EXPLANATORY MEMORANDUM TO

THE APPROVAL OF CODE OF MANAGEMENT PRACTICE (PRIVATE RETIREMENT HOUSING) (ENGLAND) ORDER 2016

2016 No. 505

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Order is to provide statutory approval for an updated version of an existing self-regulatory, industry-led Code of Practice for the management of properties in the private retirement leasehold sector in England. A copy of the Code is attached to this explanatory memorandum.

2.2 The Order revokes the Approval of Code of Management Practice (Private Retirement Housing) (England) Order 2005 (S.I. 2005/3307) ("the 2005 Order"). The approval given by the 2005 Order to "The Code of Practice for Private Retirement Housing" (ISBN 0-9526691-2-9) by the Association of Retirement Housing Managers ("ARHM") is withdrawn.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 By section 87(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), if the Secretary of State considers it appropriate to do so, the Secretary of State may by order approve any code of practice or a part of any such code, which appears to the Secretary of State to be designed to promote desirable practices in relation to any matter or matters directly or indirectly concerned with the management of residential property by relevant persons. By section 87(6) of the Act, such code of practice may make provision in respect of relevant persons who are under an obligation to discharge any function in connection with that matter as well as in respect of relevant persons who are not under such an obligation.

4.2 Section 87(8) defines "relevant person" as being any landlord of residential property or any person who discharges management functions in respect of such property, and for this purpose "management functions" includes functions with respect to the provision of services or the repair, maintenance, improvement or insurance of such property. (The word "improvement" was added to this list by section 150 of, and paragraph 11(a) of Schedule 9 to, the Commonhold and Leasehold Reform Act 2002.)

4.3 "Residential property" is defined in section 87(8)(b) of the Act.

4.4 The code of practice must be submitted to the Secretary of State for approval, and the power to approve a code includes a power to withdraw the approval for any such code. Article 3 of this Order exercises this power as described in paragraph 2.2.

4.5 By section 87(2) of the Act the Secretary of State shall not approve any such code unless satisfied that arrangements have been made for the text of the code to be published in such manner the Secretary of State considers appropriate for bringing the provisions of the code to the notice of those likely to be affected by them.

4.6 Section 87(7) of the Act provides that a failure on the part of any person to comply with any provision of a code of practice for the time being approved under this section shall not of itself render him liable to any proceedings; but in any proceedings before a court or tribunal any code of practice approved under this section shall be admissible in evidence; and any provision of any such code which appears to the court or tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question. Article 4 of this Order makes saving provision so that the code of practice for which approval is withdrawn under article 3 will remain admissible in court or tribunal proceedings in relation to acts or omissions alleged to have occurred before the Order comes into force.

4.7 The power under this section has previously been exercised in England to make the following Orders:

- Approval of Codes of Management Practice (Residential Property) Order 1996, SI 1996/2839.
- Approval of Codes of Management Practice (Residential Property) (England) Order 2004, SI 2004/1802.
- Approval of Code of Management Practice (Private Retirement Housing) (England) Order 2005, SI 2005/3307.
- Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009, SI 2009/512.

4.8 This Order approves a new code of practice (article 2), and withdraws the approval of "The Code of Practice for Private Retirement Housing" (ISBN 0-9526691-2-9) for which approval was given by SI 2005/3307.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

What is being done and why

7.1 An existing Code of Practice which is developed, owned and used by managers of residential leasehold property in the private retirement sector in England as a form of self-regulation, was approved by the Secretary of State in 2005. It serves as a benchmark of best practice for all managers in the sector.

7.2 An up-to-date, approved self-regulatory Code has been developed by, and is actively being sought, by the businesses in the sector (being managers of leasehold property).

7.3 The aim is for the Secretary of State to approve an updated version of the industry's Code of Practice for England.

7.4 The Code serves as self-regulation. It sets out the law and encourages the use of agreed best practice in the management of properties in the residential leasehold retirement sector.

7.5 Endorsement by government of the up-to-date best practice described in the Code as a benchmark, encourages all managers in the retirement leasehold sector to have regard to it (not only those organisations which are members of the ARHM). While not mandatory, the content of the Code could be referred to in tribunal or court proceedings in the event of a dispute, who themselves will have access to up-to-date information.

Consolidation

7.6 None.

8. Consultation outcome

8.1 As a form of self-regulation the up-to-date Code was developed by a working group convened by the ARHM which owns and publishes the Code. This group included organisations such as Age UK and the Leasehold Advisory Service. Consultation was also carried out with practitioner members of the ARHM, and with leaseholder focus groups. Comments and suggestions received as part of the consultation process were taken into account as part of the Code's development.

9. Guidance

9.1 Guidance is not needed as the ARHM Code exemplifies and encourages agreed best practice of property management in the residential leasehold retirement sector.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. This is a permissive change as defined by the latest Better Regulation Executive guidance paragraph 1.9.20, where there is a reasonable expectation that businesses will adopt any changes to the existing Code, but where they are not required by government to do so. Best practice in the Code is permissive in nature in suggesting, but not forcing businesses, charities or voluntary bodies to do something. In reality, it is expected that the approval of the up-to-date Code will merely revise and formalise existing protocols, and in that respect will not impose any new regulations or burdens on businesses.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 Approval of the industry–led, self-regulatory, voluntary Code of Practice is not regulation of small businesses.

11.2 The basis for the final decision on what action to take to assist small businesses (and other businesses) was considered by a working group convened by the ARHM which owns and publishes the Code. This group included independent organisations such as Age UK and the Leasehold Advisory Service. Consultation on the content of the up-to-date Code was also carried out with practitioner members of the ARHM, and with leaseholder focus groups. Comments and suggestions received as part of the consultation process were taken into account as part of the Code's development. Approval of the code is a permissive change as defined by the latest Better Regulation Executive guidance paragraph 1.9.20, where there is

a reasonable expectation that businesses will adopt any changes to the existing Code, but where they are not required by government to do so.

12. Monitoring & review

12.1 The Code is continually monitored and reviewed by its owners the ARHM. Where modifications are required these would be submitted to the Secretary of State for approval under section 87 of the Act.

12.2 The Department will review and update this Order as and when necessary, and in light of any further submissions to the Secretary of State by the ARHM under that Act.

12.3 A statutory review, taking into account the economic impact of this Order on the business activities of managers of residential leasehold property, would be disproportionate and is therefore considered to be inappropriate.

13. Contact

13.1 The Better Rented and Leasehold Sector team at the Department for Communities and Local Government (telephone: 0303 44 41332 or email: charlie.chappell@communities.gsi.gov.uk) can answer any queries regarding the instrument.