

## **Explanatory Memorandum to The RTM Companies (Model Articles) (Wales) (Amendment) Regulations 2025.**

This Explanatory Memorandum has been prepared by the Local Government, Housing, Climate Change and Rural Affairs Group of the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Cabinet Secretary'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) (Amendment) Regulations 2025. I am satisfied that the benefits justify the likely costs

**Jayne Bryant MS**

Cabinet Secretary for Housing and Local Government  
10 February 2025

## **PART 1**

### **Description**

1. These Regulations make changes to the prescribed model articles of association for Right to Manage ('RTM') Companies. The Regulations amend the method by which voting rights are allocated, following a change to the Right to Manage qualification criteria made in the Leasehold and Freehold Reform Act 2024. They will preserve the ability of tenant members of a RTM company to exercise a majority over landlord members.

### **Matters of special interest to the Legislation, Justice and Constitution Committee**

2. None.

### **Legislative background**

3. The Welsh Ministers powers to make regulations to amend the RTM Companies (Model Articles) (Wales) Regulations 2011 (SI 2011/2680) are set out in section 74(2) and (4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The amendment Regulations are subject to the negative resolution procedure.
4. By virtue of paragraph 30(2)(c) of Schedule 11 to the Government of Wales Act 2006 (c.32) the functions formerly exercised by the National Assembly for Wales as the "appropriate national authority" under section 179(1) of the Commonhold and Leasehold Reform Act 2002 are now vested in the Welsh Ministers.

### **Purpose and intended effect of the legislation**

5. The purpose of these Regulations is to amend Model Articles to respond to a change to qualification criteria for the Right to Manage ('RTM') included in the Leasehold and Freehold Reform Act 2024. The Regulations will preserve the ability of tenant members of a RTM company to exercise a majority over landlord members, which could otherwise be undermined as a result of the change in primary legislation.
6. The 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. Regulations made under the 2002 Act set out the content and form of the articles of association of RTM companies.

7. Article 33 of the Model Articles deals with the allocation of voting rights for each member of the company, based on their interest in the property. Under current articles, votes are exercisable by landlords who are members of the company in different circumstances. This includes where votes are allocated in respect of non-residential parts of the property, which are exercisable by the immediate landlord of those spaces. Votes are allocated in respect of non-residential parts of the building in accordance with the ratio of residential to non-residential floor space. Since the 2002 Act only allowed properties with maximum 25% non-residential space to qualify to exercise the RTM, this limited the proportion of the voting rights of landlords in control of non-residential floor space to 25%.
8. The Law Commission report on the Right to Manage<sup>1</sup> summarised the effect of current voting rights allocations in the Model Articles as follows:
  - to determine the relative voting power of residential and non-residential parts;
  - to ensure the landlord can exercise at least some voting power in the RTM company;
  - to ensure that where all qualifying tenants are members, they are able to exercise a majority of votes.
9. The Leasehold and Freehold Reform Act 2024 amended the qualification criteria for the Right to Manage. Previously, only properties with up to 25% non-residential usage qualified for the right. Section 49 of the Act increased this non-residential limit to 50%.
10. If the current Model Articles are retained following commencement of the change in the non-residential limit, this will allow landlords of non-residential parts of a property for which the RTM is exercised to be allocated up to 50% of the voting rights of the company.
11. These regulations will make a change to the allocation of voting rights to preserve the potential majority of tenant members, which would otherwise be lost in favour of the votes of landlords under the current Regulations. The means by which the voting rights allocation is being updated was the preferred option of the Law Commission, as set out in their RTM report.<sup>2</sup> The Regulations amend article 33 of the Model Articles to specify that the total votes exercisable by landlords under leases can never be more than one-third of the total votes exercisable by qualifying tenants. This will retain the policy aim of the right to manage, which is to ensure that tenants in a property can take over management responsibilities from a landlord.
12. Alongside the changes to voting rights required in response to the change in non-residential limit, the Law Commission also identified two

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<sup>1</sup> [Leasehold home ownership: exercising the right to manage report](#); this excerpt from p128.

<sup>2</sup> Law Commission RTM Report, options set out p131-134.

problems with the drafting of the model articles, which could interrupt the operation of the RTM company by leading to too many votes being allocated to a landlord or freeholder interests:

“There are also two ambiguities in the text of the current law. The first is that the model articles in both England and Wales refer to “leases”, but do not explicitly state that this refers only to long leases. The second is that the allocation by article 33(3)(f) of one vote to any landlord arguably inflates the number of votes controlled by the freeholder in circumstances where freeholder and intermediate landlords are related entities.<sup>3</sup>”

13. Recommendation 25 of their report set out their preferred approach to improving these issues:

“Recommendation 25. We recommend that the meaning of “leases” in the model articles should be clarified so that it refers only to “long leases”, as that expression is defined in the 2002 Act. We recommend that the allocation of one vote to any landlord under a lease in the model articles of association should apply only to the freeholder who has not otherwise been allocated a vote; it should not apply to any intermediate landlords.<sup>4</sup>”

14. The Regulations are also implementing these Law Commission recommendations.

15. The amended Model Articles set out in the Regulations will apply to both new and existing RTM companies and their members.

16. This instrument will apply in relation to Wales. The same changes will be made in England and will come into force on 3 March 2025.

## Consultation

17. The Law Commission project on the Right to Manage, included extensive consultation on the operation of and problems with the law. The project considered a wide range of matters, including qualification criteria, which the 2002 Act limited to buildings with less than 25% non-residential space. Initial consultation was undertaken on the concept of removing this non-residential limit from qualification criteria, however, after further consideration the final report recommended increasing the non-residential limit to 50%.

18. In making this recommendation, the Law Commission identified that there would be a need to amend voting rights to preserve the ability of tenants voting unanimously to exercise an absolute majority over landlords with voting rights in the RTM company, as is currently the

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<sup>3</sup> Law Commission RTM report, p130.

<sup>4</sup> Law Commission RTM report, p134.

case. The Law Commission identified a number of options to achieve this aim, but their preferred option was to cap landlord votes in the RTM.

19. The UK Government, in collaboration with Welsh Government, undertook a consultation<sup>5</sup> which specifically considered these points. This consultation ran from 11 January to 22 February 2022. A Government response<sup>6</sup> was published on 27 November 2023, alongside the introduction of the Leasehold and Freehold Reform Bill to UK Parliament.
20. The response confirmed that the stated intention of increasing the non-residential limit to 50% would be pursued. In relation to voting rights, the majority of individuals (89%) agreed that voting rights should be amended, and the majority (80%) supported the option under consideration (restricting total votes allocated to landlords to one third of the total votes of qualifying tenants). Others, particularly landlords, did not agree with the option, but the consultation response set out reasoning to support the adoption of that option, even given the lack of unanimous support from all those potentially affected:

“6.8 Option 3 provides certainty, if all leaseholders vote unanimously, they will always be able to exercise an absolute majority. We believe this is justified because the RTM is designed to transfer management functions from landlords to leaseholders, if leaseholders cannot be guaranteed control the function of the RTM is undermined. Leaseholders responding to the consultation questioned why they should exercise the RTM if it does not guarantee them control over the very management functions they are exercising a RTM to acquire. Others worried that landlords would use disproportionate control to frustrate leaseholder’s legitimate aims for the management of their properties.

6.9 Option 3 guarantees leaseholder control by capping landlords votes at no more than one-third of the total votes exercisable by qualifying tenants. Many respondents opposed to the change thought this was unfair on landlords. For example, a landlord may retain non-residential elements making up more than a third of the building but have their votes limited to one-third. They believed landlords should retain voting rights in proportion to their retained interest in the building with no cap.

6.10 We are unconvinced by this argument for two reasons. Firstly, the RTM is primarily concerned with the management of the residential and common parts of a building. It is not proportionate for non-residential and residential elements to be

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<sup>5</sup> [Reforming the leasehold and commonhold systems in England and Wales - GOV.UK](https://www.gov.uk/government/consultations/reforming-the-leasehold-and-commonhold-systems-in-england-and-wales)

<sup>6</sup> <https://www.gov.uk/government/consultations/reforming-the-leasehold-and-commonhold-systems-in-england-and-wales/outcome/reforming-the-leasehold-and-commonhold-systems-in-england-and-wales-summary-of-responses-and-government-response>

allocated equal voting rights in a RTM company that primarily manages residential space. Secondly, landlords will still enjoy voting rights in the RTM company, they will simply be limited, and leaseholders will all need to vote unanimously to exercise an absolute majority. We think this strikes a fair balance between the rights of landlords and leaseholders. We also note that landlords retain the right to make an application to the First-tier Tribunal (Property Chamber) under Part 2 of the Landlord and Tenant Act 1987 for the appointment of a manager if they believe the RTM company has failed on the listed grounds. This provides an appropriate safeguard for landlords to act against poor management of the building.

6.11 For the reasons explained above we accept the Law Commission's Option 3 to cap the total votes allocated to landlords in RTM companies to one-third of the total votes to qualifying tenants.<sup>7</sup>"

21. These Regulations give effect to the commitment made in this response to the consultation.

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<sup>7</sup> [Reforming the leasehold and commonhold systems in England and Wales: summary of responses and government response - GOV.UK](#)

## Regulatory Impact Assessment (RIA)

### Options

22. **Option 1: Do nothing.** If the Model Articles are not amended then when the RTM provisions in LFRA 2024 are commenced, the voting rights in RTM companies formed in buildings which have newly qualified for the RTM would be weighted towards landlords. This would be contrary to the intention of the Right to Manage, which is to allow tenants to take over and continue to exercise decision-making about the management of their properties.
23. **Option 2: Update the Model Articles.** Updating the Model Articles, firstly to implement the preferred voting rights amendments and secondly to effect the clarificatory amendments identified by the Law Commission, will protect the policy aim of the Right to Manage by allowing tenants to retain control of RTM companies formed in buildings with a higher proportion of non-residential space, and improving the clarity of the Regulations to ensure they operate as intended in relation to allocation of votes to landlords.

### Costs and benefits

#### a) Costs

24. **Option 1 – do nothing.** If the Regulations are not updated, any new RTM companies which are formed due to the change in non-residential limit run the risk of reverting control to the landlord. Voting rights set out in current Model Articles allocate landlord voting rights in relation to non-residential space in accordance with the proportion of residential to non-residential space in the building. Under the 2002 Act, the RTM is only available to properties with 25% non-residential space. Therefore, the vote allocated to landlords of non-residential space in current RTM companies are limited to 25% of those exercisable by tenants, and these landlords cannot exercise a majority. If the Model Articles are not updated, there is potential for RTM companies to be formed where landlords of non-residential parts of the building could exercise up to 50% of the votes, so tenants could be prevented from achieving a majority in votes on the exercising of management functions. This is at odds with the policy intent of the RTM, which is to allow tenants a no-fault route to take over management functions in their building from the landlord.
25. **Option 2: update the Model Articles.** Updating the Model Articles will have no specific impact on new RTM companies formed in properties with non-residential space in excess of 25% but below the new limit of 50%. This is because any newly established RTM company will need to comply with whatever prescribed Model Articles are in place at that point. The changes being made to amend the Model Articles in the way described in this document will not result in a more complex calculation

of voting rights, rather a different method is being substituted. Similarly, the clarificatory amendments are not likely to change the amount of time that newly established RTM companies must take to understand and comply with their requirements.

26. The Model Articles apply to all existing RTM companies, and therefore there will be a need for existing companies to ensure that they comply with the updated articles. This will require RTM companies to understand and apply the new calculation of voting rights. The changes may result in company members having a different vote share than they would have exercised previously.
27. The Law Commission specifically referred to a potential impact on current landlord members of RTM companies,<sup>8</sup> as their vote share may be diminished in the re-calculation of voting rights following the change to the Model Articles. However, although specific vote share may change, there will be no change to the general principle that where all qualifying tenants are members, they can exercise a majority of votes.
28. There are no official statistics on the number of active RTM companies in Wales. An estimate of the number of active Right to Manage companies in Wales has been determined by a postcode search of Companies House data. Some of the relevant postcode areas cover parts of England as well as Wales and this makes it difficult to provide a precise figure. Our best estimate is that there are between 130 and 200 active Right to Manage companies in Wales as of January 2025. Only companies whose members include landlords will be affected by the voting rights change. There is no data on which existing companies this will include, but it is likely to be less than the total number of RTM companies operating at present. Taking account of the change in Regulations, and updating respective voting allocations to members of the RTM company accordingly, is not considered to be an activity that will take a long time, or require any specialist advice or expertise. The impact on RTM companies of updating practices to reflect the amended Regulations is therefore considered to be minimal.
29. Beyond updating the Regulations and undertaking communication activities regarding the change, there are no financial implications for the Welsh Government. There are no financial implications for local authorities.

## Benefits

30. **Option 1: do nothing.** There are no benefits to this option, but there are dis-benefits. As described above, failing to update the Model Articles to respond to the change in qualifying criteria for the RTM will be

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<sup>8</sup> Referred to in para 6.78 of the RTM report.

inconsistent with the policy of enabling tenants to exercise management functions in relation to their properties.

31. **Option 2: update the Model Articles.** Updating the Regulations to preserve the ability of tenants to exercise a majority vote in the RTM company effectively preserves the status quo. This is because it allows the policy intention of the RTM to be reflected in relation to properties which are newly able to qualify for the right following the change in the non-residential limit in LFRA 2024.

## **Consultation**

32. As referred to above, consultation has been carried out on the proposed approach to amending model articles to accommodate the change to the non-residential limit which was made in LFRA 2024. The consultation response, issued in November 2023, confirmed the changes that would be made. No other changes are being made to the regulations.

## **Competition assessment**

33. The Welsh Government considers that these Regulations are not expected to impact on competition or the competitiveness of Welsh businesses and therefore a full Competition Assessment is not required for these regulations. The Competition filter test has been completed.

## **Post implementation review**

34. The UK Government has committed to post-implementation review following the implementation of the LFRA 2024, which prompted the change to model articles achieved via these regulations. No further specific review is planned.

## **Summary**

35. Option 2 (to update the Model Articles) has been selected. There are minimal costs to this option. This option allows the benefits of the change to the qualifying criteria for RTM to be felt by tenant members of RTM companies formed in properties with a higher proportion of non-residential floor space. This is the policy aim of the RTM, and of the non-residential limit change in LFRA 2024.