# EXPLANATORY MEMORANDUM TO

# THE HOUSES IN MULTIPLE OCCUPATION (SPECIFIED EDUCATIONAL ESTABLISHMENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2022

## 2022 No. 197

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling up, Housing, Local Government and Communities 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 (S.I. 2019/904) 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 Codes of practice.

2.2 This instrument amends the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019 ("the 2019 Regulations") to insert the Accreditation Network UK/Unipol Code of Standards for Larger Developments for Student Accommodation Not Managed and Controlled by Educational Establishments and specify additional educational establishments for the purposes of paragraph 4 of Schedule 14 to the Housing Act 2004.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 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 an 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 Houses in Multiple Occupation ("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 specifies educational establishments for the purposes of paragraph 4 of Schedule 14 to the 2004 Act – i.e. those which are exempted from HMO regulations. In determining which establishments (or descriptions of establishment) to specify for the purposes of paragraph 4, the Department of Levelling Up, Housing and Communities 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.

6.6 The Secretary of State has approved two Codes of management practice in respect of buildings managed and controlled by educational establishments. The Universities UK/Guild HE (Higher Education) Code of Practice ("the UUK Code") and The ANUK (Accreditation Network UK) (Accredited Network) /Unipol Code of Standards for Larger Residential Developments ("the ANUK Code") approved by the Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2019 ("the 2019 Order"). The ANUK/Unipol Code of Standards for Larger Developments for Student Accommodation Not Managed and Controlled by Educational Establishments dated 28th February 2022 (ANUK Code 2022) is to be approved by the Secretary of State in the Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2022.

6.7 This instrument inserts the ANUK Code 2022 into the 2019 Regulations as an additional Code that an educational establishment must be a member of and conform with to be considered exempt from HMO regulations.

## 7. Policy background

***What is being done and why?***

7.1 There are currently 159 members under the ANUK/ Unipol Code. This consists of 110 non-educational establishments and 49 educational establishments. This instrument is to specify and include the additional educational establishments (and the ANUK 2022 Code) to show they are exempt from HMO licensing.

7.2 Student halls of residence, as with other HMOs, can be difficult to manage given their size and complexity. That is why it is considered desirable for student housing to be managed in compliance with the Codes of Practice designed specifically for such

accommodation. There is a clear need to maintain standards in student accommodation and this is achievable more easily through compliance with the Codes rather than requiring local housing authorities to license halls of residence and other accommodation provided by higher educational establishments.

7.3 Membership of the UUK or ANUK Codes is voluntary, and educational establishments which are not members of either the UUK or ANUK Codes will be subject to the mandatory licensing of Houses in Multiple Occupation under Part 2 of the Act.

7.4 There are currently 159 members under the ANUK/ Unipol Code. This consists of 110 non-educational establishments and 49 educational establishments. This SI is to specify and include the additional educational establishments to show they are exempt from HMO licensing. These educational establishments must be added as otherwise they are at risk of being subject to licensing.

## 8. European Union Withdrawal and Future Relationships

8.1 This instrument does not relate to withdrawal from the European Union.

## 9. Consolidation

9.1 Not applicable to this instrument.

## 10. Consultation Outcome

10.1 This instrument brings up to date the list of educational establishments exempt from HMO licensing and inserts the new ANUK 2022 Code into the 2019 Regulations. All of the establishments have been verified and approved by either the UUK or ANUK Codes and therefore no consultation is 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 UUK or ANUK Codes is voluntary, and both of these organisations are responsible for ensuring that members of their Codes have the information necessary to ensure their compliance. Educational establishments which are not members of either the UUK or ANUK Codes will be subject to the mandatory licensing of Houses in Multiple Occupation under Part 2 of the Act. Guidance on the licensing of Houses in Multiple Occupation 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, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this 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 Ekene Pruce at the Department for Levelling up, Housing and Communities or email ekene.pruce@communities.gov.uk can answer any queries regarding the instrument.

15.2 Rebecca Perks, Deputy Director for Private Rented Sector Enforcement, at the Department for Levelling up, Housing and Communities can confirm that this explanatory memorandum meets the required standard.

15.3 Eddie Hughes, Parliamentary Under Secretary of State (Minister for Rough Sleeping and Housing), can confirm that this EM (Explanatory Memorandum) meets the required standard.