EXPLANATORY MEMORANDUM TO

THE STAMP DUTY LAND TAX (DISCLOSURE OF INFORMATION CONTAINED IN LAND TRANSACTION RETURNS) REGULATIONS 2009

2009 No. 2095

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument regulates the basis on which information from Land Transaction Returns may be disclosed to the Land and Property Services Agency and the Department of Finance and Personnel in Northern Ireland and the uses to which such information may be put.

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

None

4. Legislative Context

4.1 A Statutory gateway for disclosure of information from land transaction returns to the Commissioner of Valuation in Northern Ireland (who is an officer of the Land and Property Services Agency) is currently provided by sections 245 Finance Act 1994, as amended by regulation 3 of the Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2005 (S.I. 2005 No. 82).

4.2 This provision will be replaced by a more restrictive gateway provided by subparagraph (1)(c) of section 78A Finance Act 2003. Section 78A (which makes a number of provisions relating to disclosure of information contained in land transaction returns) is inserted, and regulation 3 of the 2005 regulations revoked, by section 48 Finance (No.2)Act 2005.

4.3 Section 48 Finance (No.2) Act 2005 is to be brought into force by a Treasury Order made under subsection (5) of that section. This Order, which is not subject to Parliamentary procedure, was made on 30th July 2009.

4.4 The present Regulations are made under powers conferred on the Treasury by subsection (d) of section 78A to prescribe other persons to whom, and purposes for which, information from land transaction returns may be disclosed. Their purpose is to widen the scope of the restrictive gateway provided by subparagraph (1)(c) of section 78A Finance Act 2003.

5. Territorial Extent and Application

This instrument applies to information relating to land transactions in Northern Ireland.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Stamp Duty Land Tax (Disclosure of Information contained in Land Transaction Returns) regulations 2009 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 The land transaction return is submitted to HMRC for Stamp Duty Land Tax purposes when a property transaction takes place. Information extracted from these returns is disclosed to the Valuation Office Agency and, in Northern Ireland, the Land and Property Services Agency (LPS), chiefly for use in community charge banding and compiling rating lists and for use as evidence in appeals. It is also used for statistical purposes and in providing valuation services to Her Majesty's Revenue and Customs and other public bodies.

7.2 The Valuation Office Agency is part of HMRC and is subject to the statutory requirements of the Commissioners of Revenue and Customs Act 2005 relating to taxpayer confidentiality. LPS is part of the Northern Ireland Department of Finance and Personnel (DFP) and is not subject to these statutory requirements. As a statutory body HMRC can only do what statute provides for and can not disclose information without the appropriate legislation. A separate statutory gateway is therefore required to regulate the disclosure and use of taxpayer information to and by these bodies.

7.3 The existing Northern Ireland gateway places no restriction on the use to which LPS and DFP may put information from land transaction returns. This does not comply with the robust safeguards HMRC usually applies to such gateways.

7.4 The revised gateway provided by section 78A Finance Act 2003 makes information from land transaction returns available only to the Commissioner of Valuation for Northern Ireland, for the purpose of maintaining a rating valuation list. This is not sufficient for LPS and DFP's purposes.

7.5 This instrument therefore widens the gateway to allow the information to be available to the Commissioner of Valuation and District Valuers in Northern Ireland for use in the exercise of their statutory functions and to DFP more widely for the purposes of its lawful functions, provided that the information is not used in any way which would permit any person other than an officer of DFP to identify the vendor or the purchaser. Disclosure outside DFP is not permitted without the consent of the Commissioners of Revenue and Customs.

Consolidation

7.6 This instrument does not amend another instrument.

8. Consultation outcome

LPS have been consulted in the preparation of this instrument and are content with its terms.

9. Guidance

HMRC does not propose to publish any guidance or other form of publicity for this instrument.

10. Impact

10.1 No impact is anticipated on businesses, charities or voluntary bodies.

10.2 There should be little or no impact on the public sector as the instrument reflects LPS, DFP and HMRC's existing practices.

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

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

The disclosure of information through this legislative gateway, and its subsequent use by LPS and DFP, will be monitored on an ongoing basis.

13. Contact

Keith Brown at Her Majesty's Revenue & Customs Tel: 020-7147 2790 or email: keith.brown@hmrc.gsi.gov.uk can answer any queries regarding the instrument.