

Explanatory Memorandum to the RTM Companies (Model Articles) (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 RTM Companies (Model Articles) (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 As originally enacted, the 2002 Act prescribed a memorandum and articles of association based upon the former Companies Act model for companies limited by guarantee.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”) introduced a major reform of company law in order to make it more focussed 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. The new provisions applying to RTM companies come fully into effect on 15th November 2011 for companies incorporated on or after that date.
- 1.3 An updated version of the prescribed constitutional documents for RTM companies in Wales is also being introduced on 15th November 2011, based upon the model articles introduced under the 2006 Act for private companies limited by guarantee. This ensures that consistency is maintained with requirements in this area for companies in general.

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 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.
- 3.2 The 2006 Act introduced changes to the 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 formally set out the purpose for which the company was created.

- 3.3 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 (Wales) Regulations 2004 (SI 2004/675). The new regulations revoke this instrument.
4. The powers to make the RTM Companies (Model Articles) (Wales) Regulations 2011 are contained in sections 74(2), (4) and (6) and 178(1) 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.

5. Purpose & intended effect of the legislation

- 5.1 This instrument revokes and replaces the RTM Companies (Memorandum and Articles of Association (Wales) Regulations 2004 (SI 2004/675). This is because the Companies Act 2006 introduced changes to the constitutional documents of companies; the replacement instrument is necessary to reflect those changes.
- 5.2 The instrument is based on the Companies (Model Articles) Regulations 2008 (SI 2008/3229) made under section 19 of the 2006 Act. Specific RTM provisions have been added where necessary. These relate to aspects of membership, insurance and inspection of documents focussing on the needs of RTM companies.

6. Application

- 6.1 This instrument will apply in relation to Wales. The same change was made in England on 9th November 2009 (SI 2009/2767).

7. Consultation

- 7.1 There has been no consultation on the proposal to introduce this instrument because it implements technical changes which have to be made in order to comply with the legislation contained in the Companies Act 2006. Failure to make the changes would constitute a breach of the 2006 Act.

8. Impact

- 8.1 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.
- 8.2 The impact on the public sector is similarly negligible and premises where the immediate landlord is a local authority are excluded from the right to manage.

- 8.3 The instrument applies to small business since most, if not all, RTM companies can be classified as such. The articles prescribed by the instrument are based upon articles in the 2006 Act which are designed to be more focussed on the needs of smaller companies. The main effect of the new arrangements will be modernising the existing regime to suit the needs of RTM companies and no major cost issues are likely to ensue.
- 8.4 Therefore, in the light of the above, an impact assessment is not deemed to be necessary in relation to this instrument.