

**EXPLANATORY MEMORANDUM TO
THE RIGHT TO MANAGE (PRESCRIBED PARTICULARS AND FORMS)
(ENGLAND) REGULATIONS 2010**

2010 No. 825

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

2. **Purpose of the instrument**

2.1 This instrument revokes and replaces the Right to Manage (Prescribed Particulars and Forms) (England) Regulations 2003 (SI 2003/1988) (“the 2003 Regulations”). The reason for the replacement is to reflect changes to the law made by the Companies Act 2006 (“the 2006 Act”) and the amendments that were made recently to the prescribed constitutional documents of right to manage (“RTM”) companies. The instrument provides for the form and content of certain notices required when establishing a RTM company. The regulations make a transitional provision so that those notices served under the 2003 Regulations will be treated on or after the coming into force of the new regulations as if they have been served under them. This is to ensure those people are not disadvantaged.

2.2 It was decided not to amend the existing set of regulations but to revoke and replace them because the Department recognises that they are likely to be used by people who do not have access to professional advice. The Department thought it would be confusing for them to try and access two sets of regulations in order to set up their Right to Manage Company. This is consistent with the approach taken when the Department updated the articles and memorandum of association for RTM companies (SI 2009/2767) to reflect the changes in the Companies Act 2006.

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 (“the 2002 Act”) s 73 and s 74 provide for the establishment of RTM companies. These are the private companies limited by guarantee that long leaseholders in blocks of flats must establish in order to exercise the right to manage.

4.2 The 2006 Act introduced changes to the required constitutional documents of companies. This included changing the required format of the memorandum and articles of association and making the memorandum a largely historic document, recording the subscribers to the company at the time of incorporation. The 2003 Regulations refer to the Companies Act 1985 and the old style memorandum of

association. It is therefore necessary to update the Regulations so that these changes are reflected in the content of the notices to be used when a RTM company seeks to establish a RTM company for the purpose of the acquisition of the right to manage.

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 2002 Act to give long leaseholders the right to join together to take over the management of the premises containing their flats, irrespective of any fault on the part of their landlord. The right is exercisable through a RTM company which complies with the requirements in the 2002 Act. As originally enacted this required the memorandum and articles of association to be based upon the former Companies Act model for companies limited by guarantee. The memorandum of a company set out its objects or purpose and the articles of association regulated its internal affairs.

7.2 The 2006 Act put in place a major reform of company law in order to make it more focused on the needs of smaller companies and new sets of model articles were introduced at the same time. These reforms came fully into effect on 1 October 2009 for companies incorporated on or after that date. An updated version of the constitutional documents for RTM companies in England was prescribed on 9 November 2009 (SI 2009/2767) based upon the model articles introduced under the 2006 Act for private companies limited by guarantee. This ensured consistency with the requirements in this area for companies in general.

7.3 The 2002 Act established a process for the exercise of the right to manage involving the service of a number of notices. These consist of a notice inviting qualifying leaseholders to join the RTM Company, a claim notice to exercise the right to manage and a counter notice from the landlord of the premises. These forms need to be updated to take account of the changes that have been made to the constitutional documents of RTM companies.

- *Consolidation*

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

8. Consultation outcome

8.1 There has been no consultation on these proposals to update the requirements of these notices because they are merely technical changes following on from wider developments in company law. They are being made to ensure that the references to the constitutional documents of RTM companies are accurate. The new model articles for RTM Companies were the subject of a consultation exercise and these changes are closely related.

9. Guidance

9.1 The Department will alert readers to the new forms through publicity on its website and that of the Leasehold Advisory Service (LEASE) and will also ensure that they are brought to the attention of those known to have an interest or involvement in this area. 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 minor since only a small number of amendments are being made to the prescribed forms which are required to be used by the parties when the right to manage is exercised. These amendments will ensure that the references to the constitutional documents of RTM companies are accurate following the changes made to those documents by the SI 2009 No 2767.

10.2 There is no effect on the public sector because premises where the immediate landlord is a local housing authority are excluded from the right to manage.

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

11. Regulating small business

11.1 The legislation applies to small business since most if not all RTM companies and many landlords 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 The only effect of the changes is to update the forms to be used when the right to manage is exercised to ensure that the references to the constitutional documents of RTM companies are accurate. The changes made to those documents were the subject of a consultation exercise between June and August 2009.

12. Monitoring & review

12.1 No specific review of this instrument is anticipated since it is solely aimed at ensuring that the references in the notices to be used when the right to manage is exercised are accurate following amendments made by and as a result of 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) can answer any queries regarding the instrument.

Department for Communities and Local Government