EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2003, SECTION 66 (PRESCRIBED PERSONS) ORDER 2005

2005 No.83

1. This explanatory memorandum has been prepared by HM Treasury and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 This instrument prescribes National Health Service (NHS) Foundation Trusts as a 'public body' which can qualify for the Stamp Duty Land Tax (SDLT) relief available under section 66 Finance Act 2003 for certain land transactions involving such bodies.

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

3.1 None.

4. Legislative Background

4.1 Stamp Duty Land Tax (SDLT) was legislated in Part 4 of the Finance Act 2003 and replaced stamp duty for most land transactions from 1 December 2003. Section 66 Finance Act 2003 affords relief from SDLT for land transactions entered into between public bodies in connection with a statutory reorganisation, and for certain other statutory transactions involving public bodies which are prescribed by Treasury Order.

4.2 Public bodies for this purpose are those specified in section 66(4), which includes a person specified for the purposes of the section by Treasury order. Bodies specified under section 66(4) include NHS Trusts, Primary Care Trusts and their Scottish, Welsh and Northern Ireland equivalents.

4.3 NHS Foundation NHS Trusts are constituted under Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003. These Trusts are not currently specified under section 66(4) Finance Act 2003 as the Finance Act became law before the Health and Social Care Act.

4.4 By virtue of paragraph 17 of Schedule 4 to the Finance Act 2003, specification under section 66(4) also qualifies the body concerned for a further SDLT relief covering certain arrangements involving public and educational bodies. This relief affects what may be taken into account as chargeable consideration for SDLT purposes under these arrangements.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Initial SDLT legislation did not take account of NHS Foundation Trusts as the Act establishing them had not yet become law.

7.2 Treasury Ministers are content that NHS Foundation Trusts should receive equivalent SDLT treatment to NHS Trusts. NHS Trusts already qualify for the 'statutory reorganisations' relief at section 66 Finance Act 2003. The present order places NHS Foundation Trusts on the same footing as NHS Trusts for this purpose.

7.4 Formal consultation has not been carried out as it is clear from correspondence that these Trusts expect to be given SDLT relief on all fours with NHS Trusts.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument. The only potential impact on business is that it ensures that certain items are not taken into account as chargeable consideration in the arrangements covered by paragraph 17 of Schedule 4 to the Finance Act 2003. There is no potential impact on charities or voluntary bodies.

8.2 The impact on the public sector is likely to be minimal as NHS Foundation Trusts qualify for relief on land transactions where they are the purchaser, by virtue of Regulation 3 of the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2005 (SI 2005 No. xxxx).

9. Contact

9.1 Keith Brown at the Inland Revenue, telephone 020-7147 2790 or e-mail keith.brown@ir.gsi.gov.uk, can answer any queries regarding the instrument.