

Explanatory Memorandum to the Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by Housing and Communities Policy Team of the Housing Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011.

Huw Lewis AM

Minister for Housing, Regeneration and Heritage, one of the Welsh Ministers

5 November 2011

1. Description

- 1.1 The Right to Manage (“RTM”) was introduced by the Commonhold and Leasehold Reform Act 2002 (“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 As originally enacted, the 2002 Act required the memorandum and articles of association to be based upon the former Companies Act model for companies limited by guarantee.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 regulated its internal affairs.
- 1.2 The Companies Act 2006 (“the 2006 Act”) put in place a major reform of company law in order to make it more focussed on the needs of smaller companies and new model articles were introduced at the same time. These changes will come into full effect on 15th November 2011 when the RTM Companies (Model Articles) (Wales) 2011 come into force. This will ensure consistency with the requirements for companies in general.
- 1.3 The 2002 Act established a process for the exercise of the right to manage which required the service 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.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 Part 2 Chapter 1 of the Commonhold and Leasehold Reform Act 2002 provides for the establishment of RTM companies. RTM companies are the private companies limited by guarantee that long leaseholders in blocks of flats must establish in order to exercise the right to manage.
- 3.2 The 2006 Act introduced changes to the constitutional documents of companies. This included changing the format of the memorandum and articles of association to make the memorandum a largely historic document, recording the subscribers to the company at the time it was formed. The Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2004 (SI 2004/678) (“the 2004 Regulations”) refer to the Companies Act 1985 and the old style memorandum of association. It is therefore necessary to update the Regulations so that the changes

brought about by the 2006 Act 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.

3.3 The powers to make the Right to Manage (Prescribed Particulars and Forms) (Wales) 2011 are contained in sections 78(2)(d) and (3), 80(8) and (9), 84(2), 92(3) and (7) and 178(1)(a), (b) and (c) of the Commonhold and Leasehold Reform Act 2002. These powers are conferred upon the Welsh Ministers in relation to Wales. The regulations are subject to the negative procedure in the National Assembly for Wales.

4. Purpose & intended effect of the legislation

4.1 This instrument revokes and replaces the 2004 Regulations (SI 2004/678). The reason for the replacement is to reflect changes to the law made by the 2006 Act and the amendments that will be made to the prescribed constitutional documents of RTM companies. The instrument covering the form and content of notices that are required when a RTM company is established.

4.2 It was decided not to amend the existing set of regulations but to revoke and replace them because the Welsh Government recognises that they are likely to be used by people who do not have access to professional advice. The Welsh Government thinks that it will be confusing for people to try and access two sets of regulations in order to set up their Right to Manage Company. This will be consistent with the approach taken to the updating of the articles and memorandum of association for RTM companies, when the RTM (Model Articles) (Wales) Regulations 2011, come into force on 15th November 2011. The latter will reflect the changes in the Companies Act 2006.

5. Application

5.1 This instrument applies in relation to Wales. The same change was made in England on 19th April 2010 (SI 2010/825).

6. Consultation

6.1 There has been no consultation on the proposals to update the requirements of these notices because they are merely implementing technical changes following on from wider developments in company law. The changes are being made to ensure that the references to the constitutional documents of RTM companies are accurate.

7. Impact

7.1 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 that will be made to those documents by the RTM Companies (Model Articles) (Wales) Regulations 2011.

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

7.3 An impact assessment has therefore not been prepared for this instrument.