

EXPLANATORY MEMORANDUM TO
THE HOMES AND COMMUNITIES AGENCY (TRANSFER OF PROPERTY ETC.)
REGULATIONS 2019

2019 No. 36

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, 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 (“HCA”) by a scheme made by the Secretary of State under section 53A(1) of the Housing and Regeneration Act 2008 (“the HRA 2008”). Homes England was announced as the trading name for the HCA in January 2018.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The HRA 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 specified, or of a description specified, 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 may only take place with the transferring body’s consent.

- 6.2 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.
- 6.3 These Regulations specify public bodies for the purposes of section 53A HRA 2008.

7. Policy background

What is being done and why

- 7.1 The aim of the Public Land for Housing Programme 2015-20 is for government departments to sell surplus land with capacity for at least 160,000 homes by 2020. This will ensure that government is able to maximise the housing potential of public sector land whilst promoting its use in a way which is efficient and provides a return for the taxpayer.
- 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
- 7.4 <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:
- 7.5 On 6th February 2017, the government published its response to the Committee’s report, in the Treasury Minute https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589619/58427_Cm_9413_Treasury_Minute_Web_Accessible.pdf. The government has agreed with all of the Committee’s recommendations, 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. This will be reported in a second programme progress report due to be published in Spring 2019.
- 7.6 On 20th February 2017, MHCLG published the first progress 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.
- 7.7 The Ministry of Housing, Communities and Local Government (“MHCLG”) published an update to the Public Land for Housing Programme Handbook on 17th August 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/734654/Public_Land_for_Housing_Programme_2015-20.pdf. The handbook sets out the aims and objectives of the public sector land programme, how progress will be monitored and programme governance.

- 7.8 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 it can take place.
- 7.9 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 HCA of designated property, rights or liabilities of a specified public body. These regulations specify the listed NHS Trusts for this purpose. The land to be transferred from the NHS Trusts has been judged to be surplus to requirements and will have no impact on the provision of patient services.
- 7.10 These Regulations are additional to the HCA (Transfer of Property etc) Regulations 2015 (S.I. 2015/1471), HCA (Transfer of Property etc) (No 2) Regulations 2016 (S.I. 2016/515), HCA (Transfer of Property etc) Regulations 2017 (S.I.2017/199), and HCA (Transfer of Property etc) Regulations 2018 (S.I.2018/8) which already specify public bodies for the same purpose.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 No consolidation is necessary.

10. Consultation outcome

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

11. Guidance

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

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 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 HCA.
- 12.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen.

13. Regulating small business

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

14. Monitoring and review

- 14.1 The approach to monitoring of this legislation is that the Ministry of Housing, Communities and Local Government will review the list of public bodies specified in this and previous instruments transferring property to the HCA 6 months after this instrument comes into force. Given that the identification and disposal of surplus government land is an ongoing activity, it is expected that further public bodies will be specified in future regulations.

15. Contact

- 15.1 Mark Harrison at the Ministry of Housing, Communities and Local Government, telephone: 0303 444 4514 or email: Mark.Harrison@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Ben Llewellyn, Deputy Director, Land for Homes at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.