EXPLANATORY MEMORANDUM TO

THE FINANCE ACT 2003, SECTION 66 (PRESCRIBED STATUTORY PROVISIONS) ORDER 2016

2016 No. 558

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order prescribes certain provisions of the Housing and Regeneration Act 2008. This means that land transactions effected under those provisions will qualify for relief from stamp duty land tax (SDLT).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 SDLT was introduced by Part 4 of the Finance Act 2003, replacing stamp duty for most land transactions from 1 December 2003.

4.2 Relief from SDLT for land transactions involving public bodies is at section 66. Section 66(1) provides relief where a land transaction is in connection with a statutory reorganisation and entered into between public bodies. Sections 66(4) and 66(5) defines public bodies.

4.3 Where the transaction does not fully meet the conditions set out in section 66(1) but is made in similar circumstances, the Treasury may make an Order under section 66(2). The effect of the Order is that a transaction made under the statutory provisions prescribed in the Order, will qualify for relief, where either the purchaser or vendor meets the definition of public body.

4.4 This Order is being made under the power conferred by section 66(2). The Order will take effect on and after 26th May 2016.

5. Extent and Territorial Application

5.1 The extent of this instrument is England, Wales and Northern Ireland.

5.2 The territorial application of this instrument is likely to be England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Sections 51 and 53A of the Housing and Regeneration Act 2008 authorises government departments to transfer their surplus land to the Homes and Communities Agency (HCA), the Government's land disposal agent. The HCA's role is to undertake essential work on the land, for example, seeking planning permission and decontamination, before selling it on to developers for housing.

7.2 There is a presumption that public bodies should not be liable to SDLT as a consequence of statutory reorganisations which take place entirely within the public sector. Some of the transfers of land to the HCA under the 2008 Act will meet the conditions for the relief from SDLT under section 66(1) of the Finance Act 2003. Where the transfer does not meet all the conditions for the relief, for example, because the vendor is a public sector arm's length body that does not meet the definition of public body, the Treasury can make an Order under section 66(2) of the Finance Act 2003.

7.3 The present Order therefore ensures that any transfer of land effected under sections 51 and 53A of the 2008 Act, will qualify for relief from SDLT, where either the purchaser or vendor is a public body as defined in sections 66(4) and 66(5) of the Finance Act 2003.

Consolidation

7.4 None - this Order does not amend another instrument.

8. Consultation outcome

8.1 The HCA and its parent, the Department of Communities and Local Government were consulted on the drafting of this Order and are content with the final version.

9. Guidance

9.1 HM Revenue and Customs does not consider separate guidance to be necessary and does not propose to issue such guidance.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is negligible. The Order applies only to public bodies that can acquire land under the Housing and Regeneration Act 2008. Currently only the HCA and the Welsh Government can do so.

10.3 A Tax Information and Impact Note is being published alongside this instrument and can be viewed at www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The measure will be monitored as part of HM Revenue and Customs' normal assurance process.

13. Contact

13.1 Anne Berriman at HM Revenue and Customs, telephone: 03000 585901 or email: anne.berriman@hmrc.gsi.gov.uk can answer any queries regarding the instrument.