EXPLANATORY MEMORANDUM TO

THE HOUSES IN MULTIPLE OCCUPATION (SPECIFIED EDUCATIONAL ESTABLISHMENTS) (ENGLAND) REGULATIONS 2012

2012 No. 249

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

2. Description

2.1 The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2012 ("the Regulations") specify educational establishments for the purposes of paragraph 4(2) 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. The Regulations revoke the Houses in Multiple Occupation (Specified Educational Establishments) (England) (No. 2) Regulations 2010 (S.I. 2010/2616) ("the 2010 Regulations").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 2(b)(ii) of the 2010 Regulations was reported for defective drafting as it referred to a Schedule annexed to the Universities UK/Guild HE Code of Practice for the Management of Student Housing dated 17th August 2010 and no such schedule was included in the annexes to that Code. The Regulations do not refer to the schedules to the codes.

4. Legislative Context

4.1 HMOs are defined in section 254 of the Housing Act 2004 (c. 34). 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 section 254 (1) to (5).

4.2 Under Part 2 of the 2004 Act, HMOs are subject to a licensing regime overseen by local housing authorities.

4.3 Schedule 14 to the 2004 Act excludes certain types of buildings from the definition of a HMO (and therefore from the scope of the licensing regime). One such type is a building occupied solely or principally by full-time students undertaking a course of higher or further education at a specified educational establishment or educational establishment of a specified description, where the person managing or having control of the building is the educational establishment in question. (The relevant detail is set out in paragraph 4 of Schedule 14).

4.4 In addition, under section 233(1) of the 2004 Act, 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 means such description of living accommodation falling within any provision of Schedule 14 as is specified in an order under section 233(1).

4.5 The Regulations specify educational establishments for the purposes of paragraph 4(2) of Schedule 14 to the 2004 Act. 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 s233; or the extent to which those buildings are in general managed in conformity with such codes.

4.7 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 Code of Practice ("the UUK Code") was approved by the Housing (Codes of Management Practice) (Student Accommodation) (England) Order 2010 ("the 2010 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 2008 ("the 2008 Order"). The 2008 Order was revoked by the 2010 Order but with savings for the ANUK Code.

5. Territorial Extent and Application

5.1 These instruments apply in relation to England only.

6. European Convention on Human Rights

6.1 As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 Student housing was a significant issue in debates during the Act's passage through Parliament. Almost two thirds of all students live in the private rented sector. However, just over a third of students are thought to live in purpose built accommodation provided by the university or a commercial provider. In any one year the number of students (at whatever stage in their studies) that are accommodated in property maintained by a higher educational establishment is in the region of 325,000[1].

7.2 HMOs can be difficult to manage and, given their size and complexity, student halls of residence can offer even greater management challenges. That is why it is considered desirable for student housing to be managed in compliance with codes of practice designed specifically for such accommodation. There is a clear need to maintain good standards in student accommodation and this is achievable more easily through compliance with the Codes rather than by requiring local housing authorities to license halls of residence and other accommodation provided by higher educational

[1] Source 2007/08 Higher Education Statistics Agency

establishments.

7.3 The list of educational establishments in the Regulations is reviewed regularly, to take account of universities or other educational establishments which have either joined or left the UUK or ANUK Code. This instrument brings up to date the list of establishments whose buildings are now managed in compliance with one of the Codes, and revokes the 2010 Regulations.

8. Consultation Outcome

8.1 No consultation has been carried out as this instrument brings up to date the list of establishments whose buildings are now managed in compliance with one of the Codes, and no changes have been made to the standards of conduct and practice in the Codes themselves.

9. Guidance

9.1 The Secretary of State does not consider that there is a need for Guidance as to the effect of the Regulations. Membership of the UUK or ANUK Code is voluntary and both of these organisations are responsible for ensuring that members of their Code have the information necessary to ensure their compliance. Educational establishments which are not members of either the UUK or ANUK Code 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 has been provided by the Department on its website to owners of such accommodation and to the local authorities which are responsible for enforcing Part 2 of the Act and as specified by the related regulations.

10. Impact

10.1 There is no impact on business, private sector charities or voluntary bodies of complying with either the UUK or ANUK Code.

10.2 The impact on the public sector of complying with an approved code of practice was estimated to be significantly less than £5 million when the Codes were originally approved in February 2006, and this remains the case. The purpose of developing codes of practice is to reduce the regulatory impact of licensing on student accommodation. If an educational establishment is a member of a code of practice buildings occupied by its students and managed or controlled by it may be excepted from the definition of an HMO and therefore will not be subject to mandatory licensing under Part 2 of the Act.

10.3 The Regulations will have the effect of reducing costs for the specified educational establishments. If the estimated student bed-space accommodation had to be licensed at anywhere near the current indicative maximum licensing fee of £500 for 5 years (or £100 per year) the total cost could be £24 million. But the costs of complying with a code of practice are currently estimated at roughly £0.76 per bed space. So for 325,000 bed spaces the total cost would be only £247,000. The Regulations will also continue to reduce the impact upon local authorities who would otherwise have to carry out inspections of such accommodation for the purpose of HMO mandatory licensing.

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

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

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

13. Contact

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