EXPLANATORY MEMORANDUM TO

THE RTM COMPANIES (MODEL ARTICLES) (ENGLAND) (AMENDMENT) REGULATIONS 2025

2025 No. 130

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Matthew Pennycook MP, Minister of State at the Ministry of Housing, Communities and Local Government, confirms that this Explanatory Memorandum meets the required standard.

2.2 Thomas Goose, Deputy Director for Leasehold, Commonhold, Rentcharges & HMLR Sponsorship at the Ministry of Housing, Communities and Local Government, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Bob Beresford at the Ministry of Housing, Communities and Local Government, email: leasehold.reform@communities.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Sections 73 and 74 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") provide for the establishment of Right to Manage ("RTM") companies. These are private companies limited by guarantee enabling long leaseholders in blocks of flats to take over management of their building irrespective of any fault on the part of their landlord. Leaseholders must form a company to exercise management functions. The memorandum and articles of association of these companies in England are prescribed (the latter termed below as "the Model Articles") by the RTM Companies (Model Articles) (England) Regulations 2009 (S.I. 2009/2767) ("the 2009 Regulations").

4.2 The instrument amends the 2009 Regulations to simplify the operation of a RTM company and, partly in consequence of section 49 of the Leasehold and Freehold Reform Act 2024 ("the 2024 Act"), to ensure that leaseholders can always exercise effective control of a RTM company.

4.3 First, the instrument clarifies that only landlords of a long lease within the meaning of sections 76 and 77 of the 2002 Act are entitled to membership of the RTM company.

4.4 It also changes the entitlement to a vote of a landlord under a lease who is not otherwise entitled to a vote, which previously gave a vote to a landlord who is a

member of the RTM company, to require that they must also be the freeholder of the premises.

4.5 Finally, the instrument provides that the votes of landlords under leases of the whole or any part of the premises are capped at one third of the votes exercisable by qualifying tenants. This change is necessary as a consequence of section 49 of the 2024 Act to ensure that leaseholders can always exercise effective control of a RTM company in buildings with a higher percentage of non-residential floor area.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The RTM was introduced by the 2002 Act to give long leaseholders the right to join together to take over the management of the premises containing their flats.

5.2 Section 49 of the 2024 Act increases the non-residential limit for RTM claims from 25 to 50 per cent. This allows RTM claims and companies in buildings where up to 50 per cent of the internal floor area (excluding common parts) is non-residential. The 2009 Regulations allocated votes to the non-residential parts of a mixed-use building by multiplying the votes allocated to the residential parts by a factor of A/B, where A is the total internal floor area of the non-residential parts and B is the total internal area of all the residential parts. Changes to voting rights are required to adjust for the increase in the non-residential limit from 25 to 50 per cent. If changes are not made, in premises with high levels of non-residential floor area, landlords could be allocated more votes than leaseholders in the RTM company and have effective control of the management of the building. In that scenario, the RTM would not be operating as intended. To avoid this outcome, this instrument caps landlords' votes in the RTM company at one third of those exercisable by leaseholders.

5.3 The instrument makes two other changes to the Model Articles to simplify the operation of a RTM company and ensure that leaseholders have effective control of them. It clarifies that the definition of lease is a long lease so as to avoid disputes over whether landlords of short tenancies should be members of a RTM company. It also clarifies that the entitlement to a vote of a landlord under a lease who is a member of the RTM company but who is not otherwise entitled to a vote only applies where that landlord is also the freeholder of the premises. This avoids inflating the number of votes controlled by the freeholder in circumstances where the freeholder and intermediate landlords are related entities and further ensures that leaseholders will always have effective control of the RTM company.

What was the previous policy, how is this different?

5.4 The 2009 Regulations allocated votes to the non-residential parts of mixed-use buildings by multiplying the votes allocated to the residential parts by a factor of A/B, where A is the total internal floor area of the non-residential parts and B is the total internal area of all the residential parts. Under the previous non-residential limit for RTM claims of 25 per cent, the highest possible factor for A/B was 25/75 or 1/3. Under the 2002 Act, for an RTM claim to be valid, two thirds of the residential units

in a building must be held by leaseholders, and leaseholders representing 50 per cent of the total residential units must be members of the RTM company. These qualifying criteria, combined with a 25 per cent non-residential limit, guaranteed that leaseholders would always be able to exercise a simple majority (just over 50 per cent) of the votes in the RTM company, allowing them to, for example, appoint and remove directors.

5.5 The instrument is necessary to amend the Model Articles to ensure that leaseholders continue to control RTM companies when taking into account the new policy, implemented by section 49 of the 2024 Act, of an increased non-residential limit that allows claims in buildings with up to 50 per cent non-residential floor area. The instrument does not change the vote calculation, but it imposes a one third cap on the votes that landlords can exercise in the RTM company. This ensures that leaseholders are always able to exercise an absolute majority (more than 50 per cent) in the RTM company if they vote unanimously.

5.6 The 2009 Regulations referred to "leases" but did not explicitly state that this referred only to long leases. The instrument amends the Model Articles to clarify that "lease" means a long lease within the meaning of sections 76 and 77 of the 2002 Act, with the intention of avoiding disputes and in turn simplifying the operation of a RTM company.

5.7 The 2009 Regulations entitled a landlord under a lease to a vote, where they are a member of the RTM company but not otherwise entitled to a vote. This was intended to give intermediate landlords a vote in the RTM company where they otherwise would not be entitled to one. The instrument amends the Model Articles to remove this entitlement for intermediate landlords, with only the freeholder entitled to one vote if they are not otherwise entitled to one. The policy intention is to make sure that leaseholders can more easily have effective control of the RTM company.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument makes three amendments to the 2009 Regulations to simplify the operation of a RTM company and ensure that leaseholders can always exercise effective control of a RTM company.

6.2 It amends article 1 of the Model Articles to specify that "lease" means a long lease within the meaning of sections 76 and 77 of the 2002 Act. This amendment is made to clarify the drafting of the 2009 Regulations so that voting rights are allocated only to persons party to a long lease as defined in the 2002 Act.

6.3 It amends article 33 of the Model Articles to provide that the votes of landlords under leases of the whole or any part of the premises are capped at one third of the votes exercisable by qualifying tenants. This amendment is made in consequence of section 49 of the 2024 Act, which increases the non-residential threshold that qualifies premises for the RTM. Without this change, leaseholders in RTM companies in some buildings with higher percentages of non-residential floor area could be outvoted by landlords. This would be counter to the purpose of the RTM as a mechanism to allow leaseholders to take over the management responsibility for their building from their landlord.

6.4 Finally, the instrument also amends article 33 to provide that a landlord under a lease who is a member of the RTM company but is not otherwise entitled to a vote is entitled to a vote only if they are also the freeholder of the premises. This amendment

clarifies the drafting of the 2009 Regulations which could potentially have increased the number of votes controlled by the freeholder in circumstances where the freeholder and intermediate landlords are related entities. This change helps to ensure that leaseholders can always exercise effective control of a RTM company.

Why was this approach taken to change the law?

6.5 This is the only possible approach to make the necessary changes, given that amendments to the 2009 Regulations are required.

7. Consultation

Summary of consultation outcome and methodology

7.1 The instrument implements Recommendation 25 and Option 3 for voting rights presented in the Law Commission's 2020 report *Leasehold homeownership: exercising the right to manage.*

7.2 In January 2022, the UK and Welsh governments sought views via the public consultation *Reforming the leasehold and commonhold systems in England and Wales* ("the 2022 consultation") on recommendations and an option presented by the Law Commission to reform the leasehold and commonhold systems in England and Wales. The 2022 consultation included questions on amending RTM voting rights to cap the votes that landlords can exercise in a RTM company to one third of those of qualifying tenants.

7.3 The 2022 consultation received 2,087 responses from individuals and a range of organisations including resident-led groups, as well as RTM companies, investors, managing agents, housing associations, charities, freeholders, law firms, local authorities, professional bodies, trade associations and one government body. Of the respondents, 78 per cent supported or strongly supported capping the total votes allocated to landlords in RTM companies to one third of the total votes of qualifying tenants. This rose to 83 per cent amongst leaseholders, and 86 per cent amongst leaseholders living in buildings with over 25 per cent and up to 50 per cent non-residential floorspace. Of the resident-led groups, including RTM companies, 67 per cent supported or strongly supported capping landlord's votes at one third, as did 43 per cent of all the organisations that responded. The consultation, the response and full analysis of responses are available at https://www.gov.uk/government/consultations/reforming-the-leasehold-and-commonhold-systems-in-england-and-wales.

7.4 In response to the 2022 consultation, the Welsh Government accepted the Law Commission's option to cap total votes exercisable by landlords under leases in RTM companies such that they do not exceed one third of the votes exercisable by qualifying tenants. Separate regulations apply to Welsh RTM companies (the RTM Companies (Model Articles) (Wales) Regulations 2011 (S.I. 2011/2680 (W. 286)). The Welsh Government are making equivalent amendments to the Welsh model articles of association for RTM companies to those made in this instrument.

8. Applicable Guidance

8.1 Specific guidance relating to this instrument has not been produced but the 'How to Lease' guide published on https://www.gov.uk/government/publications/how-to-lease/how-to-lease has been updated to reflect the amended Model Articles. The Leasehold Advisory Service ("LEASE") has also updated its guidance page on the RTM at https://www.lease-advice.org/advice-guide/right-manage/ to reflect the

amended Model Articles. LEASE is a specialist body funded by the Ministry of Housing, Communities and Local Government to give free initial advice on a wide range of residential leasehold issues.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because a low level of impact per business is anticipated. Landlords and leaseholders will need to familiarise themselves with the Model Articles as amended, but we do not anticipate this resulting in significant costs. Some landlords may find their voting rights in existing RTM companies removed or reduced. However, we do not anticipate this resulting in a significant business impact on landlords, because landlords remain responsible for the management of non-qualifying flats and any non-residential parts of the building following a successful RTM claim.

9.2 A full impact assessment has been published in relation to the 2024 Act, including section 49, and copies can be obtained at https://publications.parliament.uk/pa/bills/cbill/58-04/0013/LeaseholdandFreeholdReformBillImpactAssessment.pdf or from the Ministry of Housing, Communities and Local Government.

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies because, while RTM companies will need to familiarise themselves with the limited amendments to the Model Articles, we do not anticipate this incurring significant cost.

9.4 The legislation does impact small or micro businesses (employing up to 50 people).

9.5 No additional measures are required to minimise the impact of the requirements on small or micro businesses. As with other businesses, small and micro businesses will need to familiarise themselves with the limited amendments to Model Articles. We do not anticipate this resulting in significant cost or disproportionately affecting such businesses.

9.6 There is no, or no significant, impact on the public sector because premises of which the immediate landlord is a local housing authority are excluded from the RTM. They will need to familiarise themselves with the Model Articles as amended, but we do not anticipate this incurring significant cost.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that no specific review of changes made by this instrument is anticipated since they make limited amendments to the Model Articles. The Ministry of Housing, Communities and Local Government is committed to robust monitoring and evaluation of the 2024 Act, building on the Department's existing long-term housing sector monitoring work. We plan to conduct a process, impact, and value for money evaluation in line with the Department's Evaluation Strategy. We will remain sensitive to RTM issues more generally which will be monitored through correspondence and contact with stakeholders in the leasehold sector.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Matthew Pennycook has made the following statement:

"It would be disproportionate to include a statutory review clause in this legislation when taking into account the economic impact of the regulatory provision in this instrument."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").