

**EXPLANATORY MEMORANDUM TO**  
**THE APPROVAL OF CODE OF MANAGEMENT PRACTICE**  
**(RESIDENTIAL MANAGEMENT) (SERVICE CHARGES) (ENGLAND)**  
**ORDER 2009**

**2009 No. 512**

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. **Purpose of the instrument**
  - 2.1 By this Order the Secretary of State gives approval to a code of practice prepared by the Royal Institution of Chartered Surveyors (RICS) on the management of residential properties in respect of which the tenants pay service charges.
  - 2.2 The code of practice sets out what is regarded as best practice for management in the private residential leasehold sector, as well as highlighting any legislative requirements that managers need to comply with. A copy of the code is attached to this Explanatory Memorandum.
  - 2.3 The Order withdraws approval for a previous code of practice on the management of service charges for residential properties which was approved by a previous Order (the Approval of Codes of Management Practice (Residential Property) Order 1996, SI 1996/2839), in so far as that code relates to properties managed in England.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
  
4. **Legislative Context**
  - 4.1 By section 87(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”), if the Secretary of State considers it appropriate to do so, the Secretary of State may by order approve any code of practice or a part of any such code, which appears to the Secretary of State to be designed to promote desirable practices in relation to any matter or matters directly or indirectly concerned with the management of residential property by relevant persons. By section 87(6) of the Act, such code of practice may make provision in respect of relevant persons who are under an obligation to discharge any function in connection with that matter as well as in respect of relevant persons who are not under such an obligation. In particular, under section 87(6)(b) a code approved under this section may make provision with

respect to the administration of trusts in respect of amounts paid by tenants by way of service charges.

4.2 Section 87(8) defines "relevant person" as being any landlord of residential property or any person who discharges management functions in respect of such property, and for this purpose "management functions" includes functions with respect to the provision of services or the repair, maintenance, improvement or insurance of such property. (The word "improvement" was added to this list by section 150 of and Schedule 9, paragraph 11(a) to the Commonhold and Leasehold Reform Act 2002).

4.3 "Residential property" is defined in section 87(8)(b) of the Act and "Service charge" is defined in section 87(8)(c) of the Act .

4.4 The code of practice must be submitted to the Secretary of State for approval, and the power to approve a code includes a power to withdraw the approval for any such code, and article 3 of this Order exercises this power as described in paragraph 2.3.

4.5 By section 87(2) of the Act the Secretary of State shall not approve any such code unless satisfied that arrangements have been made for the text of the code to be published in such manner the Secretary of State considers appropriate for bringing the provisions of the code to the notice of those likely to be affected by them).

4.6 Section 87(7) of the Act provides that a failure on the part of any person to comply with any provision of a code of practice for the time being approved under this section shall not of itself render him liable to any proceedings; but in any proceedings before a court or tribunal any code of practice approved under this section shall be admissible in evidence; and any provision of any such code which appears to the court or tribunal to be relevant to any question arising in the proceedings shall be taken into account in determining that question. Article 4 of this Order makes saving provision so that the code of practice for which approval is withdrawn under article 3 will remain admissible in court or tribunal proceedings in relation to acts or omissions alleged to have occurred before the Order comes into force.

4.7 The power under this section has previously been exercised in England to make the following Orders:

Approval of Codes of Management Practice (Residential Property) Order 1996, SI 1996/2839.

Approval of Codes of Management Practice (Residential Property) (England) Order 2004, SI 2004/1802.

Approval of Code of Management Practice (Private Retirement Housing) (England) Order 2005, SI 2005/3307.

4.8 This Order approves a new code of practice (art. 2), and withdraws the approval of "Service Charge Residential Management Code" (ISBN 0 85406

643 8) for which approval was given by the Approval of Codes Management Practice (Residential Property) Order 1996 (art. 3).

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

5.1 This instrument applies to England only.

## **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**

- *What is being done and why*

7.1 The policy objective is to promote and improve management practices in the private residential leasehold housing sector by ensuring managers have access to an up to date code of practice containing best practice and reminding managers of legislative requirements. There are approximately 1.5 million properties to which the code would apply. Measures introduced by the Commonhold and Leasehold Reform Act 2002 to improve the rights of leaseholders have resulted in the need to revise the earlier code of practice in relation to the management of service charges. The measures introduced by the 2002 Act include improvements to tenants' rights to be consulted about works to be carried out to their building, improved protection against forfeiture, notices for the collection of ground rent, and the right of tenants to take over the management of their property through a "RTM Company" (Right to Manage Company).

There is considerable interest and concern from those stakeholders required to refer to and use the earlier code that it is not now fit for purpose. These include landlords, managers, leaseholders, and Leasehold Valuation Tribunals.

Updating the code is therefore important to all those in the private leasehold sector, managers and service charge payers alike, not least because it explains the statutory requirements and is admissible in evidence in court or tribunal proceedings.

- *Consolidation*

7.2 Consolidation is not considered appropriate.

## **8. Consultation outcome**

8.1 RICS' members manage approximately 750,000 properties in the private residential leasehold sector. RICS consulted and sought agreement on

the content of the changes to the code through a cross industry working group, whose remit was to update the code that was approved in 1996 on behalf of its members and others. The working group was convened because it was clear from those referring to and using the earlier code of practice that it no longer served the purpose for which it was intended, and that a revised code of practice was required. The cross industry working group consisted of stakeholders representing a range of interests in the sector, including the Association of Residential Managing Agents; the Institute of Chartered Accountants in England and Wales; the Association of Chartered Certified Accountants; Chartered Institute of Housing and the Housing Corporation, and individual members of RICS who would be expected to comply with the code of practice, as well as leasehold valuation tribunals and the Department for Communities and Local Government. This working group met at least four times during 2005/06 to identify and discuss the changes needed to the code of practice, the work for which was then taken forward by a RICS lettings and management group who met on a quarterly basis to discuss the proposed contents.

8.2 The code of practice is not published by the Department for Communities and Local Government, but by RICS, and as such, the form and type of consultation carried out was a matter for RICS, which determined that the stakeholder represented working group was the appropriate way forward given the circumstances. These circumstances are that a widely adopted and respected approved code of practice already existed, and that the code of practice required updating following legislative changes since it was first published. The Department for Communities and Local Government is strongly supportive of the way in which the new code of practice has been developed where stakeholder involvement is concerned, and anecdotal comments received by the Department from stakeholders that will be affected by the new code of practice indicate that there is a strong appetite for a new code of practice to be published as soon as possible.

## **9. Guidance**

9.1 RICS intend to publish a press release announcing the availability of the new code of practice. The code of practice will be published by RICS on or before 6<sup>th</sup> April and will be available on their website. The Department for Communities and Local Government will also make known the availability of the new code of practice through its key stakeholders in the leasehold sector.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible. Landlords and managers of residential property in the private sector are already expected to observe the earlier code of practice, as well as current legislative requirements. This new code of practice takes account of Legislative changes. The code will also be available free of charge to members of RICS, and will be made available through the RICS website. It will otherwise cost £12.50 for a printed version.

10.2 There is no impact on the public sector because this particular code does not apply to this sector.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation applies to small business (i.e. landlords and managing agents with a small portfolio of properties).

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the code will be available free of charge to members of RICS, and will be made available through the RICS website. It will otherwise cost £12.50 for a printed version (formally £20 prior to August 2006). This approach will equally apply to any firm, large or small, requiring a copy.

11.3 The basis for the final decision on what action to take to assist small business is that described at 11.2 above.

## **12. Monitoring & review**

12.1 The intended outcome for publishing a revised code of practice is improvement to management in the leasehold sector through the clarity and knowledge being provided by the code.

RICS will be responsible for monitoring and reviewing the code on a regular basis.

## **13. Contact**

Ian Fuell at the Department for Communities and Local Government, Leasehold & Park Homes Team (Tel: 020 7944 3463 or E-mail [ian.fuell@communities.gsi.gov.uk](mailto:ian.fuell@communities.gsi.gov.uk)) can answer any queries regarding the instrument.