



NHSScotland Property Transactions Handbook

B: Mandatory Requirements

1. Disposal by sale, lease or exambion
2. Acquisition by purchase, lease or exambion
3. Leasing of NHSScotland property

Introduction

Holding Bodies are responsible for all matters pertaining to the management of NHSScotland property transactions. This part of the Handbook deals with mandatory requirements for property transactions with which all Holding Bodies must comply.

DISPOSAL BY SALE, LEASE OR EXCAMBION

General

1.1 It is the responsibility of Holding Bodies to ensure that all NHSScotland property transactions including, but not limited to, sales, purchases, leases, wayleaves, excambion and servitudes are at a price and on other conditions which are the best obtainable at that time having regard to the mandatory requirements.

1.2 Where specific procedures are not laid down Holding Bodies must act in accordance with best professional advice.

1.3 All legal aspects of NHSScotland property transactions must be handled by the Legal Adviser (see Management: Paragraph 1.13).

1.4 An Independent Valuer must be appointed in major or potentially difficulty cases (as described in Management: Paragraphs 1.7 and 1.8) unless alternative arrangements have been agreed with SGHSC.

Identification of Surplus Property

1.5 Holding Bodies must, in accordance with the Policy for Property and Asset Management in NHSScotland and in support of the delivery of national and local healthcare strategies and priorities, identify essential, non-essential and surplus property and, as a minimum therefore, review annually their property holdings in order to identify that which may be declared surplus to requirements and therefore considered for disposal in the short, medium or long term.

1.6 Holding Bodies must ensure that the procedures relating to closure of NHSScotland property are followed. NHS Chief Executive Letter CEL 4 (2010), issued to NHS Boards on 10 February 2010, sets out the relevant legislative and policy frameworks for involving the public in the delivery of services and provides guidance to assist NHS Boards with their engagement with patients, the public, and stakeholders. NHS Boards must also follow the guidance set out in the document "Decommissioning of NHS Premises" which directs the principles and practice for managing the inspection of NHS premises for presence of records, other documents or media containing person identifiable information and business documents prior to decommissioning, and the arrangements for safe transfer, storage or confidential destruction.

1.7 A Holding Body's Property and Asset Management Strategy (PAMS) and financial plans must include targets for the translation of property identified as nonessential to surplus and its subsequent disposal.

1.8 Where property is identified as non-essential and prior to formally declaring surplus a Holding Body must ensure that neither it nor any other NHSScotland interest have a foreseeable use for it. In doing so it must consider the current and planned future use of all NHSScotland buildings on the site, or property in its vicinity.

1.9 A Holding Body must provide SGHSC with advance notification of a planned disposal when the property in question is valued in excess of £500,000. Such planned disposals should also be fully reflected within the Holding Body's financial plans agreed as part of the annual Local Delivery Plan.

1.10 A Holding Body must declare a property surplus if it is non-essential and non-operational, or, if it is non-essential but still operational but plans that will enable it to become non-operational are agreed, are being implemented, and are expected to result in non-operational status within 18 months and where there is no wider NHSScotland interest in the property.

Preliminaries to Disposal

1.11 As policies change status, others gain momentum and change importance and thus they need to be recognised in context. It is therefore important to keep up to date with guidance and to 'relevant' and current policies. The following link directs you to the 'Publications' page on the Scottish Government website:

<http://www.gov.scot/Publications/Recent>

See also:

Town Centre Action Plan <http://www.gov.scot/Publications/2013/11/6415/downloads>

The above link will take you to the published version of the Town Centre Action Plan. This document derives from the Community and Enterprise in Scotland's Town Centres report from the External Advisory Group as a result of their National Town Centre Review.

Important to note is Page 7 'Actions' which include: "*We will discuss inclusion of the Town Centre First Principle in the NHSScotland Property Transactions Handbook*" as a short to medium term action.

1.12 Holding Bodies must ensure that disposals recognise the rights of former owners as contained in the Crichton Down rules-

The Crichton Down rules apply, with a limited number of exceptions, to the disposal of surplus Government land acquired by, or under the threat of, compulsory purchase. A threat of compulsion is also assumed in the case of a voluntary sale where the power to acquire the property compulsorily existed, even though it was not used at the time. SG Property Division and the Legal Adviser should be consulted on the disposal of all such property.

Further information if required can be obtained in the relevant sections of the SPFM:
<http://www.gov.scot/Topics/Government/Finance/spfm/PropertyManagement>

1.13 Holding Bodies must carry out trawl procedures, in accordance with Scottish Government guidance, to identify any relevant interest in a property and deal direct with any prospective purchasers who express an interest.

Trawl Procedures:

<http://www.gov.scot/Topics/Government/Finance/spfm/PropertyManagement/TransferofProperty>

[The SPFM guidance referenced above in paras 1.12 and 1.13 has been updated to reflect legislative/policy changes as a result of the Community Empowerment Bill, the Public Bodies (Joint Working) (Scotland) Act 2014 and Town Centres First policy.]

1.14 The planning potential of the property must be thoroughly investigated before a property is marketed or a sale concluded under Trawl procedures or where a priority interest other than another NHSScotland interest has been established. The Holding Body, with the benefit of professional advice, must ensure that it (and not the eventual purchaser) receives the benefit of enhanced development value, which accrues from the grant of planning permission for a change of use. In seeking professional advice on the sale of property, Holding Bodies must always ask their professional advisers for explicit advice on whether there is likely to be potential for development or change of use and on the nature of such development or change of use.

1.15 Off market sales (which should occur only in exceptional cases) should take place only if there is *explicit* agreement from the Property Adviser/Marketing Agency and Independent Valuer that an off market sale will deliver a clear advantage to the tax payer over an open market sale. In accordance with Scottish Government policy and Scottish Public Finance Manual guidance therefore this includes consideration of the duty of Best Value and the requirement to work with wider stakeholders and partners to achieve more effective and sustainable policy development, better services and customer-focussed outcomes. This is also incorporated in the NHSScotland Joint Working Agenda – [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#). Any decision should consider any financial implications alongside sustainability and the social, economic and environmental impacts of the decision both in the shorter and longer term.

1.16 Surplus property should only be leased if this is the only option for property management reasons (e.g. temporary let of accommodation) or if professional advice indicates that the net present value of the future income stream from leasing would be greater than the proceeds from outright sale.

1.17 Disposal under provisions within the Public Bodies (Joint Working) (Scotland) Act 2014, by way of participation in, forming, or investing in a 'body corporate' as defined in the Act, must be in the best interest of the Holding Body which must ensure that the requisite appraisals, professional and legal advice would indicate that any

enhanced/future value will be to the advantage of the Holding Body and not to the eventual purchaser.

1.18 Holding Bodies must obtain advice from the CLO on the title of the property before it is marketed.

1.19 Before a property is offered for disposal it must be professionally valued by the Independent Valuer where appointed, the Property Adviser or, if such arrangements have been agreed by SGHSC, the body's own professional valuation staff. The valuation must be carried out in accordance with the Royal Institution of Chartered Surveyors (RICS) Appraisal and Valuation Standards (The "Red Book"), but reflecting "special value" and the effect of any voluntary conditions imposed by the seller. "Special value" reflects any additional value accruing from a potential bid by a purchaser with a special interest such as a sitting tenant, a neighbouring owner or an owner with a property, physically, functionally, legally or economically associated with the property to be sold.

1.20 The valuation for disposal by lease on the open market is the Market Rent (MR). The definition of MR is contained in the RICS Appraisal and Valuation Manual ("The Red Book").

Marketing

1.21 Open market sales and leases should be handled by a qualified marketing agent (normally the appointed Property Adviser). The progress of the marketing agent must be monitored by Holding Bodies to ensure neither unnecessary delay occurs nor that any important aspect of marketing is overlooked.

Consideration of offers

1.22 A formal recommendation in writing must be obtained from the Property Adviser/marketing agent and where appointed, the Independent Valuer before initial acceptance of offer/appointment of preferred bidder. This should be followed up with a confirming report once missives agreed.

1.23 Transactions where the circumstances detailed in Annex I apply must be notified to the Accountable Officer before acceptance of an offer.

1.24 In the light of professional advice, Holding Bodies should consider in every case whether clawback/right of pre-emption/title restriction or other provision covering future change of use or other circumstances is required. Clawback or a right of pre-emption or both should be included in the terms of sale for all off-market disposals (unless a general or specific waiver has been agreed with SGHSC). Holding Bodies should **always consider** clawback provisions where property is disposed of before uncertainties about the planning position have been satisfactorily resolved. This is not the case when the property is transferred between public bodies, as described in SPFM :

<http://www.gov.scot/Topics/Government/Finance/spfm/PropertyManagement/TransferofProperty>

Conclusion of disposal

1.25 Holding Bodies must ensure, with the advice of the Legal Adviser, that the legal arrangements governing property disposal provide the maximum possible protection of the Scottish Ministers' interests. This includes any disposals by way of Special Purpose Vehicles (SPVs) and Joint Ventures (JVs).

1.26 Holding Bodies are required to complete the appropriate certification for all property transactions with a value of £100,000 or above and to make such certification available for audit purposes and to SGHSC if requested. For transactions below £100,000 the Holding Bodies Chief Executive may decide on what certification procedures are required bearing in mind their responsibility for regularity and propriety for the public finances under their control and the need to provide sufficient documentation for audit purposes. All other requirements apply to such non-certificated transactions.

1.27 Holding Bodies must complete post-transaction monitoring proformas for every transaction and co-operate in the other arrangements for monitoring transactions.

Retention of capital receipts

1.28 NHS CEL 32 (2010): "Arrangements for the Management of NHSScotland Capital Resources after 2010-11" sets out the recommendations made by the Capital Strategy Group on the future handling of capital resources across NHSScotland. With particular regard to Capital Receipts, CEL 32 (2010) notifies Boards that for those capital receipts not already identified as supporting projects with approved Outline Business Cases the capital element of receipts will accrue to SGHSC and be used to support the overall capital programme. Any element of an asset disposal that scores as revenue income (profit on disposal) will be left with the Health Board where the capital receipt arose.

The Holding Body should ensure that those receipts retained are accounted for in accordance with the terms of the NHSScotland Capital Accounting Manual. <http://www.sehd.scot.nhs.uk/publications/DC20080418accounts.pdf>.

ACQUISITION BY PURCHASE, LEASE OR EXAMBIION

2.1 The following paragraphs deal with the key stages in the acquisition process. Further guidance on the key stages is available in C: Procedures.

Statement of need

2.2 The need for additional property must be established as a result of a systematic review of the Holding Bodies' service/operational needs and property holdings as detailed in its Property and Asset Management Strategy (PAMS) and appropriate approvals under the terms of the Scottish Capital Investment Manual (SCIM).

Space audit

2.3 When acquiring property Holding Bodies must acquire the minimum necessary to meet clearly defined future needs and compliance with extant space standards as defined in technical guidance and SG policy. If a site of the minimum size cannot be obtained and it is necessary to buy a larger site the Holding Body must identify and dispose of surplus land as soon as possible. Space audits should include room for expansion particularly in areas identified in extant local authority planning guidance for residential development. It is recognised that it may not be possible to acquire property that exactly meets requirements and where properties larger than that required are acquired Holding Bodies should endeavour to reconfigure services to make full use of acquired property or lease non-essential accommodation until needed.

2.4 Where the property to be acquired is of a type found generally on the market and is to be acquired by way of a lease a full space audit of the existing service must be undertaken. This will identify the appropriate amount of space required and Holding Bodies should ensure that the minimum amount of space is acquired subject to meeting existing and future needs.

Financial and option appraisal

2.5 Any investment decision must be supported by the preparation of an appropriate business case compliant with the requirements of the SCIM. The option appraisal and financial appraisal should consider a wide range of alternative options including different locations, different types of property and different forms of tenure. The analysis conducted must demonstrate that the preferred option delivers best value for money and is affordable within the context of the Holding Body's approved financial plans (capital and revenue).

It is recognised that in certain locations there may be very limited property options available.

Property search

2.6 Holding Bodies must initially consider whether or not property is available from other Holding Bodies, from within the Scottish Government Estate or the Government's Civil Estate.

2.7 If no suitable property is available from within the public sector estate the Holding Body's Property Adviser must undertake a thorough search of the property market to establish a long list of suitable land and/or buildings.

Agreement of Purchase Price/Heads of Terms under Lease

2.8 Holding Bodies:

- must ensure that there is no premature or ill-considered contact with the seller or landlord before negotiations are conducted by the Legal Adviser.
- must ensure that the transaction has a timetable agreed with the Property Adviser and the Legal Adviser to permit proper negotiation of terms to protect the taxpayer's interest.
- must ensure that they have written recommendations from the Property Adviser that the terms provisionally agreed for purchase or lease are the best that can be obtained.
- must ensure that negotiations on the legal terms are conducted by the Legal Adviser.
- must ensure that the chosen property is technically suitable for its intended use before any legal commitment is entered into to complete the purchase or lease agreement should this not be the case the cost of conversion should be considered as part of the appraisal exercise.
- must ensure, where necessary in terms of standard commercial practice, that they have taken advice from the Legal Adviser concerning the title.
- may not enter into leases unless they can demonstrate (having taken professional advice) that leasing is the most cost effective option following a detailed financial appraisal.

Completion of legal arrangements

2.9 On receipt of advice from the Property Adviser and Legal Adviser the final decision must be taken by the Holding Body. Completion can only be reached following approval of an appropriate business case by the Holding Body and, where required under the terms of the [SCIM](#), SGHSC.

2.10 Holding Bodies are ultimately responsible for protecting the Scottish Ministers' interests and certification must be completed at this stage.

Fit-out requirements

2.11 Where a building requires to be fitted out Holding Bodies must ensure that they obtain appropriate professional advice on all aspects of the work to be undertaken.

2.12 Holding Bodies must ensure that all work is appropriately tendered and that all appropriate consents are obtained.

Notification to Accountable Officer

2.13 Transactions must be notified to the Accountable Officer in the circumstances detailed at Annex I.

2.14 Holding Bodies must complete post-transaction monitoring proformas for any acquisition by purchase, lease or excambion and co-operate in other arrangements for monitoring transactions.

Post-transaction Proforma:

http://www.pcpd.scot.nhs.uk/PropTrans/PTHBDocs/PTHB_Mng_PTM_Prfrm.doc

Annexes:

<http://www.pcpd.scot.nhs.uk/proprans/PTAnnexes.htm>

