EXPLANATORY MEMORANDUM TO

THE RACE RELATIONS CODE OF PRACTICE RELATING TO HOUSING (APPOINTED DAY) ORDER 2006

2006/2239

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. Description

2.1 This Order appoints 1 October 2006 as the day on which the revised Code of Practice on Racial Equality in Housing, prepared by the Commission for Racial Equality (CRE) and approved by the Secretary of State under section 47 of the Race Relations Act 1976 (RRA), will come into effect. The Code consists of three separate parts, applying to England, Scotland and Wales respectively.

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

3.1 None.

4. Legislative Background

4.1 Section 47 of the RRA gives the CRE power to issue Codes of Practice on the elimination of discrimination and harassment in the field of housing, and from time to time to revise the whole or any part of such a Code of Practice. As part of the process, a draft of a revised Code of Practice was sent to the Secretary of State. Following her approval of the draft, it was laid before Parliament for 40 days. The Committee on the Merits of Statutory Instruments scrutinised the draft Code and drew it to the special attention of the House in its fortieth report of the 2005-2006 session. Neither House resolved that no further proceedings should be taken on the draft Code.

4.2 Failure to observe a provision of the Code will not lead to legal liability, but a Code of Practice is admissible as evidence and courts are able to take the Code into account when considering questions to which it is relevant. (section 47(10) of RRA).

4.3 There are two current Codes of Practice on racial equality in housing issued by the CRE under section 47: the Race Relations Code of Practice in Rented Housing, which was brought into effect on 1 May 1991 by the Race Relations Code of Practice (Rented Housing) Order 1991 (SI 1991/227) and the Race Relations Code of Practice in non-rented (owner-occupied) housing which was brought into effect on 18 June 1992 (SI 1992/619). The revised Code on race equality in housing will supersede the two existing codes.

5. Extent

5.1 The instrument applies to England, Scotland and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The RRA provides protection from race discrimination and harassment. It gives the CRE a legal duty to promote equality of opportunity and good relations between people from different racial groups and to keep under review the way the RRA is working and, if necessary, make proposals to the Secretary of State for amending it.

7.2 The revised Code will apply to all providers of housing and related services, whether in the public, private, or voluntary sectors. It will be relevant to anyone involved in housing, including estate agents, planning bodies and developers as well as landlords, tenants and owner-occupiers. The Code is not restricted to what is required by the law, but also includes guidance on good practice.

7.3 The revised Code replaces the existing codes of practice in rented and non-rented housing issued by the CRE in 1991 and 1992 respectively. The existing Codes need to be brought up to date to reflect current policy, practice and the legislative changes that have taken place since they were issued.

7.4 Since the existing Codes were first produced, there have been marked changes in the way in which housing is provided and managed. For example, new social landlords have come into existence; the housing association and private rented sectors have grown considerably; the owner-occupied sector has continued to thrive.

7.5 Significant changes have also been made to the RRA including the incorporation of a new definition of indirect discrimination and a new statutory duty on specified authorities to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.

7.6 While improvements for some ethnic minority groups have taken place since the early nineties, significant differences still persist overall in the type and quality of housing available to people from ethnic minorities. For example, people from ethnic minorities are more likely to live in overcrowded conditions, the incidence of homelessness is higher amongst ethnic minorities and they are more likely to say that racial harassment is a problem. Segregation, mainly in urban areas where one ethnic group predominates over others, continues to pose problems for social integration in parts of the country. (See the Office of the Deputy Prime Minister 'Housing and Black and Minority Ethnic Communities: Review of the evidence base' 2003.)

7.7 The CRE have carried out a public consultation on a draft of the Code as required by section 47(2) and (3A) of the RRA. The consultation took place for 12 weeks from May to August 2005. In summary (further details of the consultation process are set out in the Regulatory Impact Assessment attached), the CRE received completed questionnaires from 79 organisations and individuals, the vast majority from either local government (45%) or housing associations (36%). Overall, the

response was positive with a majority finding the draft code's purpose clear and its content easy to understand. The CRE also received additional written commentaries on the consultation draft from over 40 organisations, including a significant number of specific suggestions as to how the draft Code might be improved. Many of the comments and specific suggestions regarding content as well as layout have been taken into account in the final version of the Code produced following the consultation process.

7.8 The Secretary of State approved the code and has laid it in draft in both Houses of Parliament as required by section 47(4)(a) of the RRA. No resolution was passed by either House, so this Order has been made appointing the day on which the Code will come into effect.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Peter Fenn at the Department for Communities and Local Government, Tel: 020 7944 3502 or email: peter.fenn@communities.gsi.gov.uk can answer any queries regarding the Code.

FINAL REGULATORY IMPACT ASSESSMENT (RIA)
OF THE STATUTORY CODE OF PRACTICE
ON RACIAL EQUALITY IN HOUSING

May 2006

FINAL REGULATORY IMPACT ASSESSMENT (RIA) OF THE STATUTORY CODE OF PRACTICE ON RACIAL EQUALITY IN HOUSING

1. General

1.1 The objectives that the draft code of practice responds to are:

a. To further reduce racial discrimination in housing markets
b. To achieve greater equality of opportunity in housing and housing-related services
c. To increase levels of social integration and community cohesion
d. To improve the availability of information on the law and good practice in respect of race equality and housing and help both providers and users of housing and related services to comply with current precedents and interpretations of the Race Relations Act

1.2 The *Code of Practice on Race Equality in Housing* has four broad aims:

a. To set standards for achieving race equality and provide practical guidance on how to prevent unlawful racial discrimination, and achieve equality of opportunity in the field of housing and services related to housing;

b. To help housing organisations and others who have duties under the housing and planning provisions of the Race Relations Act (RRA) to understand their responsibilities and rights;

c. To help lawyers and other advisers to advise their clients, and to assist courts and tribunals in interpreting legal concepts; and

d. To make sure anyone contemplating bringing legal proceedings under the RRA has a clear understanding of both legislation and good practice in the field of housing and services related to housing.

1.3 The statutory Codes of Practice on rented and non-rented housing were published in 1990 and 1991, respectively. They need to be brought up to date to reflect current legislation, policy and practice. The Code of Practice on Rented Housing is currently (in England and Wales) a Best Value performance indicator (BVPI).

1.4 The intention is that the revised housing code will be published in three versions, which will apply in England, Scotland and Wales. The code will not apply in Northern Ireland, which has separate legislation.

2. Risk assessment

2.1 The main risk that the code will address is persistent racial discrimination and disadvantage in housing. Ethnic minority communities continue to suffer inequality, discrimination and segregation in housing.[1] Evidence from surveys and research shows that people from ethnic minorities suffer poorer housing conditions than their white counterparts. Ethnic minority households are far more likely than the white population to:

- experience overcrowding – 5% of Pakistani households and 4% of Bangladeshi households have two fewer bedrooms than the 'bedroom standard' for their size compared to a fraction of one percent for white households;

- occupy 'non-decent' housing – in 2001, 45% of Asian and 35.6% of black households lived in non-decent homes compared to 32% of white households[2]

- be accepted as statutory homeless – official statistics record that 22% of households are accepted as homeless.

Some smaller ethnic minority communities are disadvantaged because their housing needs are not recognised. Ethnic minority tenants of local authorities report less satisfaction with the overall service provided by their landlord than white tenants. People from ethnic minorities, generally, are much more likely than white people to say that they expect private landlords and lettings agencies to treat them worse than other racial groups.

2.2 Housing organisations also face the direct costs of defending themselves in courts against claims of unlawful racial discrimination.

3. Options

3.1 The following options to meet the objectives at a. to d. in paragraph 1.1 have been identified:

a. do nothing, and wait for the proposed Commission for Equality and Human Rights (CEHR) to produce an equality code; or

b. produce further non-statutory guidance; or

c. publish a revised statutory code of practice on racial equality in housing.

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[1] For details see ODPM, *Housing and Black and Minority Ethnic Communities: Review of the evidence base*, 2003

[2] ODPM, *English House Conditions Survey*, 2001

3.2 Adopting option a. would mean that housing organisations would not have to familiarise themselves with a code which may well be superseded in a few years' time. However, it would also mean that the most important statutory guidance on the housing implications of the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 (referred to as RRA), will remain out of date. Critically, the guidance will be seriously misleading, given the range and scope of legislative, policy and institutional changes, as well as the case law that has been built up over the last fifteen years. To withdraw the existing code – even if it is possible to do so – would send a very negative signal to organisations operating in the housing markets.

3.3 In addition, the CEHR is not expected to come into being until at least 2007 and the CRE is expected to continue to carry out its functions until 2009. There is no guarantee that the new body will produce a code of practice straight away; even if it were to do so, there would probably be a lengthy period of development and consultation, and it would be another four or five years, at least, before such a code were published.

3.4 The BVPI based on the 1990 code of practice on rented housing will become increasingly irrelevant, and may have to be abandoned, sending negative messages to housing organisations.[3]

3.5 Adopting option b. – producing non-statutory guidance – would mean, at best, that housing organisations would have to link the existing out-of-date codes with the newer associated guidance. At the worst, there would be serious confusion as to the standard housing organisations would be expected to apply and discrediting of both code and supplementary guidance. In addition, the negative factors listed at 3.2 to 3.4 would also apply.

4. Benefits of the revised code

4.1 Economic benefits

The revised code may have economic benefits such as:

- reducing turnover in tenancies and thereby reducing landlord costs in finding new tenants

[3] The BVPI (164) has two elements. It asks whether 'best value' authorities follow the CRE code for rented housing *and* the Good Practice Standards for social landlords in tackling harassment in *Tackling Racial Harassment: Code of Practice for Social Landlords.* It requires a single yes/no response. There are signs that the indicator's value is diminished by the ageing of the CRE code. In 2003/04, 45% of authorities reported that they followed the codes, 23% said they did not and 32% provided no data.

- reducing the number of complaints and the costs incurred by landlords, service providers, CRE, Ombudsmen and the courts in dealing with them, and
- reducing the costs to health organisations of meeting needs caused by non-decent and overcrowded housing (see also under social benefits below).

However, such benefits are difficult to define and calculate.

4.2 Social benefits

Housing organisations

4.2.2 The revised code will have the following substantial benefits for housing organisations that follow its recommendations.

- It will clarify the legal position for housing organisations and individuals, such as tenants, sellers and buyers.

- It will bring together in a single document up-to-date and comprehensive guidance on good equal opportunities practice, based on guides, toolkits, etc – the alternative would be to continue using an inaccurate code of practice, and having constantly to refer to supplementary guidance.

- It will assist housing organisations that are public authorities and subject to the duty to promote race equality to interpret the duty in their housing functions.

- Its recommendations, and its descriptions of the outcomes that housing organisations and others can expect to see as a result of following the recommendations, will help housing organisations to meet the requirements of various inspection and regulatory regimes.

- It will make it easier for housing organisations and others with responsibilities under the RRA in the housing field to adopt and put into practice effective policies, designed to prevent unlawful racial discrimination, and ensure equal opportunities and good relations between people from different racial groups.

- It will help to reduce the financial and reputational risks of defending claims of unlawful racial discrimination.

- As well as helping housing organisations to avoid the direct legal and other costs of not taking steps to prevent discrimination and harassment, the recommendations of the revised code of practice will help them increase equality of opportunity and diversity.

Wider social benefits

4.2.3 The revised code can be expected to have the following wider benefits. The code will help to:

- achieve greater community cohesion;
- ensure that the housing needs of people from different racial groups are met;
- improve services for all customers, not just those from ethnic minorities;
- increase satisfaction among tenants and other customers;
- reduce the levels of overcrowding and 'non-decent' housing experienced by some ethnic minority groups; and, as a result
- contribute to improved health outcomes and educational achievement, with benefits to the economy through greater success in the labour market, and reduction in the costs of, for example, the health service.[4]

4.3 Environmental benefits

We have not been able to identify any environmental benefits that the code is likely to produce.

4.4 In our view the social benefits itemised in 4.2 are real although they are not easily quantifiable. Some of these benefits would also be expected from option b. but would be more limited for reasons already identified.

5. Costs

Business sectors affected by the code

5.1 The code will have implications for several groups of **public sector bodies**, most importantly local housing and planning authorities, of which there are some 400 in England, 22 in Wales and 29 in Scotland. Other organisations include a small number of housing action trusts, some 60 arms-length management organisations, and, in England, the ten regional housing boards. Together, these make up some 550 organisations, most of them relatively large.

[4] Evidence of the link between overcrowding, health and education is set out in ODPM, *The Impact of Overcrowding on Health and Education: A review of Evidence and Literature,* May 2004.

5.2 The code will have implications for various housing organisations that are **voluntary sector bodies**, most importantly housing associations. There are some 2,000 housing associations in England, 100 in Wales and 270 in Scotland, and, of these, some are small organisations. Other voluntary housing organisations include housing rights and advice agencies, many of which are small organisations.

5.3 Housing associations in England that are registered are regulated by the Housing Corporation and, from 2003, inspected by the Audit Commission. The corporation's regulatory code, introduced in 2002, expects associations to avoid racial discrimination, promote equality of opportunity and take steps to introduce good practice. Those steps are closely reflected in the recommendations of the draft statutory code. Regulatory instruments lay down similar expectations of housing associations in those countries.

5.4 The code of practice will have implications for a range of **private sector** providers of housing and services related to housing. They include private landlords, residential lettings and management agents, estate agents, owners of residential mobile (park) home sites, and banks and building societies that offer house purchase loans as well as organisations offering professional services, such as chartered surveyors, solicitors and, in Scotland, factors. The numbers in these sectors vary widely. There are some 750,000 private landlords in the UK, many of them very small, with no staff, others much more substantial. Many act through residential letting agents, of whom there are several thousands most of them small businesses. In general, we would expect many of the larger organisations, regardless of sector, already to be following the recommendations of the 1990 and 1991 codes of practice in rented and non-rented housing. The CRE recognises the different needs of the small business sector, and makes it clear that smaller businesses are not expected to follow the revised code's recommendations in all their detail. However, since the RRA applies equally to all organisations, whatever their size, small businesses will need to ensure they follow the principles of the code and take steps that are appropriate to their size and circumstances. In recognition of the fact that most of the recommendations in the code of practice are directed at public organisations, the CRE proposes to produce a leaflet summarising the code's recommendations for the private sector.

Approach to estimating costs

5.5 The costs of the code for housing organisations can be divided into costs of familiarisation and costs of implementation. Costs need to be looked at in context. The revised code is not new, but based on the guidance and recommendations of the existing codes in rented and non-rented housing. In addition, as regards public bodies, account should be taken of the duty to promote race equality, and as regards housing associations, the race equality requirements of the relevant regulatory codes to which they are subject.

Costs of the revised code – (i) public and social sector

5.6 The cost of the code for public and social housing organisations should be assessed in the light of the recommendations in the existing code of practice on rented housing (in effect since 1991), and the requirements of the race equality duty and the statutory guidance issued by the CRE on meeting that duty.

5.7 The existing code of practice on rented housing contains general recommendations that housing organisations should:

- adopt and communicate an equal opportunity policy and implement it through an action plan;
- train staff in the law and policy;
- take action to combat racial harassment;
- use ethnic records to monitor the policy; and
- identify and provide for unmet needs.

5.8 These general recommendations are reinforced in the code by more detailed recommendations in certain key areas, such as access to housing, quality of housing and service delivery. These recommendations advise housing organisations to:

- review policies and criteria to avoid discrimination and disadvantage;
- develop a policy on discriminatory instructions;
- take steps to overcome communication difficulties; and
- take steps to control the effects of discretion and subjective judgment.

The code also makes several specific recommendations on steps to tackle racial harassment.

5.9 These recommendations were reinforced by the general duty that, with effect from 2001, the RRA imposed on most public authorities to promote race equality, and by the specific duties issued to help meet the general duty. The specific duties include the production and publication of a race equality scheme setting out how the public authority will meet the general duty, by listing those of the organisation's functions and policies that are relevant to meeting the general duty, and by making arrangements in a number of areas. These areas include: assessing and consulting on the likely impact of any proposed policy on the promotion of race equality, monitoring current policies by racial group, training staff on the

duty, and publishing reports on the results of the authority's assessments, consultation and monitoring. Public authorities must also ensure ready public access to information and services.

5.10 Many public authorities would have set up the systems and procedures needed to meet the recommendations of the 1990 code of practice on rented housing, when it first came into effect. Those that had not done so should have taken the necessary steps in 2000-02, when considering how to meet the statutory general duty to promote race equality in their housing and related functions, and/or when preparing a race equality scheme, and in 2002-5 when implementing those schemes.

5.11 The recommendations of the draft revised code of practice do not differ substantially from the existing code, and, in respect of the race equality duty, they indicate how the duty is likely to apply in housing and related functions. There are some differences of emphasis – for example, the focus on impact assessment as a tool for 'proofing' new policies, ethnic monitoring and governance – which reflect the changed legal and public policy context. The revised code will therefore reinforce what many public authorities will already be doing, remind them of their responsibilities and help them to focus on the implications of their race equality duty. By bringing the guidance up to date it will help housing organisations to understand the recommendations in their contemporary context.

5.12 Public and social bodies should therefore already be following most, if not all, the recommendations of the 1991 code on rented housing. The main cost for them will be in familiarising themselves with the recommendations of the revised code, rather than in drawing up policies from scratch. They will need to identify gaps and make a report to elected members or the board. Their policies will need some revision, but this should not be extensive.

5.13 The costs are likely to fall within the range given in the following estimates:

Familiarisation

(i) 3,000 public sector and social housing bodies spend 2-4 hours reading the guidance, at an hourly rate of £22

= £132 - 264k

Implementation

(ii) 3,000 public sector and social housing bodies spend 2-4 hours making necessary changes to their policies and strategies at an hourly rate of £22

= £132 - 264k

Total cost ((i)+(ii)) **= £264 – 528k**

Costs of the revised code - private sector

5.14 The costs to private sector housing organisations will depend to some extent on the functions of the organisation concerned.

Familiarisation

5.15 If all million or so private housing organisations were to familiarise themselves with the revised code, the costs of reading the guidance would be in the region of £24m. This is based on the assumption that it would take a suitably qualified and experienced member of staff on a median wage of, say, £12 per hour, two hours to read through the code.

5.16 However, despite best efforts to promote the code, it is likely that a proportion of private housing organisations will rely on summaries of its content, either in the CRE leaflet or from another source. Moreover, some organisations, which have acted on the recommendations of the 1990 or 1991 code, will only need to skim through the revised code quickly, to see if they need to make any changes to their policies, procedures and practices to follow recommendations that have been modified. In addition, many small landlords will rely on the services of lettings agents. Although it is important that they (small landlords) should be aware of the basics of the law in respect of unlawful discrimination, their reliance on agents give the latter's understanding of the code added importance.

5.17 The following costs of familiarisation are based on the assumption that 5-10% of all private sector housing organisations (50-100k) will obtain a copy of the code. If half of them (25-50k) look through it quickly to make sure they are following its recommendations, and the other half spend two hours on a detailed

examination, using the lower end of the assumptions, the costs (at £12 per hour) would be as shown below:

i.	25k housing organisations (2.5%) spend 1 hour on a quick check:	£300k
ii.	25k housing organisations (2.5%) spend 2 hours on a thorough read:	£600k
iii.	50k housing organisations (5.0%) spend 15 minutes on it	£150k
	Total costs of familiarisation	***£1.05m***

Implementation

5.18 As discussed earlier, many housing organisations, particularly larger ones, will already be meeting many of the recommendations of the relevant existing code of practice, and will have an equal opportunities policy that covers their housing function, as well as the systems and procedures for putting it into practice. Organisations that have not done anything will need to dedicate staff and other resources to introducing a policy and the necessary procedures and systems for making it operational. For example, the code recommends that they:

a. introduce and implement a strategy for racial equality;

b. provide training on equal opportunities;

c. monitor applicants for housing and tenants, and applicants and users of services, by racial group; and

d. review their housing and related policies, procedures and practices on a regular basis and take steps to reduce any significant disparities between people from different racial groups, for example by setting targets and timetables to meet any equal opportunities plans, or by taking lawful positive action to provide housing that meets the special needs of particular groups.

5.19 The RRA has been part of British law since 1976 and the majority of housing organisations abide by its provisions. The revised code does not make any new requirements of housing organisations, but it does contain modified recommendations.

5.20 Housing organisations that are small businesses are much less likely to have an equal opportunities policy, but the revised code makes it clear that, while they are expected to take steps to prevent unlawful discrimination, they may not need a detailed equal opportunities policy or sophisticated systems and procedures, for

example to monitor applicants and tenants or service users by racial group. The CRE has produced a non-statutory guide for the private sector, including smaller businesses, to accompany the code of practice.

5.21 It is difficult to predict accurately how housing organisations will respond to the revised code. The cost estimates below are based on the following understanding, drawn from various sources:

a. most large housing organisations have equal opportunities policies;

b. those that do not are predominantly small; and

c. some equal opportunities policies are 'empty shells', that is, written policies that have not been put into practice.

(i) 25k housing organisations (2.5%) spend 10 hours, on average, at an hourly rate of £12 developing an equal opportunities policy from scratch or making major revisions to their policy, plus 2 hours for management, at an hourly rate of £22 (small businesses would spend less time, on average, and medium to large businesses more) = £4.1m

(ii) 25k housing organisations (2.5%) make only basic adjustments to their policies, spending, on average, 2 hours of officer time and half an hour of manager time each: = £0.9m

Total implementation costs ((i) + (ii)) ***= £5m***

Total familiarisation and implementation costs ***=£6.5m***

5.22 The above are first-year 'start-up' costs. From the second year onwards, as housing organisations become more familiar with the code, and the procedures and practice associated with the equal opportunities policy are up and running, benefits can be expected to outweigh the costs.

5.23 Housing organisations may decide to carry out yearly reviews and monitor their equal opportunities policy. For very small businesses (fewer than ten employees), who make up the large majority of organisations in the private sector, this is likely to be a simple and informal process. For larger organisations, it is likely to be more complex, but it should be remembered that they are more likely to be doing this already. Exact costs are difficult to estimate, but the extra costs of doing more to follow the recommendations of the code are unlikely to exceed £5 million each year. Furthermore, the benefits should be apparent in the likely improvements in:

customer satisfaction and participation, greater demand for services, better recruitment and retention, reductions in the time spent by senior managers in dealing with claims of racial harassment or discrimination and, possibly, costly litigation.

6. Equity and fairness

6.1 The RRA gives protection from unlawful discrimination to everyone, regardless of their colour, ethnicity, race, nationality or national background. The Act is not for ethnic minorities alone, nor for any particular racial group. The recommendations of the code apply equally to housing organisations from all racial groups – for example, the 'black and minority ethnic housing associations' registered with the Housing Corporation – and ethnic minority businesses will be affected in the same way as other businesses. However, the code is also clearly intended to address the discrimination and disadvantage experienced by ethnic minority groups.

6.2 The code is not expected to have any significant effect on **rural areas**. It does consider the risk of indirect discrimination occurring if a rural housing organisation reserves some affordable housing (for rent or purchase) for people with local connections in the community. The code sets out the questions that the organisation should ask itself in order to avoid such discrimination.

6.3 The CRE has carried out an initial **race equality** impact assessment (REIA) of the code and found no reason to believe that it would have an adverse impact on the Commission's ability to meet its duty to promote race equality. During the formal consultation we sought views on this point but did not receive any direct responses. A number of respondents, however, pointed out that the code did not draw attention to the housing circumstances and needs of various groups such as recent arrivals, and in redrafting we have added appropriate references. The CRE will publish a complete REIA of the code.

6.4 In terms of **health**, as already pointed out, the code is expected to help reduce the overcrowding that affects household of some ethnic minority communities.

7. Distribution of effects

Transfer of income

7.1 The code should not have any direct effect on the distribution of income. Any indirect effects would be long term and very difficult to calculate.

Redistribution of opportunities

7.2 The code's recommendations should reduce racial disadvantage and inequality in housing by:

a. improving the supply of housing (including caravan pitches) suitable for ethnic minority communities;

b. making suitable housing more accessible to households from ethnic minorities;

c. reducing the negative effects of overcrowded and poor housing on ethnic minority households;

d. increasing engagement and participation by ethnic minority households and communities in drawing up and implementing policies;

e. helping to ensure that any special housing needs of ethnic minority individuals and households are provided for; and

f. increasing satisfaction rates among ethnic minorities, and contributing to better relations in the community, and more widely.

Sectors

7.3 The revised code will apply to all sectors equally in promoting racial equality and eliminating racial discrimination in housing and related functions.

Competition

7.4 The revised code applies equally to all organisations and should therefore have no effect on competition.

8. Small firms

8.1 As explained in paragraphs 5.2 and 5.4, the code would have an impact on small businesses. The main requirement imposed by the RRA on small housing organisations is to avoid discrimination and harassment and that has not changed since the existing codes were published. However, many will not have in place steps recommended in the code such as written equality policies or plans or systems for monitoring them and the CRE recognises such organisations would have difficulty adopting recommendations more applicable to larger organisations. However, the code clearly acknowledges that a different, more simplified approach to equality and monitoring will be appropriate for small firms, reducing the chance of any disproportionate burden. It will be for such firms to make good faith efforts to ensure they do not discriminate and take steps in line with code recommendations appropriate to their organisations.

8.2 In response to views expressed during the drafting of the revised code, the CRE has sought to keep the code as succinct as possible.

8.3 A planned leaflet summarising the main elements of the code for private sector organisations should assist small businesses.

8.4 The code will be downloadable from the CRE website and the CRE will seek to ensure that it is signposted from relevant organisations' websites.

8.5 The code may be expected to have a small but positive effect on small businesses that specialise in providing niche services, advice and training in race equality to housing organisations.

9. Arrangements for enforcing the code

9.1 This is a statutory code, which gives practical guidance, but does not place any legal duties on, employers. It is not an authoritative statement of the law. However, employers who do not follow the code's recommendations may find themselves facing legal proceedings for claims of discrimination or harassment under the RRA. The RRA makes them liable for acts of unlawful discrimination or harassment on racial grounds, unless they can show they have taken reasonably practicable steps to prevent such acts.

9.2 In the public sector, the CRE will make use of the code in its work on monitoring and enforcement of the general duty and the duty to publish a race equality scheme to help assess whether public authorities are meeting these duties in respect of their housing and related functions.

9.3 The CRE anticipates that the revised code will replace the current code as a best value indicator in England, and that its implementation will therefore be assessed by auditors and inspectors. In the event that the framework of performance information for local government is revised the CRE will press for the code to be incorporated.

10. Monitoring and review

10.1 The CRE will monitor and evaluate the effects of the revised code in the following ways.

a. The three codes will be available in printed form as well as on the CRE website (www.cre.gov.uk/housingcode). The number of 'hits' to the site, free downloads of the codes and sales of printed copies will all be monitored.

b. The CRE will invite organisations from the private, public and voluntary sectors to take part in a pilot project, to monitor the effects of the code on racial equality.

c. The CRE will offer training seminars to explain the code, and will monitor the way organisations are putting its recommendations into practice.

d. The CRE will approach professional and representative organisations, such as the local government associations, the National Housing Federation, the Scottish Federation of Housing Associations, the Chartered Institute of Housing, the Royal Institute of Chartered Surveyors, the National Association of Citizens Advice Bureaux and others to help advertise and promote the code.

e. The CRE will carry out research into cases of racial discrimination where the code is cited in decisions of the courts.

f. The Director of the Policy and Public Sector at the CRE will be responsible for conducting yearly reviews of the code. Details will be available on the CRE website.

11. Summary and recommendation

For reasons explained earlier the options of doing nothing or publishing non-statutory guidance are not likely to achieve the objectives. Both those options involve the serious cost of leaving housing organisations and those seeking housing and related services having to refer to an outdated code of practice. The second option, publishing non-statutory guidance, might be expected to have similar benefits to the statutory code but they would undoubtedly be limited because of a) the perception that the guidance had a lower status and b) the need to cross-refer and to reconcile that guidance with the existing statutory code. The publication of revised statutory guidance represents the option likely to be most effective. The costs of this proposal are summarised in the following table (using the lower end of the estimates in paras 5.13 and 5.17). The main benefits are also summarised, but it is our view that the benefits cannot be usefully quantified.

Costs	*One off costs*	*Annual costs*
Familiarisation	£1.05m private sector £132k public and social sector	
Developing equal opportunities policy, where necessary	£5m private sector £132k public and social sector	
Monitoring and implementing equal opportunities policy		£5 million
Total	£6.05m private sector £264k public and social sector	
Benefits		
(i) for housing organisations: ▪ clarify the law ▪ reduce costs of complaints ▪ give good practice guidance ▪ meet inspection requirements (ii) for communities ▪ greater community cohesion ▪ meeting diverse needs ▪ improving services and satisfaction ▪ reducing overcrowding and non-decent housing ▪ increasing satisfaction		

We recommend that the 1990 and 1991 statutory codes of practice in rented and non-rented housing should be revised and, with Ministers' and Parliament's approval, the revised versions published, brought into effect and made available as widely as possible.

12. Consultation

12.1 The CRE and its consultants sought the views of a wide range of national stakeholder organisations as a basis for drawing up the code and the draft reflects the many contributions received, for which the CRE is grateful.

12.2 The CRE carried out a statutory consultation for 12 weeks from May to August 2005. The consultation was primarily web-based. The consultation draft code was downloadable from the CRE website, together with a questionnaire, which could be completed and returned by email. The CRE received assistance from partner organisations to include news items on the code and set up hyperlinks to the code's address on the CRE website. The CRE published and sought comments on the partial Regulatory Impact Assessment alongside the draft code.

12.3 The CRE helped partner organisations with arrangements for seminar events to present and seek views on the draft code and also itself arranged events on a country and regional basis. We arranged meetings of the existing advisory groups and sought opportunities to present the code to organisations in particular functional/sectoral areas.

12.4 We received completed questionnaires from 79 organisations and individuals, mostly public sector: either local government (local authorities and ALMOs – 45%) or housing associations (36%). There were only a handful of private sector respondents. Overall, the response was very positive. Only 3 respondents found the code's purpose fairly or very unclear with the vast majority finding it very (61%) or fairly (35%) clear. More (57%) thought it fairly easy to understand than very easy (38%), with similar proportions finding it easy or very easy to follow. Over two in three (67%) thought the amount of detail just right and nearly the same proportion (64% said the balance between the parts was exactly right. Only a handful of respondents found the code fairly or very difficult to use, with most finding it either fairly (60%) or very (28%) easy to use. In terms of the individual chapters, most found the introduction fairly (37%) or very (59%) helpful. Chapter 2 on the legal context had the right amount of detail in the view of over four in five (82%), though not as many (40%) thought it very clear compared with fairly clear (52%). Again, the vast majority found chapter 3 on housing and good practice either very (60%) helpful or fairly (35%) helpful. Over half (52% found chapter 4 (training, monitoring and impact assessment) fairly helpful and a further two in five (40%) very helpful.

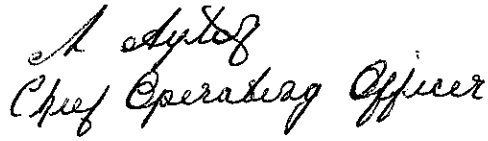
12.5 We received written commentaries on the consultation draft from over 40 organisations, as well as write-in comments and suggestions in many of the questionnaires returned. It is intended that a summary of these responses will be published on the CRE website, together with the action proposed. Although there were criticisms of particular points, respondents generally welcomed the code. We have profited from many of the comments as well as helpful suggestions made and made changes which, we believe have strengthened the code.

12.6 When we published the consultation draft of the code, we also published this Regulatory Impact Assessment (RIA) in a draft, partial form and invited comments on it as part of the questionnaire. Most respondents did not take the opportunity to offer comments on this question. We received only four responses.

One local authority observed that there would be 'large implications' for resources when the code was published. Another commented that constraints on resources might lead to tokenistic implementation, and a third local authority simply observed that the RIA was very helpful. A voluntary organisation commented that smaller organisations would find the code more difficult to implement. We did not consider these responses sufficiently substantial to require revision of the assumptions, conclusions and recommendations set out above. The CRE will, as set out in paragraph 9 above, monitor take up and use of the code following its publication and report the results.

12.6 Overall the picture emerging following the consultation is very encouraging. It is not surprising that the chapter on the legal context received a less positive response on clarity: the law is more complicated than it should be, but we judged it important that it should be set out in sufficient detail. We adopted a number of respondents' suggestions which we believe have strengthened and clarified this chapter.

12.7 In the light of views expressed during the consultation exercise, the CRE has amended the revised draft code for submission to the government.



May 2006

Annex

Housing Codes of Practice: implementation and delivery plan

Target sector(s)	Work item	Target/outcome	Milestones
General	1.Press release on publication 2. Input to CIH conference	Increased recognition levels	July 06 June 06
General	Place articles in key magazines/journals	Increased recognition/awareness	October 06
General	Produce and distribute summary leaflet on the code	Increased recognition/awareness	July/August '06 and ongoing
General	Develop learning/reference materials in partnership if resources available and evidence of demand: eg training modules, practitioner checklists etc	Increased awareness, knowledge and skills	Sept/Oct '06 and ongoing
General	Finalise and publish the draft of the housing factsheet, if possible to coincide with the publication or coming into effect	Support the case for the codes of practice with up to date information on evidence of racial discrimination and inequality in housing	October '06
General	Encourage partner organisations to place information and links to code on CRE website	Increased recognition/awareness	July – Sept '06
Local housing authorities	1. Presentation to LGA board, also WLGA and COSLA 2. Seek support from partners for dissemination of information 3. Input to seminars/workshops for leaders and practitioners arranged by partner organisations on national and regional basis	Increased organisational awareness Increased awareness among local authorities Better leadership focus on the issues Practitioner skills levels enhanced	Sept '06 Oct-Dec '06 and ongoing
Housing associations	1. Information distributed by NHF and SFHA 2. Input to partner	Increased awareness Improved policy and	July and Oct '06

	organisations (NHF, SFHA, etc) pre-arranged seminars/ workshops	practice Enhanced practitioner skills	Oct – Dec '06
Private landlords	Produce, publicise and distribute leaflet aimed at private sector	Increased awareness, improved practices	July /Oct '06
Banks and housing finance providers	1. Private sector leaflet: seek help on publicising etc 2. Co-organise breakfast meeting with CML support	Increased awareness, improved policy and practice	July/Oct '06 Oct/Nov '06
Estate agents	Private sector leaflet: seek NAEA, etc help on publicising etc Input to partner-organised events	Increased awareness, improved policy and practice	July/Oct '06 Oct/Dec '06
House builders and developers	Seek help from NHBA ,etc to disseminate information on the code, including private sector leaflet Input to partner-organised events	Increased awareness, improved policy and practice	July/Oct '06 Oct onwards
Residential letting agents	Private sector leaflet: seek ARLA help to publicise, etc. Input to partner-organised events	Increased awareness, improved policy and practice	July/Oct '06 Oct onwards
Housing advice centres	Work with Shelter and other key advice-giving organisations	Increased awareness knowledge	July/Oct '06
Tenants and residents associations	1. Seek TPAS, etc support to distribute information about the code 2. Organise inputs to conferences in partnership	Increased awareness Better race equality practices	July – Sept '06
Inspection, funding and regulatory bodies	Discuss and secure changes integrating the code with inspection and regulatory procedures	Additional challenge to inspected and regulated bodies based on the code's recommendations	July '06 – April '07
General	As part of the monitoring/enforcement work strand, undertake survey of public authorites	Evaluation of the quality and extent of uptake in the different areas covered by the code	Nov '07 – March '08

	Survey other target sectors to measure the extent of uptake of the code's recommendations		**March '08**
Local race equality groups	**Arrange ways of informing RECs and other local bodies about code recommendations and develop a promotional role**	**Increased awareness and capacity to promote use**	**July '06 and ongoing**