EXPLANATORY MEMORANDUM TO

THE HOMES AND COMMUNTIES AGENCY (TRANSFER OF PROPERTY ETC.) (No. 2) REGULATIONS 2016

2016 No. 515

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument specifies the bodies whose property, rights or liabilities can be transferred to the Homes and Communities Agency ("the HCA") by a scheme made by the Secretary of State under section 53A(1) of the Housing and Regeneration Act 2008 (c.17) ("the HRA 2008").

3. Matters of special interest to Parliament

Matters of special interest to the Joint 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 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 The HRA 2008 was amended by section 31 of the Infrastructure Act 2015 (c.7) ("the IA 2015"), which inserted section 53A (other property etc transfers to the HCA) into the HRA 2008. Section 51 of the HRA 2008 allows the Secretary of State to make schemes for the transfer to the HCA of the property, rights and liabilities of the Urban Regeneration Agency, the Commission for New Towns (both of these bodies are now defunct) or a Minister of the Crown. Section 53A of the HRA 2008 empowers the Secretary of State to make schemes for the transfer to the HCA of the property, rights and liabilities of a public body or a description of public bodies which is specified by the Secretary of State in regulations. For these purposes, a 'public body' is defined as a person or body with functions of a public nature. The Public Forest Estate, that is land acquired by the Department for Environment, Food and Rural Affairs under the Forestry Act 1967, is excluded. Transfer to the HCA can only take place with the transferring body's consent.

4.2 Section 53A of the HRA 2008 allows sites to be transferred directly from specified arm's length bodies to the HCA. Before 2015, sites would need to have transferred firstly to a body's parent department and then to the HCA, thereby duplicating the time and costs involved in the process. The Homes and Communities Agency (Transfer of Property etc.) Regulations 2015 (S.I. 2015/1471) ("the 2015 Regulations") already specify a number of public bodies for the purposes of section

53A. This instrument specifies additional public bodies from whom land can be transferred to the HCA under section 53A.

5. Extent and Territorial Application

5.1 The extent of the instrument is England and Wales.

5.2 The territorial application of this instrument is England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 Maximising the release of surplus public sector land is a critical part of supporting the Government's ambitions both to reduce the budget deficit and to increase the number of houses being built. The previous public sector land programme (2011 – 2015) released land with capacity for over 100,000 homes.

7.2 To improve the process and land disposal, since April 2015, the HCA has taken on a new role as the land disposal agency for government in England outside of London. This involves transferring a significant amount of land from government departments and their arm's length bodies to the HCA. These transfers will enable the HCA to prepare that land for release to market, promoting housing development and boosting economic growth. In London, the land disposal role will be performed by the Greater London Authority.

7.3 On 24 June 2015, the National Audit Office ("the NAO") published a report, 'Disposal of public land for new homes', which reviewed the 2011-15 public land for housing programme and provided recommendations on the public land for housing 2015-2020 programme. The report identified concerns about transparency, consistency and monitoring after disposal. It recommended that the Department for Communities and Local Government should clarify its process for measuring progress, base targets on a robust assessment of what departments can achieve, provide guidance to other Government departments on data requirements for measuring and identifying housing capacity, and decide which organisations should be responsible for monitoring for what happens to land after disposal.

7.4 The new role for the HCA will bring greater consistency and transparency to the way in which land is released and records are maintained. In addition to this, in response to the NAO's report of June 2015 on the public land for housing programme 2011-15, the Government has put in place the following measures:

- The Department for Communities and Local Government issued guidance on record-keeping and set out the data validation and challenge process in April 2016. This will complement the programme document due to be published in spring 2016.
- The Cabinet Office will collect receipt information from departments to capture the type of sale and gross receipt value of sold sites (each department will also maintain receipt and sales information) which will demonstrate value for money.

7.5 Only public sector land identified as surplus will be transferred to the HCA. Land is defined as surplus when it is no longer needed by a body for the furtherance of its operational functions, as set out in the Cabinet Office 'Guide for the disposal of surplus property' (http://webarchive.nationalarchives.gov.uk/20110822131357/http:/www.ogc.gov.uk/documents/Guide_for_disposal_of_surplus_property_PDF.pdf). The transferring body must give consent to the transfer before this can take place.

7.6 This instrument specifies those arm's length bodies of Government that are expected to transfer surplus land to the HCA in the next year as part of the public land for housing programme.

Consolidation

7.7 None.

8. Consultation outcome

8.1 No consultation is required for this instrument given that its purpose is to facilitate internal government processes.

9. Guidance

9.1 No guidance is required as this instrument simply specifies the bodies from whom land can transfer to the HCA.

10. Impact

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

10.2 The impact on the public sector is minimal overall. However, there may be a small reduction in the bureaucracy and cost to the taxpayer involved in transferring land to the HCA.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This instrument does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The Department for Communities and Local Government will review the list of public bodies in this instrument 6 months after it has come into force. Given that the identification and disposal of surplus government land is an ongoing activity, it is expected that further bodies will be specified in future.

13. Contact

13.1 Alison Bowerbank at the Department for Communities and Local Government Telephone: 0303 444 1936or email: Alison.Bowerbank@communities.gsi.gov.uk can answer any queries regarding the instrument.