EXPLANATORY MEMORANDUM TO

THE HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC) REGULATIONS 2017

2017 No. 199

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 The purpose of this instrument is to specify the public bodies whose designated 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 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 Housing and Regeneration Act 2008 was amended by section 31 of the Infrastructure Act 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 designated property, rights and liabilities of a public body. For these purposes, 'a public body' is defined as a person or body with functions of a public nature. Transfer to the HCA may only take place with the transferring body's consent.

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. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application is 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 The Government is committed to selling land with capacity for at least than 160,000 homes by 2020. 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 provides a return for the taxpayer. The government also announced in October 2016 the Accelerated Construction programme which aims to make the best possible use of surplus public sector land and act as a catalyst in the wider housing market

7.2 In 2015, the government appointed the HCA as its land disposal agency in England, outside of London. The HCA provides consistency and transparency to the way in which land is released. The land disposal process 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

7.3 In response to the National Audit Office investigation https://www.nao.org.uk/wp-content/uploads/2016/07/Disposal-of-public-land-for-new-homes.pdf and subsequent Public Accounts Committee report http://www.publications.parliament.uk/pa/cm201617/cmselect/cmpubacc/634/634.pdf in October 2016 on the public land for housing programme 2015-20, the government has put in place the following measures:

- The Department for Communities and Local Government (DCLG) published the Public Land for Housing Programme Handbook on 16th December 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/578735/Public_land_for_housing_-_programme_handbook.pdf . The handbook sets out the aims and objectives of the public sector land programme, how progress will be monitored and programme governance.
- On 20th February, DCLG published the first annual report on the programme. https://www.gov.uk/government/publications/public-land-for-housing-programme-2015-to-2020-annual-report The document sets out the progress made by Government departments in meeting the target to release land with capacity for 160,000 homes by 2020.
- On the 6th February, the government published its response to the Committee's report, in the Treasury Minute. The government has agreed with all of the Committee's recommendations, and has also committed to publish data on the number of homes built on public land, and will monitor the progress of sites through the planning system.

7.4 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. The transferring body, specified in these regulations, must give consent to the transfer before this can take place.

7.5 Section 53A(1) of the Housing and Regeneration Act 2008 allows the Secretary of State to make one or more schemes for the transfer to the Homes and Communities Agency of designated property, rights or liabilities of a specified public body. These regulations specify Network Rail Infrastructure Limited and the listed NHS Trusts for this purpose. The land to be transferred from the NHS Trusts and Foundation Trusts has been judged to be surplus to requirements and will have no impact on the provision of patient services. These Regulations are additional to the Homes and Communities Agency (Transfer of Property etc) Regulations 2015 (S.I. 2015/1471) and the Homes and Communities Agency (Transfer of Property etc) (No 2) Regulations 2016 (S.I. 2016/515) which already specify public bodies for the same purpose

Consolidation

7.6 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 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 The legislation 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 added to the list in the future.

13. Contact

13.1 Alison Bowerbank at the Department for Communities and Local Government, Telephone: 03034441936 or email: Alison.Bowerbank@communities.gsi.gov.uk can answer any queries regarding the instrument.