EXPLANATORY MEMORANDUM TO

THE HOUSES IN MULTIPLE OCCUPATION (SPECIFIED EDUCATIONAL ESTABLISHMENTS) (ENGLAND) REGULATIONS 2016

2016 No. 420

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 Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2016 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 revoke the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2013 (S.I. 2013/1601) ("the 2013 Regulations").

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 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.)

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

4.3 Schedule 14 to the 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). In addition, under section 233(1) of the 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).

4.4 This instrument specifies educational establishments for the purposes of paragraph 4 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 section 233; or the extent to which those buildings are in general managed in conformity with such codes.

4.5 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. 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 this 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 Student housing was a significant issue in the 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 understood 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 based on the statistics provided by the UUK and ANUK/Unipol codes of practice is in the region of 300,000.[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

[1] National Codes Annual Report to Communities and Local Government 2015
UUK/GuildHE Approved Code of Practice for the Management of Student Housing 9th Annual report 2015

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.

8. Consultation

8.1 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 either the UUK or ANUK Code and therefore no consultation is necessary.

9. Guidance

9.1 The Secretary of State does not consider that there is a need for guidance as to the effect of this instrument. 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 can be found by visiting the GOV.UK website at: https://www.gov.uk/house-in-multiple-occupation-licence.

10. Impact

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

10.2 There is also no impact on the public sector.

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

11. Regulating small business

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

12. Monitoring & review

12.1 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.

12.2 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.

13. Contact

13.1 Deyna Birthwright at the Department for Communities and Local Government. Telephone: 0303 444 1799 or email Deyna.birthwright@communities.gsi.gov.uk can answer any queries regarding the instrument.