed an opinion on one or both of the content of the proposed ground rent notice and the size of the lettering. Responses were received from long leaseholders, property managers, landlords, professionals and representative bodies and can be broken down as follows.

Content of notice		Minimum size of lettering		
Agree/Agree with qualifications	Disagree	12 point	14 point	Other
		34	8	13

7.5 The responses indicated general support for the proposed form and content of the ground rent notice. Whilst 9 respondents agreed completely with what was being proposed, 25 expressed a qualified form of agreement. Of this latter group, 8 suggested that it should be possible to incorporate the notice into service charge demands, as did 5 out of the 8 who stated that they disagreed with the proposed content. Other suggestions that were made included those of 9 respondents who considered that the notice should use language that would be easier for laypersons to follow.

7.6 Some adjustments have been made in the light of these and other suggestions about the layout and wording of the notice. However, it has not been possible to accommodate those who wished to have a combined form of demand notice for both ground rent and service charges. Although section 166 of the 2002 Act allows the content and form of a rent demand notice to be prescribed, there is no power to prescribe the form of a notice demanding the payment of service charges. Section 21B of the Landlord and Tenant Act 1985 (inserted by section 153 of the 2002 Act) enables the Secretary of State to prescribe the form and content of summaries of the rights and obligations of tenants of dwellings in relation to service charges, and subsection (1) of that section requires a demand for the payment of a service charge to be accompanied by such a summary. As a matter of policy, the ODPM would prefer demands for rent and for service charges to be made separately, so that leaseholders can see clearly the amount that is attributable to each. Where service charges are payable, a landlord may use a single envelope for both the rent demand notice and the service charges documentation.

7.7 The ODPM does not wish to be over-prescriptive, especially in matters of detail, such as the size of the font to be used in a rent demand notice. However, it intends to include in Guidance the recommendation that the font size should not be smaller than 12 point.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this Memorandum.

8.2 The Assessment identifies that the provision would affect the landlords of around 2 million properties in England. However, there is no requirement to send a rent demand notice by registered post or recorded delivery; it can be sent by ordinary second-class post. Multi-property landlords and property managers will have the option of producing a standard notice (in the prescribed form) for the long leasehold dwellings in their portfolios. Ministers are satisfied that the Regulations will not have a disproportionate effect upon small businesses.

8.3 There will be an impact upon public sector landlords, although this may be reduced by the fact that such landlords will generally already issue ground rent demands to their long leaseholders.

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