EXPLANATORY MEMORANDUM TO

THE HOUSING (APPROVAL OF CODES OF MANAGEMENT PRACTICE) (STUDENT ACCOMMODATION) (ENGLAND) ORDER 2019

2019 No. 884

1. Introduction

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

2. Purpose of the instrument

2.1 The Housing (Approval of Codes of Management Practice) (Student Accommodation) (England) Order 2019 ("the Order") approves a code of practice with regard to the management of houses in multiple occupation ("HMOs") and other living accommodation (managed or controlled by specified educational establishments) occupied solely or principally by full-time students of further or higher education. The Order also withdraws approval for an earlier code of practice, and revokes (with savings) two earlier Orders approving such codes.

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 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. The Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019 specify certain educational establishments for the purpose of paragraph 4 of Schedule 14.

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 Under section 233(2) and (3), the appropriate national authority may only approve a code of practice if it has consulted certain persons, and if it is satisfied that the code has been published (whether by the authority or by another person) in a manner that the authority considers appropriate for the purpose of bringing the code to the attention of those likely to be affected by it (or that arrangements have been made for it to be so published).

6.6 The Order approves the Codes named in article 2 of the Order and withdraws approval for the codes named in article 3 of the Order.

6.7 By virtue of this Order there are now 3 codes of practice which are currently approved under section 233 of the 2004 Act in relation to the management of student living accommodation comprised in buildings that fall within paragraph 4 of Schedule 14. These are:

- The Accreditation Network UK/Unipol Code of Standards for Larger Developments for Student Accommodation Not Managed and Controlled by Educational Establishments dated 20th February 2006 and approved by the 2006 Order (with approval saved by the 2010 Order and this Order);
- The Accreditation Network UK/Unipol Code of Standards for larger Developments for Student Accommodation Managed and Controlled by Educational Establishments dated 1st May 2019 and approved by this Order; and

6.8 The Universities UK/Guild HE Code of Practice for the Management of Student Housing dated 1st May 2019 and approved by this Order.

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. 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 290,621[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 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. Membership of the UUK or ANUK Code is voluntary, 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.

7.3 The Codes approved by the Order are published by Universities UK and Guild HE and Accreditation Network UK/Unipol. The codes were published by both organisations in 2010 and 2008 respectively. Both Code providers committed to review their codes.

7.4 Universities UK and Guild HE completed their review in 2017. The review was led by the Sector Advisory Group. The panel was made up of eight professional bodies being CUBO, AUDE and ASRA, NUS, CHIEA, USHA, Association of University Chief Security Officers and AMOSSHE[2], and was led by a member of the Council for Higher Education Internal Auditors (CHEIA) Executive. The panel met in February 2016, June 2016, October 2016 and 10th March 2017.

7.5 An amended draft of the code was circulated for consultation to the Governance Board with a request that representatives circulate it to their membership for wider consultation; and to the ANUK Board for external stakeholder engagement with other student accommodation providers. Following consultation feedback, Code revisions were discussed at the March 2016, October 2016 and March 2017 Governance Board meetings with its wider stakeholder representation including representatives from the following:

7.6 The revised draft was presented and discussed on at the 3rd and 4th Practitioners meeting of the Code of Practice in 2017 and 2018 with 70 institutional members who attended the event each year. Following a review of the feedback received by the Sector Advisory Group on the 7th February 2017, a revised draft was resubmitted to the Governance Board which received formal approval on the 24th March 2017.

7.7 The Accreditation Network UK/Unipol code was reviewed in 2018 by a review group made up of representatives from each of the Consortium members ANUK, NUS and Unipol; the educational establishment stakeholders - ASRA and CUBO; three representatives of the Cambridge Colleges and two other educational establishment members; and two representatives from private providers.

7.8 In addition to recommending a number of minor wording changes and additions, the Review Group argued for the inclusion of some completely new sections covering such matters as Wi-Fi provision and student wellbeing.

7.9 The revised Code has been circulated to members of the Code for comment on two occasions, and both times only minor alterations were suggested. The Code was then

[1] National Codes Annual Report & UUK/Guild HE Annual Reports 2018
[2] Acronyms are listed at paragraph 7.5

approved by The National Codes Committee of Management, the Committee includes representatives from the following:

- Association of Colleges (AOC)
- The UK Student Services Organisation (formally known as AMOSSHE)
- Association of Student Residential Accommodation (ASRA)
- Chartered Institute of Environmental Health (CIEH)
- College and University Business Officers (CUBO)
- Ministry of Housing, Communities and Local Government (MCLG)
- Universities UK
- Two members from each of
- Accreditation Network UK (ANUK)
- Unipol
- National Union of Students (NUS)

7.10 The Codes will be published on the UUK, ANUK and Unipol websites. The Accreditation Network UK/Unipol Code of Standards for Larger Developments for Student Accommodation Not Managed and Controlled by Educational Establishments (approved by the 2006 Order) are published on the respective ANUK and Unipol websites. Paper copies of all of the Codes are made available by the Code writers on request. Each of the Codes requires the persons managing student accommodation to provide student tenants, who are the principal beneficiaries of the Codes, with full information about the existence and operation of the Code relevant to their buildings through the letting and marketing materials and tenant information provided to potential or existing tenants.

7.11 The Secretary of State is, therefore, reasonably satisfied that arrangements have been made for the Codes to be published in a manner that is appropriate for the purpose of bringing it to the attention of those likely to be affected by them.

The Regulations are being updated to include references to the Codes approved by the Order, and to ensure that the references in the Schedule are current.

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.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 Under section 233(2) of the Act, before approving a Code of practice the appropriate national authority must take reasonable steps to consult persons involved in the management of premises of these kinds, persons occupying such premises, or persons whom the authority considers represent the interests of such persons. Details of the consultation undertaken in relation to the Codes approved by the Order are given in paragraph 7 above.

11. Guidance

11.1 The Secretary of State does not consider that there is a need for Government Guidance as to the effect of the Order or 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.

12. Impact

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

12.2 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 UUK Code of February 2006 was approved and this remains the case. The purpose of developing Codes of practice is to reduce the regulatory impact of licensing on student accommodation. By agreeing to comply with a Code of practice certain student accommodation may be excepted from the HMO definition and therefore will not be subject to mandatory licensing under Part 2 of the Act. For commercial undertakings that comply with a Code of practice there is the prospect of lower costs and less direct regulation than under licensing. These instruments will also reduce the impact upon local authorities who would otherwise have to carry out inspections of student property for the purpose of HMO mandatory licensing.

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

13. Regulating small business

13.1 The legislation 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 Connor Power at the Ministry of Housing, Communities and Local Government. Telephone: 0303 444 2859 or email Connor.Power@communities.gov.uk can answer any queries regarding the instrument.

15.2 Emma Garrett, Deputy Director for Private Rented Sector Enforcement, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Heather Wheeler at the Ministry of Housing, Communities and Local Government. can confirm that this Explanatory Memorandum meets the required standard.