

**To: Business Committee**  
**From: Sue Essex AM**  
**Minister for Finance, Local Government and Public Services**

## **EXPLANATORY MEMORANDUM**

### **THE LANDLORD AND TENANT ACT 1954, PART 2 (NOTICES) REGULATIONS 2004**

#### **Summary**

**This Instrument will prescribe the form of statutory notices to be used by landlords and tenants of business tenancies under Part 2 of the Landlord and Tenant Act 1954 (the 1954 Act). The proposed Regulations are to be made for England and Wales by the Assembly acting in conjunction with the Office of the Deputy Prime Minister (ODPM).**

1. This Memorandum is submitted to the Assembly's Business Committee in relation to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004.
2. A copy of the Instrument is submitted with this memorandum.

#### **Enabling Power**

3. Under section 66 of the 1954 Act, as read with the entry for that Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672 ) ("the 1999 TFO ") the Assembly has, in relation to Wales, power in Regulations to prescribe the form of statutory notices to be used by landlords and tenants in relation to the renewal or termination of business tenancies under Part 2 of that Act . By virtue of section 22(5) of the Leasehold Reform Act 1967, again as read with the 1999 TFO, that power to prescribe forms of notices also applies to business tenancies that may also be houses within Part 1 of the Leasehold Reform Act 1967 Act.
4. The main notices the form of which can be prescribed in Regulations are:
  - (a) under section 25 of the 1954 Act (termination of tenancy by landlord);
  - (b) under section 26 (tenant's request for a new tenancy ); and
  - (c) under section 40 ( duty of tenants and landlords of business premises to give information to each other ).
5. Responsibility for Part 2 of the Landlord and Tenant Act 1954, in particular Sections 25, 26 and 40 has been transferred to the National Assembly by the Transfer of Functions Order. The powers have been delegated to my portfolio.

#### **Effect**

6. On the 1<sup>st</sup> December 2003 the Deputy Prime Minister (designated the First Secretary of State) made the Regulatory Rreform Order (RRO) under the Regulatory Reform Act 2001. It reformed Part 2 of the Landlord and

Tenant Act 1954 in respect of the statutory procedures relating to the termination and renewal of business tenancies and the security of tenure they afford to business tenants.

7. In particular the RRO simplified the procedure for the renewal and termination of business leases by empowering landlords and tenants to agree to exclude the security of tenure provisions in Part 2 of the 1954 Act by removing the previous requirement for the court to sanction such an agreement. Those reforms apply to Wales and England and are the policy responsibility of ODPM. The RRO provides that it is to come into force six months after it was made, that is on 1<sup>st</sup> June 2004
8. Before the RRO could be made the consent of the National Assembly was required for certain minor changes it made to the Assembly's power to prescribe notices for use in Wales. The National Assembly gave its consent to the changes when it considered the draft RRO at a plenary session on 4<sup>th</sup> November 2003.
9. The First Secretary of State made the RRO on 1 December 2003, following the approval of both Houses of Parliament.
10. The purpose of the proposed Regulations is to change the form of the notices currently prescribed for use under Part 2 of the 1954 Act. This is in consequence of the changes made to this Part of the 1954 Act by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (S.I 2003/3096) (the RRO). The date for the commencement of the proposed Regulations is the 1<sup>st</sup> June 2004 to coincide with the date for commencement of the RRO. A copy of the proposed Regulations is attached.
11. The current prescribed forms are contained in the Landlord and Tenant Act 1954 Part II (Notices) Regulations 1983.( S.I 1983/133 ) ( as amended by the Landlord and Tenant Act 1954, Part II (Notices ) (Amendments ) Regulations 1989 (SI 1989 / 1548 ) .These Regulations were made for Wales and England by the Secretary of State for Wales together with the Secretary of State for the Environment in England. These forms were prescribed in English alone.
12. As stated above, the forms prescribed in the present Regulations should be replaced to reflect the changes made to Part 2 of the 1954 Act by the RRO.
13. Because the law and the prescribed forms relating to business tenancies are at present common between Wales and England and because the RRO changes apply throughout Wales and England, it is considered appropriate that the proposed Regulations should be made for Wales and England by the Assembly acting in relation to Wales and the First Secretary of State acting in relation to England.

14. An ODPM Minister has signed the Regulations before the Assembly in plenary is asked to approve them. After the Assembly approves them (subject to and following Assembly approval) they will be laid by ODPM before Parliament. As much advance notice of the Regulations coming into force as possible is desirable so that the commercial property sector can prepare themselves for using the new forms on and from 1<sup>st</sup> June.
15. In conjunction with the RRO and the proposed Regulations coming into force on 1<sup>st</sup> June, Guidance is to be issued to the commercial property sector and their professional advisers on these changes to the 1954 Act made by the RRO and the new forms that will need to be used. That Guidance is to be issued by ODPM as it has the lead responsibility for the RRO. It is understood that ODPM intend to issue that Guidance as soon as possible with the Regulations so as to enable the commercial property sector and their professional advisers to prepare for the changes.
16. Part 2 of the 1954 Act makes provision for the security of tenure of business tenancies. It applies across England and Wales and forms the framework upon which leases of commercial properties are let for business purposes.

#### Prescribed forms

17. The amendments to the 1954 Act made by the RRO has meant that the prescribed forms of the statutory notices that are required to be used for the statutory termination and renewal of business tenancies under Part 2 of the 1954 Act need revising. Failure to amend the prescribed forms could lead to confusion among the commercial property sector and their professional advisers as to what forms to use when the RRO comes into effect on and from 1<sup>st</sup> June 2004. That could lead to litigation between landlords and tenants and complaints against ODPM and the Assembly for not amending the forms in time. It is imperative that the proposed Regulations and new forms be in place on 1<sup>st</sup> June 2004.

#### Welsh Dimension

18. Schedule 2 to the proposed Regulations sets out the new proposed prescribed forms. There are 17 in total. Forms 1 to 11, 13 and 14 are common to England and Wales while forms 16 and 17 are essentially Welsh and forms 12 and 15 are essentially English. These are listed in the Schedule 1 to the Regulations.
19. There will only be two prescribed Forms, which are essentially Welsh in application (although there could be in some very few cases a cross border dimension). These are Forms 16 and 17. They relate to the Welsh Development Agency. Form 16 is the prescribed form to be used where the WDA has obtained a certificate from the Assembly under section 60A of the 1954 Act that the use or occupation of the property in the business tenancy should be changed in the interests of employment in that area. The effect of that certificate is to exclude security of tenure for the business tenant under Part 2 of the 1954 Act, although compensation may be payable to the tenant.

20. Form 17 is the prescribed form to be used where a certificate has been issued by the Assembly under section 60A but in that case the business tenancy may include a house within the meaning of Part 1 of the Leasehold Reform Act 1967. In that case additional protection for the tenant is provided by drawing the tenant's attention to the possible application of the 1967 Act in that case.
21. The two WDA forms can be considered to be the Welsh equivalents of 2 English Forms (Forms 12 and 15) which deal with regeneration and involve certificates issued by a UK Minister in England. Again these are essentially English in nature, although there could be in some very few cases a cross border dimension.
22. The 2 WDA forms will replace the 2 corresponding forms in the 1983 Regulations, namely Forms 6 and 16. These forms in practice are rarely used by the WDA to obtain possession of a property from a tenant. The more normal methods of gaining possession under the 1954 Act are appropriate in the vast majority of cases.
23. The present 1983 Regulations prescribe 2 other Forms of a specific Welsh nature, namely Forms 7 and 17. These relate to the Development Board for Rural Wales. As the Board was abolished in 1999, there is no need for a specific replacement.
24. Of the other 13 proposed prescribed forms, all of these will apply equally in Wales and in England. Most forms will be used where private sector landlords and tenants are involved. However, some Forms deal with special cases where the public interest could be involved. In Wales this could involve certificates having been issued by the Assembly, for example, Form 8 is a notice to be used to end a business tenancy on public interest grounds and where the Assembly may have issued a certificate under section 57 of the 1954 Act.

#### Proposed Welsh forms

25. The forms prescribed in the proposed Regulations are in English only. In this they follow the format of the forms prescribed in the present Regulations. Later in the year, the Welsh Assembly Government will be consulting on the introduction of bi-lingual versions of these forms for use in Wales. Drafting of the bilingual versions of the forms has had to await the final version of the proposed regulations. We would not expect consultation on the forms to start later than the Autumn.
26. This would be the first time that these forms relating to business tenancies would be prescribed bilingually. Consequently, there will be a requirement for a full period of formal consultation. In addition to consulting the Welsh Language Board, the Welsh public sector and other interested bodies, there will be particular need to consult representative and professional bodies involved in the commercial property sector. The drafting of the bilingual forms for consultation will be conducted in accordance with the Assembly's Welsh language policy. At consultation we will explain to

stakeholders the policy underlying the proposed bilingual forms and in particular seek to reassure the commercial property sector that the use of bilingual forms will not impose a burden on it. Subject to the outcome of such consultation, it is hoped to lay before the Assembly for its consideration further Regulations under the 1954 Act providing for bilingual forms towards the end of this year.

### **Target Implementation**

27. It is intended that the proposed Instrument will be made on 30<sup>th</sup> March 2004, and come into force on 1<sup>st</sup> June 2004 to coincide with the coming into force of the RRO. This coordinated commencement is anticipated by the commercial sector. If the target date for making this instrument is not achieved, the main implication would be the prospect of confusion in the commercial property sector and their professional advisers as to what statutory forms are prescribed for use when the RRO comes into effect on the 1<sup>st</sup> June 2004. This could lead to litigation between landlords and tenants and complaints against the Assembly and ODPM for not amending the forms on time.

### **Financial Implications**

28. The professional bodies advising the commercial property sector have been actively involved in all stages of the legislative process including drawing up the RRO and the proposed draft Regulations. They have also been active in raising the awareness of property professionals about the changes to the legislation initiated by the RRO.

29. It is recognised generally that the long awaited reforms for simplifying the procedures and operation of Part 2 of the Landlord and Tenant Act 1954, brought into effect by the RRO, significantly outweigh any relatively minor transitional problems resulting from the introduction of the amended prescribed forms. It is likely that there would be savings in legal costs to landlords and tenants in Wales and England arising from the new procedures for excluding security of tenure and the revised time limits for making Court applications to renew a tenancy. ODPM estimate that the reforms introduced by the RRO could save landlords and tenants in the UK at least £6.5m.

30. There will be some transitional costs to those involved in the commercial property sector - in training and the use of the new forms and ensuring the proper use of the various forms on behalf of their clients. These costs are difficult to quantify especially as in relation to training the costs of using the new forms are likely to be subsumed into the costs of training on the general reforms introduced by the RRO. However, the forms underpin the new 1954 Act procedures introduced by the RRO which will result in more efficiency and cost savings for all the parties involved in the process. The reforms introduced by the RRO will come into effect on 1 June, and if the new forms are not ready, the commercial sector could face higher costs, as it is likely that there would be confusion and no doubt professional advisers would have to modify the existing prescribed forms to try and

reflect the amended statutory provisions. The only Welsh element of the costs ,at present, are the costs falling on the WDA. These are not additional costs as WDA forms already exist. They are in any event likely to be small. The costs of producing and issuing the bilingual forms will fall on the Welsh Assembly Government.

31. The financial implications for the Welsh Assembly Government arising from these proposals are unlikely to be significant. They are limited to issuing the statutory notices and guidance and the associated translation costs. The estimated additional costs arising to the Welsh Assembly Government as a result of this process are likely to be of the order of £4,000, comprising the costs of producing and issuing the draft SI (£1,000) and the costs of translating the notices (£2,000). These costs would be met from Local Government Modernisation Division's existing staff, programme and postage budgets and from OCG's staffing budget.

### **Regulatory Appraisal.**

32. A Regulatory appraisal has been prepared and is attached.

### **Consultation**

#### With Stakeholders

33. The purpose of the reforms introduced by the RRO is to modernise and streamline the provisions of the 1954 Act, making them more user friendly. The RRO applies to Wales and England and was consulted upon during the summer and autumn of 2001. The Welsh Assembly Government for its part ensured that the consultation exercise was highlighted within Wales by distributing copies of the consultation paper to the business and property sectors and local authorities in Wales. Following that consultation ODPM had the responsibility for taking the draft RRO through its Parliamentary stages. That involved the special Parliamentary scrutiny procedures to which RROs are subject.
34. There is no statutory requirement under the 1954 Act to consult before making Regulations that prescribe the form of statutory notices to be used in respect of business tenancies under Part 2 of the 1954 Act. However, there has been consultation on the format and content of the proposed forms (including consultation with the WDA on the two specific WDA forms). This consultation embraced interested parties from professional and representative organisations across Wales and England. ODPM at the time of drafting the RRO established an expert panel (called the "sounding board") comprising representatives of legal and property interests in Wales and England such as the Law Society, British Retail Consortium, the Royal Institution of Chartered Surveyors and British Property Federation. These bodies are national bodies covering the interests of members across England and Wales. Apart from the two WDA forms, it is considered that there is no specific Welsh dimension to the proposed Regulations and we are satisfied that interested groups through their professional and representative bodies have been consulted on the proposed introduction of the new forms.

### With Subject Committee

35. The proposed Instrument was scrutinised by the Local Government and Public Services Committee on 17<sup>th</sup> March 2004, no objections were received. The Committee requested and was given clarification in respect of the application of the various forms addressed in paragraphs 18-24 above. A view was expressed in Committee that the notes should explain the meaning of public interest and national security for the purposes of Sections 57 and 58. The notes are designed to alert landlords and tenants to specific statutory procedures and to take appropriate advice thereon and not to provide definitions of terms such as these. We are taking up with ODPM whether the detailed guidance should reflect this information. Issues concerning the timetable for the bilingual versions of the forms is added in paragraph 25.

### **Recommended Procedure**

36. Subject to the views of the Business Committee, I recommend that the Instrument proceed to a vote in plenary without debate. The Regulations are only making technical changes to the forms consequential upon the RRO. When the RRO was considered in plenary on the 4<sup>th</sup> November 2003 it was voted upon without debate.

### **Compliance/Statutory cross-cutting themes**

37. I confirm that the proposed Instrument will (as far as practicable) :
- this Memorandum has due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 Section 120);
  - be compatible with the Assembly's scheme for sustainable development (Section 121);
  - be compatible with Community law (Section 106);
  - be compatible with human rights legislation (Section 107);
  - be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

This Memorandum has been cleared with the Office of the Counsel General (OCG) and the Assembly Compliance Officer (ACO).

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**MARCH 2004**

**SUE ESSEX AM  
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