

EXPLANATORY MEMORANDUM TO
THE APPROVAL OF CODE OF MANAGEMENT PRACTICE (PRIVATE
RETIREMENT HOUSING) (ENGLAND) ORDER 2005

2005 No. 3307

1. This explanatory memorandum has been prepared by the Office of the Deputy Prime Minister and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Order gives approval, with the exception of appendices 4 to 6, to the Association of Retirement Housing Managers' (ARHM) Code of Practice on the management of private retirement homes.

2.2 The Code sets out what is regarded as best practice for management in the residential private retirement sector, as well as highlighting any legislative requirements that managers need to comply with. A copy of the Code is attached.

2.3 The Order withdraws approval for a previous code of practice on the management of private retirement homes, given by SI 1995/3149 and for a modification to that code given by SI 1998/106.

2.3 Although failure to comply with any provision of an approved code of practice does not of itself render a person liable to proceedings, any such code is admissible as evidence and any provision of the code relevant to the matter before the court or tribunal shall be taken into account when determining that matter.

2.4 The Order provides that the code of practice approved by the Order shall not be admissible as evidence under the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) in proceedings relating to any alleged act or omission occurring before the Order comes into force.

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

3.1 None

4. Legislative Background

4.1 Codes of Practice approved under section 87 of the 1993 Act assist courts and tribunals in determining the reasonableness of a landlords or managers action in relation to their tenants or residents. Currently there are 3 codes of practice in operation which have been approved under this section –

- (a) The Association of Retirement Housing Managers' Code of Practice for the Management of Leasehold Sheltered Housing;
- (b) The 'Rent Only' Residential Management Code; and

(c) The 'Service Charge' Residential Management Code.

4.2 In 1996 the Association of Retirement Housing Managers published a code of practice on the management of private retirement housing. The Code had been approved under section 87 of the 1993 Act by the Secretary of State by SI 1995/3149. The Code was modified in 1998 and approval was given for that modification by the Secretary of State under section 87 by SI 1998/106.

4.3 Changes brought about by the Commonhold and Leasehold Reform Act 2002 mean that the current approved code of practice needs to be updated to reflect those changes, see paragraph 7.1.

5. Extent

5.1 This instrument applies in relation to the management of residential properties in England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Policy is to promote and improve good management practice in the private retirement housing sector by ensuring managers have access to an up to date code of practice approved by the First Secretary of State containing best practice and legislative requirements. Measures introduced by the Commonhold and Leasehold Reform Act 2002 to improve the rights of leaseholders, have resulted in the need to revise the existing code of management practice in relation to private retirement housing published by the ARHM. The measures introduced by the 2002 Act include improvements to leaseholders' rights to be consulted about works to be carried out to their building, improved protection against forfeiture and for the collection of ground rent, and the right to take over the management of the property through a Right to Manage Company.

7.2 The code itself was prepared by the ARHM, who represent 59 organisations managing approximately 94,000 properties in the private retirement sector. The ARHM consulted and sought agreement on the content of the code from its own members and 20 relevant organisations that will be affected by it, before submitting an agreed version for approval. Updating the code is important to all those in the private retirement sector, managers and residents alike, not least because it can be used as evidence in court or tribunal proceedings.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no impact on the public sector.

9. Contact

Ian Fuell at the Office of The Deputy Prime Minister, Leasehold Reform & Park Homes Branch (Tel: 020 7944 3463 or E-mail ian.fuell@odpm.gsi.gov.uk) can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT (RIA)

Title of Proposal

1. Association of Retirement Housing Managers (ARHM) - Code of Practice for Private Retirement Housing

Purpose and Intended Effect of Measure

Objective

2. To update the existing code of practice approved under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993, ensuring it contains up-to-date information.

Background

3. The code of practice published by the ARHM was first approved and published in 1996, and amended in 1998. It sets out what is regarded as best practice for management in the residential private retirement sector, as well as highlighting any legislative requirements that managers need to comply with. Changes brought about by the Commonhold and Leasehold Reform Act 2002 has meant that the code needs to be updated to reflect those changes.

Rationale for government intervention

4. The code itself is not a specific government measure or initiative. However, having originally approved a management code of practice that can be used in evidence at a court or tribunal, and because of the measures introduced by the Commonhold and Leasehold Reform Act 2002, there is a need to revise the code so that references to any legislative requirements are up to date and to ensure that the best practice set out in the code is still acceptable.

Consultation

Within government

5. This is not a code of practice published by government, and it is not actually introducing or implementing any government measure or regulation. Apart from ensuring with ODPM colleagues that any references to the registered social landlords sector are correct, no consultation within government has taken place.

Public consultation

6. See 5 above. No formal public consultation has taken place. However, the ARHM who own and publish the code, has consulted its own members and 20 relevant organisations as appropriate on any revisions to the code, before submitting it for approval.

Options

7. 2 options have been identified:

A) Do nothing

B) Revise the Code

Option A - Do nothing

8. Doing nothing would leave in place a code of practice approved by Ministers that will be out of date when referring to legislative requirements and one that will also not have been reviewed in respect of best practice. This will prove unhelpful to managers in the private retirement sector belonging to ARHM who are expected to comply with the code, and unhelpful to residents in the sector who choose to use the code in evidence at court or tribunal proceedings and as a reference for assessing the quality of management services.

Option B - Revise the code (the preferred option)

9. This is really the only viable option in this case. It will ensure that the code provides information that is as up to date as possible in respect of legislative requirements, and one that has been reviewed in respect of best practice.

Alternative options considered

10. Remove approval for the code. This is not seen as a viable option. Deciding to opt for a management code of practice approved by the First Secretary of State results in the need for less regulation in the sector, which may otherwise be required if approval is removed.

Costs and Benefits

Sectors and groups affected

11. The following sectors will be affected:

Managers in the private residential retirement sector (belonging to ARHM).
Residents living in the retirement sector.
Leasehold Valuation Tribunals (LVTs).

Race equality assessment

12. While the revised code itself is not a result of any specific government policy being made at this time, the code sets out best practice and legislative requirements for the residential private retirement sector. As such we believe that all groups affected by the revised code will be affected equally.

Health impact assessment

13. The updating of the code will have a positive effect on the managers required to comply with the code, and the residents (usually elderly) whose property is so managed. By ensuring an up to date code is available it may help reduce any potential stress associated with establishing current best practice in the sector, and what legal requirements need to be complied with.

Rural considerations

14. The revision of the code will have no specific impact on rural areas compared with other areas.

Breakdown of costs and benefits

Option A - Do nothing

15. Economic Benefits - None

Economic costs - Would leave in place an out of date code resulting in poor quality and incorrect information being available which managers and residents are likely to have to pay for to obtain.

16. Environmental Benefits - None

Environmental costs - None

17. Social benefits - None

Social costs - Doing nothing would create a disadvantage to managers and residents in the sector, by not having access to up to date information, leading to an unclear position for both parties. It would also create a disadvantage to LVTs when asked to determine a matter where the code is used in evidence, in not having an up to date code to refer to.

Option B - Revise the code

18. Economic Benefits - Revising the code would (continue to) ensure that the quality of information available about best practice for the sector as well as statutory requirements is up to date. Members of the ARHM are the majority of the organisations in this sector of property management and while the publication of the revised code itself should not change the way manager s work (they should already be complying with legislation and best practice), because the majority of the managers in this sector belong to the ARHM, it is likely to have a strong influence on the sector.

Economic costs - A revised code will lead to managers having to purchase the code to ensure they are able comply with its requirements (compliance is a requirement of membership of the ARHM). The ARHM requires its members to purchase an up to date copy of the code to be put as a reference document on each scheme. There would also be a cost to those residents and residents associations wishing to purchase their own copies of the code in order to be aware of what is required of the manager by way of best practice and other statutory requirements (although free advice on residential leasehold law is available from the Leasehold Advisory Service).

19. There are some 59 organisations represented by the ARHM managing approximately 94,000 retirement properties. It is not known exactly how many retirement schemes are managed by these organisations, but assuming that there are in the region of 2,000 schemes, the total cost to these organisations of obtaining the revised code at no more than £5 per copy is estimated at £10,000 (1 copy per scheme).

20. The estimated one off cost to an individual resident or residents association in such a scheme in obtaining a copy of the code would be no more than £5.

21. Environmental benefits - None

Environmental costs - None

22. Social benefits - A revised code will provide comfort to residents in the private retirement sector in knowing that managers of their property have to comply with an up to date code of practice. It will also provide more and better clarity to managers in what they are meant to be complying with as members of the ARHM, thus leading to a better service being provided.

Social costs - None

Alternative Option - Remove approval for code

23. Economic benefits - None

Economic costs - May impact on the quality of services provided to residents by managers because the code could not be used in evidence at a court or tribunal - thus reducing its effectiveness.

24. Environmental benefits - None
Environmental costs - None

25. Social benefits - None

Social costs - Removing approval for the code would remove any comfort currently provided to residents in the private retirement sector that managers of their property have to comply with an up to date code of practice approved by government, which they can use in evidence at a court or tribunal as necessary.

Small Firms' Impact Test (SFIT)

26. Some of the managers in the private retirement sector would be regarded as small businesses. While revising the code will affect these managers because they will be required to ensure that they are au-fait with current best practice requirements (they should already be au-fait with any legislative requirements), we do not feel that it will have a significant impact on these managers. This is because they are already required to comply with best practice set out in the existing code, and with any legislative requirements. Indeed, it will be beneficial ensuring that they have clear and up to date information to hand to enable them to comply properly.

Competition Assessment

27. Because there are no government measures or initiatives being introduced by revising the code, we believe that there are no competition concerns for the market. The market structure will not change as a result; costs will not be significantly different between firms as a result of a new code; and new firms entering the market would not be prevented from entering the market, be treated differently or incur higher costs as a result of the revised code.

Enforcement, Sanctions and Monitoring

Enforcement

28. Because it is the ARHM's code of practice the same method of redress currently operated will apply, i.e. the ARHM will monitor and act upon any complaints about non-compliance with the code that they receive, and LVTs will refer to the code when used in evidence before them. The ARHM also carries out each year a series of compliance checks on a sample of its members.
29. In addition, the code requires all members to have in place speedy and responsive procedures for dealing with residents' complaints, including use of mediation and access to independent redress.

Sanctions

30. Failure to comply with the code approved by the Secretary of State may lead to management responsibilities being taken away and given to another manager, subject to an application to and determination by a leasehold valuation tribunal. Membership may also be revoked by the ARHM where the failure (or continued failure) is deemed sufficiently serious enough.

Monitoring and review

31. The content of the code is monitored and kept under review by the ARHM, with ongoing assistance from the Office of the Deputy Prime Minister in respect of any changes arising from legislation.

Implementation and Delivery Plan

32. The revised code will come into effect 21 days after the making of the Order approving the code, and will be available from the ARHM. An announcement will be made once the code has been approved by the Minister and the Order has been made.

Post-Implementation Review

33. As in paragraph 30 above, the code will be monitored and kept under review by the ARHM on a regular basis, with ongoing assistance from the Office of the Deputy Prime Minister in respect of any changes arising from legislation.

Recommendation

34. Option B - revising the code is recommended because failure to do so would leave an approved code of practice in place that is out of date and potentially misleading, and removing approval for the code altogether would have a detrimental effect on the sector and may lead to the need for regulatory intervention.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ...Kay Andrews.....

Date 29th November 2005

Baroness Andrews OBE

Parliamentary Under Secretary of State

Office of the Deputy Prime Minister

Contact point for enquiries and comments:

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