



Department for
Communities and
Local Government

The Lord McKenzie of Luton
House of Lords
London
SW1A 0PW

Lord Tariq Ahmad of Wimbledon
Parliamentary Under Secretary of State

**Department for Communities and Local
Government**
Eland House
Bressenden Place
London SW1E 5DU

Tel: 0303 444 3461
Fax: 0303 444 3291
E-Mail: pslord.ahmad@communities.gsi.gov.uk

www.gov.uk/dclg

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Dear Sir,

Infrastructure Bill, Clauses 21 and 22

I am writing on behalf of Baroness Kramer to respond to points raised in the Infrastructure Bill Committee on 15 July relating to Clauses 21 and 22, as the Minister now responsible for this part of the Infrastructure Bill.

Direct arm's-length body transfers to the Greater London Authority (GLA)

Baroness Kramer offered to find out more about how official-level discussions were progressing in terms of establishing the need for an amendment to allow direct transfer of arm's-length bodies to the Greater London Authority (GLA). We are currently working with the GLA to finalise how their expertise can be used to dispose of land in the capital and recognise the important role that the GLA can play. The transfer mechanism for the Homes and Communities Agency (HCA) was agreed across Government last year, however we are still working with the GLA on what the final mechanism will look like in London.

Whilst there is little difference in the legal mechanism for transferring sites to the HCA or the GLA, in practical terms the process for transferring sites will be different because the HCA is a central Government body and the GLA is not. This has a number of practical implications, such as potential financial and tax issues, and we are continuing to work through these with the GLA to establish the best delivery route.

There are already legislative powers to transfer surplus land of arm's length bodies to the GLA, via the parent department and we need to consider whether the proposed amendment would be beneficial to the public sector land programme in London.

The GLA delivered a well-received presentation to senior level Government officials this week on how land transfers in London could work. These ideas will now be developed further to establish what the best land disposal mechanism in London will be.

Local Authority powers to override easements

Baroness Kramer also committed to write to you to clarify the position with regard to the powers to override easements. Clause 22 will ensure that future purchasers of land owned by the HCA, GLA and MDCs will be able to develop and use that land without being affected by third party interests. The will bring the powers of those purchasers into line with those already enjoyed by purchasers of land from local authorities and other public bodies involved in regeneration and development (such as urban development corporations).

To clarify, use of those powers by purchasers is not dependent on the HCA, GLA or MDCs having first exercised them.

Powers to override easements are also available to urban development corporations and local highways authorities under the Local Government, Planning and Land Act 1980; local highways authorities and development corporations under the New Towns Act 1981 and housing action trusts under the Housing Act 1988 and to purchasers of land from all these bodies. These powers were also available to regional development agencies and English Partnerships, both of which have been abolished.

Tax Provisions relating to Clause 21

You raised a number of queries around the tax provisions relating to Clause 21.

The transfer of land from an arm's length body (ALB) to the HCA could have unintended tax consequences. For example, the transfer could result in a capital gain on the arm's-length body, which could be taxable. This is notwithstanding the fact that no money is actually exchanged between the transferring bodies. New section 53B in the Infrastructure Bill will allow the Treasury to make regulations to neutralise an unintended tax advantage or disadvantage for a public body that could otherwise arise solely because of the transfer.

It is the intention that any tax provisions made under regulations under section 53B would only apply in relation to a transfer from an arm's length body to the HCA. A sale of land outside of Government would be expected to be on a commercial basis for tax purposes. Purchasers of land from the HCA will be subject to stamp duty land tax in accordance with the normal rules and will not receive any tax benefit through these regulations.

You also asked about how value will be accrued from the sale of sites. When the HCA sells a piece of land that has been transferred to it from a department, the department is credited with the value of their land through an adjustment to their departmental expenditure limits. This will be to the market value of the land at the point it transferred from the department. Any uplift from the sale will be redistributed separately on a 70:30 basis between the department and the HCA.

Freemining rights

Baroness Royall raised a query around Freemining, which is a unique issue to the Forest of Dean. As we have already made clear, this Government has no intention of transferring Public Forest Estate land to the HCA for onward disposal and, as the PFE is not owned by an arm's length body, the provisions in Clause 21 do not apply to it in any case. Freemining rights will not therefore be affected by the new powers. Further, as land subject to these rights will not be transferring to the HCA, these rights will not be affected by the powers to

override easements which only apply in relation to HCA, GLA or MDC land for the purposes of Clause 22.

Signature for transfer schemes

Baroness Kramer promised to clarify who should provide the signature for a transfer scheme. The power to make schemes under section 51 of the Housing and Regeneration Act 2008 is conferred on the Secretary of State at large. However, Secretary of State functions under that Act are currently exercised by the Secretary of State for Communities and Local Government.

I should re-emphasise that our amendment of section 51 is intended only to speed up the bureaucratic transfer process. Arm's-length bodies will continue to be responsible for deciding which land they no longer need, as they do at the moment. Where that land also has development potential, it will transfer to the HCA for onward disposal.

GLA subsidiary

You also asked for clarity on our amendment around the GLA subsidiary but Baroness Kramer did not get an opportunity to respond. I would like to confirm that our amendment allows the subsidiary and purchasers of land from it to override third party interests in that land.

Use of Negative Procedure

I must also correct Baroness Kramer's statement to the effect that the negative resolution procedure allows a challenge to be made and a debate to take place, in either House. Where regulations are made under section 53A as inserted by clause 21, the negative resolution procedure allows an objection to be made and a negative resolution to be passed by either House as a result of which the regulations will cease to have effect.

I hope this is helpful. I have copied this to all Lords who spoke at the Grand Committee Debate and deposited a copy in the house of Lords Library.

Yours sincerely,



LORD TARIQ AHMAD