EXPLANATORY MEMORANDUM TO

THE HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.) REGULATIONS 2015

2015 No. 1471

1. This explanatory memorandum has been revised by the Department for Communities and Local Government and is re-laid before Parliament by Command of Her Majesty following the 7th report of Session 2015-16 of the House of Lords Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

2.1 The purpose of this instrument is to specify the public 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 ("the HRA 2008").

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

3.1 None.

4. Legislative Context

4.1 The Housing and Regeneration Act 2008 was amended by section 31 of the Infrastructure Act 2015 ("the IA 2015"), which inserted new 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. New 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. Transfer to the HCA can only take place if the transferring body has consented to the terms of the transfer scheme. This is the first time that the regulation-making power has been used.

4.2 Following concerns raised by Peers during the Infrastructure Bill's passage through Parliament, a scheme under section 53A of the HRA 2008 cannot be used to transfer to the HCA any part of the Public Forest Estate ("the PFE"). The PFE is the term used to describe land acquired by the Department for Environment, Food and Rural Affairs under the Forestry Act 1967.

5. Territorial Extent and Application

5.1 This instrument applies only in England.

6. European Convention on Human Rights

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 to reduce the deficit and increase the number of houses being built. With this in mind, in 2011 Government announced its ambition to release surplus public sector land capable of supporting 100,000 new homes by 2015.

7.2 By March 2015, Government had exceeded this target, announcing the release of public sector land capable of supporting 103,000 homes. The new Government has an even more ambitious target: to release public sector land for a further 150,000 homes. This will ensure that Government is able to maximise the housing potential of public sector land while promoting its use in a way, which is efficient and demonstrates value for money for the taxpayer.

7.3 Since April 2015, the HCA has taken on a new role as the land disposal agency for Government in England outside of London. This role will involve 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.

7.4 Until section 31 of the IA 2015 amended the HRA 2008 in order to allow the direct transfer of land held by public bodies to the HCA, land held by an arm's length body of a government department could not be transferred directly to the HCA. Instead it was first transferred to the parent Department, before being transferred to the HCA. This method typically required two independent legal processes. The new power in section 53A of the IA 2015 has therefore been essential towards enabling the HCA to carry out its role in delivering disused Government land for new homes.

7.5 On 24 June 2015, the National Audit Office (NAO) published a report, 'Disposal of public land for new homes', which reviewed the 2011-15 public land for housing programme and provided recommendations for 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 the 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 what happens to land after disposal.

7.6 The Government intends to take on board NAO's recommendations and has already begun to put them in effect. The Department for Communities and Local Government has committed to publishing the methodology for scoring the number of housing units against the new target, and to measuring progress and monitoring the impact of the land for housing programme. We will also provide guidance to Government Departments to ensure proper record keeping across the programme to deliver a transparent and consistent approach. The Cabinet Office will collect receipt information from Government Departments for sites disposed between April 2015 and March 2020. This will capture the type of sale, and gross receipt value of sold sites (each Department will maintain receipt and sales information). This will support the delivery of the Government's ambition of £5-6 billion receipts from land and property by 2020.

7.7 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 current 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.

7.8 This statutory instrument specifies those arm's length bodies of Government that are expected to transfer surplus land to the HCA in the first year of the Government's public sector land programme. The bodies to be specified are as follows:

Parent Department	**Arm's-Length Body**
Department for Business, Innovation & Skills	Biotechnology and Biological Sciences Research Council
	Land Registry
	Natural Environment Research Council
Department for Energy & Climate Change	Coal Authority
Department for Environment, Food and Rural Affairs	Environment Agency
Department for Transport	Highways England Company Limited
	London and Continental Railways Limited
Department of Health	NHS Property Services Limited

Consolidation

7.9 No consolidation is necessary.

8. Consultation outcome

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

9. Guidance

9.1 No guidance is required as this instrument does not change existing policy.

10. Impact

10.1 The impact on business, charities and voluntary bodies is nil.

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 A full Impact Assessment is not required for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

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 added to the list in the future.

13. Contact

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