**EXPLANATORY MEMORANDUM TO**

**THE FINANCE ACT 2003, SECTION 66 (PRESCRIBED STATUTORY PROVISIONS) ORDER 2007**

**2007 No. 1385**

**1.** This explanatory memorandum has been prepared by H M Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

**2. Description**

This Order prescribes certain provisions of the School Standards and Framework Act 1998 (as amended) and the Education and Inspections Act 2006 for the purposes of section 66(2) Finance Act 2003. This means that land transactions under these provisions will qualify for relief from stamp duty land tax where either the purchaser or the vendor is a public body.

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

None

**4. Legislative Background**

4.1 This Order is made under the negative resolution procedure.

4.2 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.

4.3 In particular, section 66(2) Finance Act 2003 provides that the Treasury may make an order providing for relief where the transaction is effected by or under a prescribed statutory provision and either the purchaser or the vendor is a public body.

4.4 In this provision, "prescribed" means prescribed in an order made under section 66(2). A list of public bodies for the purposes of section 66 is set out at sections 66(4) and 66(5).

4.5 Schedule 22 of the School Standards and Framework Act 1998 makes provision for transfers of surplus land from school governing bodies to local education authorities in certain circumstances. The provisions of Schedule 22 are amended by Schedule 4 of the Education and Inspections Act, which also introduces, at section 27, a further provision for transfers of land on the removal of a foundation.

4.6 The 1998 Act includes, at section 79A, a relief from stamp duty land tax for transfers under provisions of Schedule 22. This relief will no longer apply to all such

transactions once the amendments introduced by the 2006 Act have taken effect, and is repealed by clause 78 of the 2007 Finance Bill. Relief for these transactions is in future to be given under section 66 Finance Act 2003.

4.7 Some transactions under the amended provisions of Schedule 22 to the 1998 Act, and section 27 of the 2006 Act, will automatically qualify for relief under section 66(1) Finance Act 2003. Others will not, either because in the circumstances there will not be a "reorganisation" (as defined at section 66(3)) or because one or other of the parties is a body of trustees which does not meet the definition of a "public body" (as defined at sections 66(4)-(5)).

4.8 The present Order therefore prescribes for the purposes of section 66(2) Finance Act 2003 those provisions of Schedule 22 to the 1998 Act, and section 27(2)(b) of the 2006 Act, where transactions will not always qualify under section 66(1).

4.9 The Order is to come into force on 25 May 2007, which is the day on which the relevant provisions of the Education and Inspections Act 2006 come into force.

## 5. Territorial Extent and Application

This Order applies to all of the United Kingdom although it will have practical effect only in England and Wales.

## 6. European Convention on Human Rights

As the Order is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 Although public bodies (with the exception of those benefiting from Crown immunity) are not generally exempt from stamp duty land tax, there is a presumption that these bodies should not be liable to SDLT as a consequence of statutory reorganisations which take place entirely within the public sector. Generally, relief in these circumstances is provided by section 66(1) Finance Act 2003.

7.2 Section 66(2) Finance Act 2003 caters for exceptional cases, where transfers in broadly similar circumstances do not meet the full qualifying conditions for the general relief.

7.3 In legislating the new and amended transfer provisions introduced by the Education and Inspections Act 2006, the Department for Education and Skills' preference was to repeal the existing stamp duty land tax relief at section 79A Education and Inspections Act 1998 and rely in future on the general relief at section 66 Finance Act 2003, rather than amending the existing relief.

7.4 The Department for Education and Skills has been consulted throughout on the drafting of this Order and the final version reflects their comments at all stages.

7.7 HMRC does not propose to issue separate guidance in respect of this Order. There will be no change to the existing procedure for claiming relief for these transfers.

## 8. Impact

The impact of this Order is entirely on the public sector and no Regulatory Impact Assessment has been prepared.

## 9. Contact

Keith Brown at H M Revenue & Customs, tel: 020-7147 2790 or e-mail: keith.brown@hmrc.gsi.gov.uk, can answer any queries regarding the Order.