EXPLANATORY MEMORANDUM TO

THE APPROVAL OF CODE OF MANAGEMENT PRACTICE (RESIDENTIAL MANAGEMENT) (SERVICE CHARGES) (ENGLAND) ORDER 2016

2016 No. 518

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 residential leasehold sector in England. A copy of the code is attached to this explanatory memorandum. A copy of the code is attached to this explanatory memorandum.

2.2 The Order revokes the Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 (S.I. 2009/512). The approval given by that Order to "The Service Charge Residential Management Code" (ISBN 978-1-84219-168-2) which is published by the Royal Institution of Chartered Surveyors ("RICS") is withdrawn.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 as 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 “Service Charge Residential Management Code” (ISBN 978-1-84219-168-2) for which approval was given by SI 2009/512.

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 This provides an update to an existing Code of Practice, developed, owned and used by managers of residential leasehold property in England as a form of self-regulation, approved by the Secretary of State in 2009. It serves as a benchmark of best practice for all managers in the residential leasehold sector.

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

7.3 The Code serves as self-regulation. It has been developed by practitioners and managers of properties in the residential leasehold sector, and they are actively seeking approval of the Code. It sets out the law and encourages the use of agreed best practice in the management of properties in the residential leasehold sector.

7.4 Approval by government of the up-to-date best practice described in the Code as a benchmark, means that all managers in the residential leasehold sector should have regard to it (not only those organisations which are members of the RICS). While not mandatory, the content of the Code could be referred to in tribunal or court proceedings in the event of a dispute.

Consolidation

7.5 None.

8. Consultation outcome

8.1 As a form of self-regulation the up-to-date Code was developed by the RICS in conjunction with a working group. This group included organisations such as the Leasehold Advisory Service, the Association of Residential Managing Agents, the Institute of residential Property Management, and the Competition and Markets Authority. Consultation was also carried out with practitioner members of the RICS. Other comments and suggestions received as part of the consultation process were taken into account in developing the Code.

9. Guidance

9.1 Guidance is not needed as the RICS Code exemplifies and encourages agreed best practice of property management in the residential leasehold 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 law to comply with the best practice in the Code.

10.2 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.

10.3 There is no impact on the public sector.

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

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 However, approval of the industry-led self-regulatory, voluntary Code of Practice is not regulation of small business. 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 RICS Surveyors which owns and publishes the Code. This group included independent organisations such as the Leasehold Advisory Service. Consultation on the content of the up-to-date Code was also carried out with practitioner members of the RICS. DCLG officials were involved through the process of developing the Code and although the Code is 'owned' by RICS, DCLG policy considerations were taken on board. 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 the RICS. Where amendments are required these would be submitted for consideration of approval by the Secretary of State as and when appropriate, and in accordance with 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 RICS 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.