

EXPLANATORY MEMORANDUM TO THE

**The Approval of Codes of Management Practice (Residential Property) (England)
Order 2004**

2004 No.1802

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**

By this Order a code of practice relating to the management of residential property by landlords, and those who discharge the management functions of landlords, is approved and the approval of an earlier version of the code of practice is withdrawn.

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

None

4. **Legislative Background**

4.1 Section 87(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (“the 1993 Act”) allows the Secretary of State to approve any code of practice, or modification to such a code, which is designed to promote desirable practices in relation to any matter directly or indirectly concerned with the management, by landlords or managers, of residential property. This section also allows the Secretary of State to withdraw any approval given.

4.2 The Secretary of State cannot approve a code of practice under section 87 unless he is satisfied that arrangements have been made for the text of the code to be published in such a way as to ensure that the provisions of the code are brought to the notice of those people likely to be affected, for example, landlords, managers and tenants.

4.3 Section 87(7) of the 1993 Act provides that a code of practice approved under section 87 shall be admissible in evidence in any proceedings before a court or tribunal even though a failure to comply with any provision of an approved code does not render the person failing to comply liable to proceedings.

4.4 Section 87(9) provides that code of practice approved under section 87 applies in relation to dwellings let on licences as it applies to dwellings let on leases.

5. **Extent**

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

6. European Convention on Human Rights

This instrument is subject to negative procedure and does not amend primary legislation. Therefore no statement of compatibility is required.

7. Policy background

7.1 The Rent Only Residential Management Code, to be published by the Royal Institution of Chartered Surveyors (RICS), encourages desirable practices in the management of residential property and promotes the government's aims to secure a better-managed private rented sector

7.2 This code of practice is designed to promote best practice in relation to any matter or matters directly or indirectly concerned with the management of residential property by landlords and those who carry out management functions in respect of residential property.

7.3 This code is a revised version. The first edition was approved by Order in 1996¹. This second edition has been updated to take account of the following legislation, which directly affect the management of rental properties, which has been enacted since the first edition of the Code was published in 1997:

- Commonhold and Leasehold Reform Act 2002
- Data Protection Act 1998
- Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573)
- Finance Act 2000
- Gas Safety (Installation and Use) Regulations 1998 (SI 1998/2451)
- Income Tax (sub-contractors in the construction industry) (Amendment) Regulations 1998
- Pressure Systems Safety Regulations 2000 (SI 2000/128)
- Unfair Terms in Consumer Contracts Regulation 1999 (SI 1999/2083)
- Unfair Terms in Consumer Contracts (Amendment) Regulations 2001 (SI 2001/1186)

7.4 In addition, new commentary sections on 'Access' and 'Inventories and dilapidations' have been added to further inform RICS Members of the Institution's view of best practice.

7.5 Updated references to official sources of advice and guidance have been included, e.g. Inland Revenue, HSE, RICS, and a more comprehensive listing of statutory references has been added and some commentary has been expanded or modified to clarify the advice.

7.6 The code is written for managers of residential property, although it is also relevant to landlords who do not manage and tenants. The code advises on best practice through co-operation and mutual understanding between landlords, tenants, occupiers

¹ S.I. 1996/2839. The approval to the first edition is withdrawn at the same time as the approval of the second edition comes into force.

and managers, of the procedures necessary for effective management of property, as well as awareness of the problems that can arise.

7.7 The code applies to the management of residential properties in England where the rent payable (not being just ground rent) is payable to the landlord, who is not a public sector authority or registered social landlord, and the landlord is responsible for the expenses of repairing and servicing the property. It deals with flats, houses and all other dwellings whether in towns or in the country, on estates, in groups or on their own. It covers all lengths of leases and all types of contractual tenancies, as well as statutory tenancies, when the rent payable is not a ground rent.

7.8 The code does not cover service charges. There is a separate code for leaseholders/tenants who pay a service charge². This code aims to complement the 'Rent Only' code and a revised version of the 'Service Charge' code is also in the process of achieving Secretary of State approval.

7.9 With regard to publishing the Code, RICS Business Service Limited will publish the code as a A4 paperback and will be priced at £20 for members of the Royal Institute of Chartered Surveyors and £30 for non members (discounts etc available for bulk orders or via the faculty). The new edition of the Code has been pre-advertised on the RICS Books website which highlights the main new content. Once it is published the website will change from 'to be published' to 'now available'. The Code will also be advertised in the RICS Business Magazine (sent free to all RICS members) on the general RICS Books page which shows all our latest releases. The RICS Residential Faculty will announce its launch on their Faculty website and in their e-mail briefings to members of their Faculty.

8. Impact

8.1 As this is a code of good practice a Regulatory Impact Assessment has not been prepared for this instrument. It has no regulatory impact on the public sector, business, charities or voluntary bodies.

9. Contact

Rob Miles at the Office of the Deputy Prime Minister, Tel: 020 7944 3554 or e-mail: rob.miles@odpm.gsi.gov.uk can answer any queries regarding the instrument.

² The Service Charge Residential Management Code (ISBN 085406 643 8) was approved by the Approval of Codes of Management Practice (Residential Property) Order 1996 S.I. 1996/2839.