

## **EXPLANATORY MEMORANDUM TO**

### **THE RTM COMPANIES (MODEL ARTICLES) (ENGLAND) REGULATIONS 2009**

**2009 No. 2767**

1. This explanatory memorandum has been prepared by Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

#### **2. Purpose of the instrument**

2.1 This instrument revokes and replaces, subject to transitional provisions, the RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (SI 2003/2120). This is because the Companies Act 2006 introduced changes to the constitutional documents of companies; the replacement SI is necessary to reflect those changes.

2.2 The instrument is based on the Companies (Model Articles) Regulations 2008 (SI 2008/3229) made under section 19 of the Companies Act 2006 (“the 2006 Act”). Specific Right to Manage (“RTM”) provisions have been added where necessary. These relate to aspects of membership, insurance and inspection of documents focusing on the needs of RTM companies.

2.3 The introduction of this instrument has been subject to a delay. It was planned to introduce the 2009 Regulations on 1 October 2009. After the close of the consultation further consideration resulted in the decision to extend the application of the regulations to existing RTM companies. This led to further work which has delayed making by around four weeks.

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

3.1 None

#### **4. Legislative Context**

4.1 The Commonhold and Leasehold Reform Act 2002 s 73 and s 74 provided for the establishment of RTM companies. These are private companies limited by guarantee enabling long leaseholders in blocks of flats to take over the management of their building irrespective of any fault on the part of their landlord. Leaseholders must form a company to exercise the management functions.

4.2 The 2006 Act introduced changes to the required constitutional documents of companies. It abolished the requirement for companies to have a separate memorandum of association and for companies to specify their objects. Objects formerly set out the purpose for which the company was created. It has been decided to keep objects for RTM companies as they should be restricted to RTM functions only.

4.3 All RTM companies are private companies limited by guarantee. Their memorandum and articles are currently prescribed by the RTM Companies (Memorandum and Articles of Association) (England) Regulations 2003 (SI 2003/2120.) The new regulations revoke this instrument, subject to transitional provisions which enable RTM companies incorporated before 9 November 2009 to use the old articles until 30 September 2010. Such companies are free to adopt the new articles before this date if they choose.

#### **5. Territorial Extent and Application**

5.1 This instrument applies to England.

## 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

- *What is being done and why*

7.1 The Right to Manage was introduced by the Commonhold and Leasehold Reform Act 2002 to give long leaseholders the right to join together to take over the management of the premises containing their flats. The right is exercisable through a RTM company with prescribed memorandum and articles of association based upon the former Companies Act model for companies limited by guarantee. Whilst the memorandum of a company set out its objects or purpose and the articles regulated its internal affairs.

7.2 The 2006 Act introduced a major reform of company law in order to make it more focused on the needs of smaller companies including replacing the memorandum and articles of association with a single document (the articles). New sets of model articles reflecting these reforms have also been introduced which includes one for private companies limited by guarantee. These provisions come fully into effect on 1 October 2009 for companies incorporated on or after that date.

7.3 An updated version of the prescribed constitutional documents for RTM companies in England is being introduced on 9 November 2009; based upon the model articles being introduced under the 2006 Act for private companies limited by guarantee. This will ensure that the existing consistency is maintained with the requirements in this area for companies in general. At the same time a small additional amendment is being introduced to the specific voting arrangements that apply to RTM companies so that they operate more consistently and fairly.

7.4 Both an initial consultation exercise on the proposal and a follow up exercise were undertaken by the Department involving all those who were known to be interested in leasehold matters.

- *Consolidation*

7.5 No consolidation is needed as a result of this instrument.

## 8. Consultation outcome

8.1 A consultation exercise was undertaken on these proposals and whilst the period for responses was less than the full 12 weeks, the consultation paper was sent to over 1300 stakeholders who were known to have an interest in this area. There were 15 responses to the paper with a number of them containing comments upon other topics including wider leasehold issues which were not within the subject matter of the consultation. There was general agreement to the proposals in the paper although a number of respondents put forward suggestions for alternative or additional provisions to be included in the new prescribed articles for RTM companies.

8.2 Following consideration of the responses to the paper it was decided that some amendments should be made to the original proposals. The objects now expressly refer to a power to insure for the full cost of rebuilding and reinstating the Premises whilst the existing power to

provide pensions and related benefits has been removed. It was decided to retain the existing articles dealing with applications for membership and the rights of members to inspect and copy books and records. A summary of responses to the consultation exercise is being made available on the Department's website.

8.3 There was some division of opinion in the consultation responses upon whether the amendments should apply only to the new RTM companies. Following further consideration of the legal position it was decided that the new articles would need to be prescribed for all RTM companies, including those incorporated before 9 November 2009 although these particular companies should be given until 30 September 2010 to become familiar with the new prescribed articles.

## **9. Guidance**

9.1 The Department has produced publicity alerting readers to the fact that these regulations will not now come into effect on 1 October 2009, and setting out the effect of the changes when they are commenced. This publicity will be published on the websites of both the Department and Leasehold Advisory Service (LEASE) and brought to the attention of bodies whose members are known to have an interest or involvement in the right to manage. LEASE is a specialist body funded by the Department to give free initial advice on a wide range of residential leasehold issues.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible since these provisions will merely amend the constitutional documents that are prescribed for RTM companies.

10.2 The impact on the public sector is similarly negligible and premises where the immediate landlord is a local housing authority are excluded from the right to manage.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business since most if not all RTM companies can be classified as such.

11.2 No additional measures are required to minimise the impact of the requirements on firms employing up to 20 people.

11.3 These prescribed articles are based upon model articles in the 2006 Act which are designed to be more focused on the needs of smaller companies. Existing RTM Companies will need to update their articles at the end of the transitional period and familiarise themselves with the new articles. Guidance will be published to assist them on these points.

## **12. Monitoring & review**

12.1 No specific review of this instrument is anticipated since it is aimed at maintaining consistency between particular requirements for RTM companies and those for relevant companies under company law following amendments made by the 2006 Act. The Department will remain sensitive to RTM issues more generally which will be monitored through correspondence and contact from stakeholders in the leasehold sector including LEASE.

## **13. Contact**

Chris Humphreys at the Department for Communities and Local Government (Tel: 030 344 43703 or email: [chris.humphreys@communities.gsi.gov.uk](mailto:chris.humphreys@communities.gsi.gov.uk)) can answer any queries regarding the instrument.

Department for Communities and Local Government

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Communities and Local Government</b>	<b>Title:</b> <b>Impact Assessment of proposals for new RTM company articles</b>	
<b>Stage:</b> Final	<b>Version:</b> 1 <sup>st</sup> Draft	<b>Date:</b> 30 September 2009
<b>Related Publications:</b> Consultation on Right to Manage Company Articles (June 2009). Product code 09 PRL 05997. ISBN: 978 14098 1585 3 and summary of responses Product code 09PRL0607L		

**Available to view or download at:**

<http://www.communities.gov.uk>

**Contact for enquiries:** Chris Humphreys

**Telephone:** 020 7944 3552

**What is the problem under consideration? Why is government intervention necessary?**

The main reason for these changes is to update the style and content of the prescribed constitutional documents for RTM companies to ensure that they are simplified and more appropriate to the needs of these companies. This follows changes made by the Companies Act 2006 (the 2006 Act) and will also ensure that they remain consistent with wider company law requirements. The proposals are primarily aimed at long leaseholders and landlords of flats and professionals in the leasehold field.

**What are the policy objectives and the intended effects?**

To ensure that the constitutional documents for RTM Companies are more appropriate (simplified and focussed) to the needs of these smaller companies by conforming with new style Model Articles under the 2006 Companies Act.

**What policy options have been considered? Please justify any preferred option.**

- 1. Do nothing (i.e. retain and rely on continued use of existing style of articles without amendment or changes).**
- 2. Prescribe updated articles for all RTM companies whilst providing transitional provisions for existing companies.**

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The policy will be monitored through contact with and feedback from key stakeholders and others in the leasehold field.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Ian Austin

.....Date: 13<sup>th</sup> October 2009

## Summary: Analysis & Evidence

<b>Policy Option: 2</b>	<b>Description: Introduce amended prescribed articles of association for all RTM companies on 1 October 2009 with transitional provisions</b>
-------------------------	---

<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups'		
	<b>One-off</b> (Transition) <b>Yrs</b>			
	£			
	<b>Average Annual Cost</b> (excluding one-off)			
£		<b>Total Cost (PV)</b>	£	
<p>Other <b>key non-monetised costs</b> by 'main affected groups' Existing RTM companies will need to become familiar with the simpler, new style constitutional document although any change in practice that results is likely to be minor and given the voluntary nature of these activities such costs are not easily quantifiable.</p>				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups'		
	<b>One-off</b> <b>Yrs</b>			
	£			
	<b>Average Annual Benefit</b> (excluding one-off)			
£		<b>Total Benefit (PV)</b>	£	
<p>Other <b>key non-monetised benefits</b> by 'main affected groups' All RTM companies will benefit from having prescribed constitutional documents that were more focussed on the needs of small companies. Simpler company requirements will mean less administrative burdens for existing RTM companies. New RTM Companies will benefit from the simpler arrangements.</p>				

**Key Assumptions/Sensitivities/Risks** It is not envisaged that there are any significant risks.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	(insert when known)
Which organisation(s) will enforce the policy?	RTM Companies
What is the total annual cost of enforcement for these organisations?	£ Nil
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro      Small      Medium      Large
Are any of these organisations exempt?	No      No      N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of    £	Decrease of    £	<b>Net Impact</b> £

Key:    Annual costs and benefits:    (Net) Present

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Introduction

1. This Impact Assessment looks at the possible costs of amending the constitutional documents that are prescribed for both existing and new RTM companies.

### Background

2. All companies are required to adopt certain constitutional documents when they incorporate and these have set out the purpose of the company (memorandum of association) and the internal rules governing how it is run (articles of association). Successive Companies Acts have provided standardised or model forms of memorandum and articles of association for particular types of company. Such model articles can be adopted by companies and can also provide useful guidance to both new and existing companies as they are periodically updated to reflect changes to legislation.
3. The Right to Manage was introduced by the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) and gave long leaseholders of flats the right to join together to take over the management of the premises containing their flats. The 2002 Act provided for the right to be exercisable by a RTM company and for regulations to be made about the content and form of their memorandum and articles of association. The Right to Manage came into effect on 30<sup>th</sup> September 2003 along with regulations setting out the form and content of the memorandum and articles of association for RTM companies based upon existing company law requirements.
4. The Companies Act 2006 (the 2006 Act) introduced a major reform of company law in order to make it more focussed on the needs of smaller companies. This reform included replacing the memorandum and articles of association of new companies with a single document (the articles) with the objects of the company being unrestricted if there are no express objects in the company's articles. New sets of Model Articles reflecting these reforms have also been introduced through regulations<sup>1</sup> including one for private companies limited by guarantee<sup>2</sup> such as RTM companies. Information on these wider reforms of company law is available on the website of the Department for Business Innovation & Skills. See following link <http://www.berr.gov.uk/files/file53041.pdf>
5. A Consultation Paper was issued in June 2009 seeking views on changes that Communities and Local Government (CLG) are proposing to introduce to the constitutional documents of RTM companies from 1 October 2009. It was also proposed to include an additional amendment to the provisions in the existing prescribed articles dealing with the votes of members in order to correct what was seen as an anomaly.
6. Although the period for responses was less than the full 12 weeks to allow implementation of the amended RTM articles as quickly as possible, the consultation paper was sent to over 1300 stakeholders who were known to have an interest in this area. There was general agreement to the proposals in the paper from the 15

---

<sup>1</sup> The Companies (Model Articles) Regulations 2008 (the 2008 Regulations).

<sup>2</sup> Schedule 2 of the 2008 Regulations.

respondents although a number put forward suggestions for alternative or additional provisions to be included in the new prescribed articles for RTM companies. There was some division of opinion upon whether the amendments should apply only to new RTM companies. Following consideration of this and further legal advice it was decided that the amended articles would need to be prescribed for all RTM companies, including those incorporated before the proposed commencement date although these particular companies should be given until 30 September 2010 to become familiar with the new prescribed articles.

7. All those who responded to the consultation paper were asked whether they would have changed their response had it been proposed in the paper to prescribe the updated articles for existing as well as new RTM companies. The responses received confirmed that we could go ahead with commencing the regulations and then applying them to existing companies.
8. A small number of additional amendments have been made to the proposed prescribed articles included in the June 2009 Consultation Paper following consideration of the responses to that paper. The objects will now expressly refer to a power to insure for the full cost of rebuilding and reinstating the premises, whilst the existing power to provide pensions and related benefits has been removed. It was decided to retain the existing articles dealing with applications for membership and the rights of members to inspect and copy books and records which are regarded as appropriate for these types of companies and would otherwise have been removed.

## **Policy Objectives**

9. There is a need to update the prescribed constitutional documents for RTM companies to make them more appropriate to the needs of smaller companies and following changes made by the 2006 Companies Act. The constitutional documents will be shorter and less prescriptive than the previous ones in a number of areas such as the conduct of meetings.

## **Options**

10. The available options would be to either leave the existing prescribed memorandum and articles of association in place for all RTM companies or alternatively to replace this with an amended, simplified form of articles of association for those companies. However, leaving the existing prescribed memorandum and articles of association in place and not ensuring that the constitutional documents for RTM Companies are more appropriate to the needs of these smaller companies will mean that both the existing, and new RTM companies will not be able to take advantage of the benefits available.

## **Costs**

11. Any costs would be those associated with the existing approximately 1800 RTM companies registered at Companies House having to become familiar with an amended and simpler set of constitutional documents, albeit documents that are more geared towards the needs of smaller companies such as RTM companies. Although such companies will also have until 30 September 2010 to familiarise themselves with the new constitutional documents. Any such costs are difficult to quantify given the wide variety of RTM companies, the voluntary nature of these activities and that many may continue with existing procedures. Discussions with the Department for Business Innovations and Skills (BIS) which is responsible for the changes to company law indicate that they are content that in this instance any impact would be minimal.



12. It is also possible that while the documents are simpler than the existing versions, some RTM Companies may choose of their own volition to seek advice. Free initial advice is available from the Leasehold Advisory Service.
13. However, there are no costs for new RTM Companies incorporating after the regulations come into effect.

## **Benefits**

14. Existing RTM companies will benefit from prescribed articles of association that are simpler and more geared towards the needs of smaller companies following the amendments made by the 2006 Act.
15. RTM Companies incorporated after implementation will benefit from being able to adopt the simpler constitutional documents rather than those existing before that date.
16. This should lead to a clearer understanding for RTM Companies in what their objectives are and how the company is to be run.
17. Key benefits of the changes are:
- It will be clearer how RTM Companies should operate.
  - Clearer/more specific information about what is regarded as suitable insurance provisions.
  - Fewer, simpler regulations for Directors to comply with.
  - Modern easier drafting style making it easier to understand.
  - Less burdensome notice requirements when arranging director's meetings.
  - No need for a fixed notice period when arranging a general meeting and ability to rely on electronic communication. Less formal and designed to suit smaller companies.
  - Fairer allocation of voting rights where a qualifying tenant is not a member of the RTM Company.
  - Administration savings more generally.

## **Summary of cost/benefits analysis**

18. Any costs that there may be upon the members and directors of existing RTM companies in familiarising themselves with the content of the new articles are not easily quantifiable given the voluntary nature of the activities of those involved. However these costs are likely to be of a small scale and are outweighed by the benefits to all RTM companies in having updated articles that are more focussed on the needs of smaller companies.

## **Implementation arrangements**

19. The amended form of articles of association will be prescribed for all RTM companies subject to transitional arrangements which will allow those companies incorporated before this date a period of time to elect to adopt them. This period will run until 30 September 2010.

## **Enforcement arrangements**

20. The new prescribed articles of association will apply to RTM companies in the same way as the existing prescribed memorandum and articles of association, by setting out the objects of the company and the internal rules that govern the operation of those companies. There are therefore no specific enforcement arrangements required.

## **Post Implementation Review**

21. The operation of the new prescribed articles of association will be monitored through contact with and feedback from key stakeholders and others in the leasehold field.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

## Annexes

## Specific Impact Tests

### **Competition Assessment**

We have assessed the impact of the policy against the Office of Fair Trading checklist criteria and believe that there is unlikely to be a negative competition impact as a result. The provisions will apply to all RTM companies. The nature of RTM Companies (i.e. companies formed by leaseholders to take over the management of the building containing their own flats from their landlord) is such that they are individual to the block concerned, and are not in competition with any other company. No competition issues therefore arise.

### **Small Firms Impact Test**

RTM companies would not be considered to be small businesses as they do not trade on a commercial basis. They are formed by leaseholders to take over the management of the building containing their own flats and so are not established as a commercial entity to compete for business with other firms.

### **Legal Aid**

There are no anticipated legal aid impacts.

### **Sustainable Development**

Neither of the options identified will have any impact upon sustainable development issues. The preferred option recognises the need for updating and simplifying the constitutional documents of RTM companies following the changes introduced by the Companies Act 2006 to make them more appropriate to the needs of smaller companies.

### **Carbon Assessment**

Neither of the options will have any discernable impact on the sectors or key sources of greenhouse gas emissions such as energy, industrial processes, solvents and other product use, agriculture, land-use change and forestry and waste. We do not therefore believe that there is a need to undertake a full carbon impact assessment.

### **Other Environment**

Neither of the options will have a serious impact on other environmental issues identified in the environmental impact guidance published by DEFRA.

### **Health Impact Assessment**

Neither of the options will have a foreseeable impact upon the health of those affected.

### **Race Equality**

Where racial groups are affected by the options they will be affected equally.

### **Disability Equality**

Neither of the options will have any specific impact in relation to disability equality.

### **Gender Equality**

Both of the options will apply equally to those women and men affected.

**Human Rights**

Neither of the options will engage or affect anyone's Convention rights.

**Rural Proofing**

Neither of the options will have a different or disadvantageous effect on anyone in rural areas. They will apply to everyone in exactly the same way including those in urban areas where most RTM companies are likely to operate.