**EXPLANATORY MEMORANDUM TO**

**THE HOUSING (CODES OF MANAGEMENT PRACTICE) (STUDENT ACCOMMODATION) (ENGLAND) ORDER 2010**

# 2010 No. 2615

**THE HOUSES IN MULTIPLE OCCUPATION (SPECIFIED EDUCATIONAL ESTABLISHMENTS) (ENGLAND) (No. 2) REGULATIONS 2010**

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**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. Purpose of the Instrument.**

2.1 The Housing (Approval of a Code of Management Practice) (Student Accommodation) (England) Order 2010 ("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.

2.2 The Houses in Multiple Occupation (Specified Educational Establishments) (England) (No. 2) Regulations 2010 ("the Regulations") specify certain educational establishments managing or having control of buildings which are not HMOs for the purpose of the Housing Act 2004 ("the Act") (excluding Part 1 of the Act, which deals with housing conditions). The Regulations also revoke the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2010 (S.I. 2010/607).

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

3.1 None.

**4. Legislative Context**

4.1 Houses in Multiple Occupation ("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 multiple persons who do not form a single household. (The precise conditions for a building or part to qualify as a HMO are set out in subsections (1) to (5) of s254).

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 buildings used as accommodation for full-time students of higher education, where the building in question is under the management or control of a specified educational establishment (or other person of a specified description). (The relevant detail is set out in paragraph 4 of Schedule 14).

4.4 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.

4.5 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).

4.6 The Order approves the Code named in article 2 of the Order and withdraws approval for the code named in article 3 of the Order. It also revokes (with savings for two earlier approvals of codes), two previous orders made under the same power.

4.7 The Regulations specify certain educational establishments for the purposes of paragraph 4 of Schedule 14 to the 2004 Act. Buildings occupied for the purpose of undertaking full time higher education at such establishments, and which are under the control or management of such establishments may fall within paragraph 4 (and thus be excluded from the definition of "HMO" and from the licensing regime for such premises), provided the other conditions in that paragraph are met.

4.8 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 establishment in question manages the buildings in question in conformity with a code pf practice approved under s233; or the extent to which buildings managed by or on behalf of certain descriptions of establishment are in general managed in conformity with such codes.

## 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]. The number of students accommodated in privately maintained halls of residence is currently in the region of 50,000. This gives a total of 375,000 students or bed spaces. 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 establishments.

7.2 The Code approved by the Order is published by Universities UK and Guild HE and was made following a review of a code that was published by them in February 2006 ("the UUK 2006 code"). (The prior approval for that code (see S.I. 2006/646) is withdrawn (see article 3 of the present Order)).

7.3 The review was prompted by feedback from members of Universities UK and Guild HE and other stakeholders which identified the following areas for improvement:

- the need to achieve greater clarity of essential and desirable elements in the code;
- revise wording to improve clarity on the definition for elements where needed, based upon members feedback; and
- relocate some elements to a different section of the Code where they are deemed to be more relevant.

7.4 The decision to review the UUK 2006 code was taken on 8th December 2008 at a Governance Board meeting. The Governance Board include representatives from the following:

- Association of Managers of Student Services in Higher Education Accreditation Network UK (ANUK)
- Association for Student Residential Accommodation (ASRA)
- Associate of University Directors of Estates (AUDE)
- College and University Business Officers (CUBO)
- Communities and Local Government (CLG)
- National Union of Students (NUS)
- University Safety and Health Association (USHA)
- Local Authority Coordinators of Regulatory Services (LACORS)
- Universities UK (UUK)

7.5 The review has been lead by the Sector Advisory Group which is made up of the three lead professional bodies being CUBO, AUDE and ASRA, and NUS. Revisions have been discussed at the March 2009, July 2009 and January 2010 Governance Board

[1] Source 2007/08 Higher Education Statistics Agency

with its wider stakeholder representation including NUS and Local Authorities. The draft was also consulted on at the third annual meeting of the Code of Practice on the 3rd November 2009 by the 50 members who attended the event.

7.6 An amended draft was then circulated for consultation to all registered members of Universities UK and Guild HE; 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.

7.7 Following a review of the feedback received by the Sector Advisory Group on the 3rd February 2010, a revised draft was resubmitted to the Governance Board which received formal approval on the 23rd March 2010.

7.8 The Code will be published on the UUK website. The ANUK/Unipol Code of Standards for Larger Residential Developments for Student Accommodation Managed and Controlled by Educational Establishments (approved by the 2008 Order) and 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.

7.9 The Secretary of State is, therefore, reasonably satisfied that arrangements have been made for the Code 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 it.

7.10 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. Consultation Outcome

8.1 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 Code approved by the Order are given in paragraph 7 above.

## 9. Guidance

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

10.3 These instruments, together with the approved codes of practice will also have the effect of reducing costs for the providers of student accommodation. 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 for property that is managed and controlled by a higher educational establishment, 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.

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

Paul Martin at the Department for Communities and Local Government, tel: 0303 444 1668 or e-mail: PaulG.Martin@communities.gsi.gov.uk, can answer any queries regarding the instruments.