



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**

4th Floor, Fry Building  
2 Marsham Street  
London SW1P 4DF

Tel: 0303 444 3461  
Fax: 0303 444 3291  
E-Mail: [lord.ahmad@communities.gsi.gov.uk](mailto:lord.ahmad@communities.gsi.gov.uk)

[www.gov.uk/dclg](http://www.gov.uk/dclg)

16 November 2014

*Dear Sir,*

**Infrastructure Bill: Report Stage**

During day two of the Report Stage debate on the Infrastructure Bill on the 5 November, there were a number of questions raised in relation to Clause 21 of the Bill. I promised to write to clarify some of the issues that were not covered during the debate.

Lord Phillips queried what property is to transfer under these powers and whether the definition of 'public bodies' is too broad. In particular Lord Phillips wanted to know whether the powers in Clause 21 would extend to charitable bodies such as the Woodland Trust. For reasons which I set out below I am confident that it would not.

Firstly, I would like to be clear about the purpose of this clause. It is intended to support the Public Sector Land programme from next year, which is intended to free up disused Government land. Where this land is no longer needed by Government, and it is developable, it will typically transfer to the Homes and Communities Agency (HCA). The HCA will then prepare the land for release to market, and work with local planning authorities to ensure that the land is used in a way that best benefits the local community, for example by supporting local housing needs or boosting economic growth.

Powers already exist (under the Housing and Regeneration Act 2008) to transfer land from central Government departments to the HCA, but land from their arm's-length bodies currently must transfer first to the parent department before it can legally transfer. Our clause is aimed solely at 'cutting out the middle-man' in these transfers, by allowing the direct transfer from arm's-length bodies to the HCA. We have no intention to extend the scope of the programme to other types of public body.

Turning specifically to Lord Phillips' concern, in order to be recognised as a charity in law a group of individuals or an organisation must be established exclusively for charitable purposes. A charitable purpose is one that:

- a) falls within one or more of the descriptions of purposes capable of being charitable set out in the Charities Act 2011; and
- b) is for the public benefit.

In order to exercise the power in Clause 26 to specify a public body in relation to which the

Secretary of State can make a scheme to transfer property, rights or liabilities he must be satisfied that the body in question has "functions of a public nature". This is a very different concept to acting "for the public benefit".

I accept that lawyers may argue the exact scope of bodies covered by "functions of a public nature". However the jurisprudence arising from the Human Rights Act 1998 supports the proposition that generally speaking a public function is something that's normally provided to the public by the state like education or prisons. The fact that charities such as the Woodland Trust have purposes which are "for the public benefit" does not mean that they have "functions of a public nature" which would bring them within the scope of this clause. The courts will look at a number of things to decide if a private organisation like the Woodland Trust is carrying out a public function. It will look at whether the organisation is:

- funded by the state
- supervised by a state regulatory body
- exercising powers given to it by the law
- taking the place of central or local government
- providing a public service
- acting in the public interest
- carrying out coercive powers devolved from the state.

The courts will also look at whether there's a close relationship between the organisation and a public authority.

Lord Phillips cited the example of section 270 of the Local Government Act 1972, but the approach taken there was to provide an inclusive definition so that specific bodies that that Act was intended to cover fell within the definition. The fact that certain trustees were specifically stated to come within the definition of public body indicates that had they not been then they would otherwise have fallen outside it. The definition is specific to that legislation and does not affect whether a body "has functions of public nature" more generally and so would come within the scope of the new Clause 26.

While this new power is only intended to be used to transfer land owned by central Government and its arm's-length bodies, it is important that the drafting in the Bill reflects this aim as closely as possible. To be absolutely clear that it does, we will review whether the current wording provides any scope for ambiguity on this point, and I would be very happy to meet to discuss this further.

Lord Phillips also asked about the transfer of property. When the title passes to the HCA, the land, and any buildings on that land, will transfer. Sites would normally transfer having been vacated by the previous landowner, who will be expected to take all other property from the site. Other forms of property (such as machinery, furniture or intellectual property) would not transfer.

I have copied this letter to Lord Philips and all Peers who also spoke in the debate at day two of Report Stage. A copy has also been placed in the House of Lords Library.

*Yours sincerely*  
*Tariq*

**LORD (TARIQ) AHMAD OF WIMBLEDON**