EXPLANATORY MEMORANDUM TO

THE HOUSES IN MULTIPLE OCCUPATION (SPECIFIED EDUCATIONAL ESTABLISHMENTS) (AMENDMENT) (ENGLAND) REGULATIONS 2019

2019 No. 1260

1. Introduction

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

2. Purpose of the instrument

2.1 The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019 specify educational establishments for the purposes of paragraph 4 of Schedule 14 to the Housing Act 2004 ("the Act"). The effect is that any building managed or controlled by such an establishment and occupied solely or principally by its students will not be a house in multiple occupation ("HMO") for the purposes of the Act (except Part 1, which deals with housing conditions), whilst the establishment is a member of one of the specified approved Codes of Practice.

2.2 The Secretary of State has approved two Codes of Practice in respect of buildings managed and controlled by educational establishments. The Universities UK/Guild HE Code of Practice ("the UUK Code") was approved by the Housing (Codes of Management Practice) (Student Accommodation) (England) Order 2019 ("the 2019 Order"). The ANUK/Unipol Code of Standards for Larger Residential Developments ("the ANUK Code") was approved by the Housing (Approval of a Code of Management Practice) (Student Accommodation) (England) Order 2019 ("the 2019 Order") (together the "Codes of Practice").

2.3 This instrument corrects an omission in the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019 (S.I. 2019/904) ("the Principal Regulations"). This omission needs correcting in order to ensure that all educational establishments that are members of one of the specific Codes of Practice are listed and therefore exempt from licensing.

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 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 HMOs are defined in section 254 of the Act. In broad terms, they are buildings (or parts of buildings) occupied as a sole or main residence by more than two persons who do not form a single household (the precise conditions for a building or part of a building to qualify as a HMO are set out in subsections (1) to (5) of section 254).

6.2 Under Part 2 of the Act, HMOs are subject to a licensing regime overseen by local housing authorities.

6.3 Schedule 14 lists buildings which are not HMOs for the purposes of the 2004 Act (apart from Part 1, which deals with housing conditions). HMOs are defined in section 254 of the 2004 Act. Paragraph 4 of Schedule 14 refers to any building occupied by persons for the purpose of undertaking full-time further, or higher education, courses at specified educational establishments, where the person managing or having control of that building is the educational establishment in question or a specified person or a person of a specified description.

6.4 In addition, under section 233 of the 2004 Act (subsection (1)), the "appropriate national authority" (for England, the Secretary of State) may by order approve a Code of practice (whether prepared by that authority or another person) laying down standards of conduct and practice to be followed with regard to the management of HMOs or of excepted accommodation. Excepted accommodation is defined in subsection (6) as being a description of living accommodation falling within any provision of Schedule 14 (buildings which are not HMOs for the purposes of provisions other than Part 1) and specified in such an order.

6.5 This instrument amends the list of educational establishments for the purposes of paragraph 4 of Schedule 14 to the 2004 Act. It adds those that were omitted in error from the Principal Regulations. In determining which establishments (or descriptions of establishment) to specify for the purposes of paragraph 4, the appropriate national authority may have regard to the extent to which, in its opinion, the buildings are managed by or on behalf of the establishment in conformity with a Code of practice approved under section 233; or the extent to which those buildings are in general managed in conformity with such Codes.

7. Policy background

7.1 HMOs are defined in section 254 of the Act. In broad terms, they are buildings (or parts of buildings) occupied as a sole or main residence by more than two persons who do not form a single household (the precise conditions for a building or part of a building to qualify as a HMO are set out in subsections (1) to (5) of section 254).

7.2 Under Part 2 of the Act, HMOs are subject to a licensing regime overseen by local housing authorities.

7.3 Schedule 14 lists buildings which are not HMOs for the purposes of the 2004 Act (apart from Part 1, which deals with housing conditions). HMOs are defined in section 254 of the 2004 Act. Paragraph 4 of Schedule 14 refers to any building occupied by persons for the purpose of undertaking full-time further, or higher

education, courses at specified educational establishments, where the person managing or having control of that building is the educational establishment in question or a specified person or a person of a specified description.

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7.5 This instrument amends the list of educational establishments for the purposes of paragraph 4 of Schedule 14 to the 2004 Act. It adds those that were omitted in error from the Principal Regulations. In determining which establishments (or descriptions of establishment) to specify for the purposes of paragraph 4, the appropriate national authority may have regard to the extent to which, in its opinion, the buildings are managed by or on behalf of the establishment in conformity with a Code of practice approved under section 233; or the extent to which those buildings are in general managed in conformity with such Codes.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instruments amends The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019, the Department does not intend to consolidate these Regulations.

10. Consultation outcome

10.1 This instrument brings up to date the list of educational establishments exempt from HMO licensing. All of the establishments have been verified and approved by the Codes of Practice and therefore no consultation is considered necessary.

11. Guidance

11.1 The Secretary of State does not consider that there is a need for Government guidance as to the effect of this instrument. Membership of the Codes of Practice is voluntary, and the organisations are responsible for ensuring that members of their Codes of Practice have the information necessary to ensure their compliance. Educational establishments which are not members of the Codes of Practice will be subject to the mandatory licensing of HMOs under Part 2 of the Act. Guidance on the licensing of HMOs can be found by visiting the GOV.UK website at: https://www.gov.uk/government/publications/houses-in-multiple-occupation-and-residential-property-licensing-reform-guidance-for-local-housing-authorities

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this amending instrument.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Both UUK and ANUK/Unipol submit annual reports to the Department on the operation of their Codes of Practice. The Department also monitors the work of the ANUK/Unipol Committee of Management for the National Code of Standards for Larger Student Developments and the UUK's Governance Board for the operation of its Code of Practice.

14.2 These Regulations do not contain provision for review, and section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply.

15. Contact

15.1 Sarah Amer at the Ministry for Housing, Communities and Local Government. Telephone: 0303 444 8925 or email sarah.amer@communities.gov.uk can answer any queries regarding the instrument.

15.2 Dawn Eastmead, Deputy Director, Private Rented Sector Division, at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Luke Hall at the Ministry for Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.