



NHSScotland Property Transactions Handbook

C: Procedures

Procedures provides guidance to Holding Bodies to assist in achieving VfM in Property Transactions

Flowchart

1: Overview

2: Sale of property

3: Leasing of NHSScotland Property

4: Sale of health centres/surgeries

5: Acquisition of property

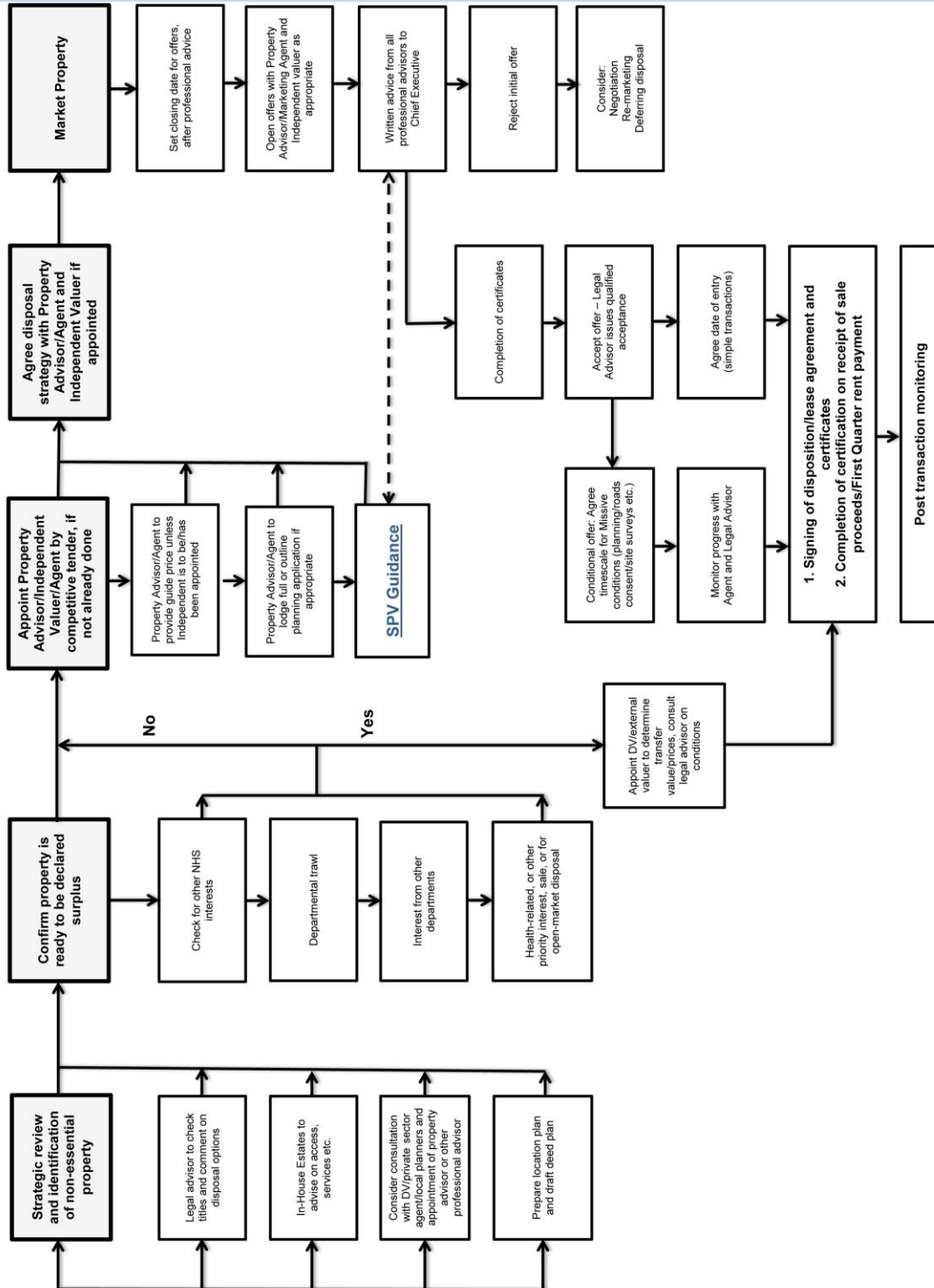
Public Bodies (Joint Working) (Scotland) Act 2014 -
a brief introduction

To ensure that value for money is achieved and that high standards of propriety are maintained, there should be proper supervision of staff and clear separation of responsibilities particularly in relation to the valuation and disposal process.

Joint development vehicles may also be considered where unfavourable market conditions militate against conventional methods of disposal. Such vehicles would however have to provide the best value for money option and meet standard requirements with regard to propriety and safeguarding the public interest

Flowchart

Disposal Procedures (sale or lease) - Flowchart



Note: Prior to choosing an SPV it is imperative that the detailed guidance linked from the above flowchart ([SPV Guidance](#)) is followed. Further advice should be sought from Scottish Government Procurement and Commercial Directorate, Property Division.

OVERVIEW

Introduction

1.1 This Part of the Handbook gives guidance on the procedures to be followed in complying with the Mandatory Requirements of the Handbook. This Section (1) provides guidance on matters common to all NHSScotland property transactions. More detailed advice on different types of transaction is contained in Sections 2 to 5.

1.2 Holding Bodies' responsibilities are described at Management: Section 1 of the Handbook. In certain circumstances, detailed at Annex I, Holding Bodies are required to notify transactions to the Accountable Officer.

Aims

1.3 The aim of the Procedures is to ensure that NHSScotland buys, sells, leases or excambis property at a price and on other conditions which are the best obtainable for the public interest at that time. It is essential that Holding Bodies are able to demonstrate publicly if need be that this aim has been achieved in every case.

1.4 Frequently an alternative course of action is available – even if it is only “do nothing” – in any property transaction. In that event the transaction must be subject to an appraisal of options. This applies particularly where property is to be acquired by purchase or lease but it is also relevant in circumstances where a disposal is other than to the highest bidder on the open market, e.g. health related sale. See also Option Appraisal requirements at Management: Section 3.

1.5 It is important that transactions are carried out diligently and Holding Bodies must ensure that adequate staff and other resources are available for each project. Delay can involve the loss of the opportunity to buy or sell a particular property and, in the case of disposals, means that resources which could be used for another purpose are tied up unnecessarily in property. It is most important to ensure that the outcome is the best obtainable for the public interest at that time.

Professional Advice

1.6 Achievement of the aims depends crucially on obtaining appropriate professional advice. Many property transactions are complex, and (internal and/ or external) expert advice must be sought in all cases. The respective responsibilities of professional advisers are detailed in Paragraphs 1.6 to 1.15 of Management.

Property Adviser

1.7 A **mandatory** requirement for all transactions is the appointment of a Property Adviser unless other arrangements have been agreed with SGHSC. The Property Adviser is the professionally qualified external adviser appointed by the Holding Body to assume overall responsibility for advising on the non-legal aspects of a transaction.

1.8 Who is appointed Property Adviser depends on the type of transaction – and in particular on the pre-eminent skills required for the transactions. In the case of a standard disposal, the Property Adviser will normally be the marketing agent. For acquisitions, the Property Adviser may be the District Valuer, who has considerable experience in this area, or a private sector professionally qualified firm. Where transfer between NHSScotland and another interest of Scottish Ministers following a trawl is involved, the District Valuer or a suitably qualified external valuer should always assess the transfer price and in these cases the Property Adviser would be the District Valuer or external valuer. In certain circumstances it may be necessary to appoint separate Property Advisers including a Planning adviser for different stages of transactions.

1.9 The Holding Body should therefore decide what type of professional adviser should be appointed as Property Adviser. All external professional advisers, including Property Advisers, Independent Valuers and other valuers or consultants if engaged, should be appointed by competitive tender unless there are convincing and justifiable reasons to the contrary.

Independent Valuer

1.10 For certain disposals (see Management: Paragraph 1.7), an Independent Valuer must be appointed in addition to a Property Adviser. The Independent Valuer can be a District Valuer, or a suitably qualified private sector valuer, otherwise unconnected with the disposal, appointed by competitive tender (as above 1.9). The Independent Valuer is an **additional** source of advice, not a substitute for the Property Adviser, who must be appointed for every transaction. Management: Paragraph 1.8 identifies the Independent Valuers' main responsibilities, in addition the Holding Body should consider what additional services from the Independent Valuer would assist the taxpayers' interests in the particular transaction. These will vary depending on the transaction but may include:

- involving the Independent Valuer in regular project group meetings;
- ensuring the Independent Valuer approves each stage in negotiations (to avoid the risk of a difference of opinion when it may be too late to resolve);

Further Advice

1.11 Where any Holding Body is in doubt as to an appropriate Property Adviser, Independent Valuer or any other professional adviser, advice is available from SG Property Division (see Management: Paragraph 1.9). Holding Bodies should consult the Legal Adviser at all appropriate stages of a property transaction, and generally keep all advisers up-to-date with progress at other times. Further guidance on the use of professional advisers is given in the individual sections dealing with particular types of transactions.

1.12 The formal recommendation of each of the Property Adviser and Independent Valuer (when appointed) must be obtained in writing before conclusion of a binding contractual commitment by the Holding Body in every transaction (unless alternative arrangements have been agreed with SGHSC). This

includes advice on the normal valuation aspects, purchase and sale prices, planning aspects, lease terms and completion of transactions. The Property Adviser's agreement should be sought for the terms of a proposed lease in every case. **Where notification of a transaction to the Accountable Officer is required, the notification should include the Property Adviser's advice and recommendation and that of the Independent Valuer (when appointed) (see Annex I).** Where a Holding Body proposes to act contrary to the Property Adviser's advice, where this is related to mandatory responsibilities, this must be recorded in the Certificate (see Annex III).

1.13 After any notification of a transaction to the Accountable Officer, the responsibility for implementation of any action requested rests with the Holding Body concerned.

Notification to Accountable Officer

1.14 Holding Bodies are free to conclude property transactions within their remit without reference to SGHSC unless notification to the Accountable Officer is required in the specific circumstances listed at Annex I.

1.15 Whether or not notification is required in terms of Annex I, all Holding Bodies must inform SGHSC of any transactions which might:

- lead to Ministerial interest or be brought to the attention of Scottish Ministers;
- give rise to judicial proceedings;
- inspire suggestions of conflict between Scottish Ministers NHSScotland interests and their other responsibilities e.g. for appeals under planning procedures; or
- be otherwise novel or contentious.

In these circumstances Holding Bodies should, as soon as they are aware of such interests, provide SGHSC with briefing and advice which can be used in dealing with any questions or issues raised and await authorisation to proceed.

Supporting information

1.16 Where notification to the Accountable Officer is required for any property transaction issue, the Holding Body must provide all the necessary certification and supporting information when the case is submitted to SGHSC. The procedures and forms for notifying the Accountable Officer are described at Annex II. Submissions must be based on specific recommendations from the Holding Body's Chief Executive.

Certification

1.17 All Holding Bodies must complete certification for all property transactions as set out at Annex III.

1.18 Certification should be signed at the point where an offer is to be accepted or submitted or, in the case of transactions which require to be notified to the Accountable Officer, signed certification should be, where appropriate, supplied with the other papers submitted.

Monitoring

1.19 Holding Bodies' handling of property transactions is subject to certification, to monitoring following completion of the transaction and the submission of an annual post-transactions report to SGHSC. The monitoring arrangements are explained at Management: Section 6: Post-transaction monitoring.

Wayleaves and Servitudes

1.20 Holding Bodies are responsible for granting all wayleaves and servitudes in connection with NHSScotland land. Applications received by any Holding Body for such a right should be examined to ensure that the development of a site will not be adversely affected (e.g. by a wayleave to lay pipes across a piece of land on which an extension to a hospital might be built). The Legal Adviser should be consulted about proposals (as should the Property Adviser where necessary) as to appropriate terms. Any document associated with a transaction should be drawn up by the Legal Adviser and executed by a duly authorised officer of the Holding Body.

Telecommunications Equipment

1.21 The provisions set in Paragraph 1.20 above apply. However, Holding Bodies must be aware that the statutory Telecommunications Code can result in security of tenure for certain equipment regardless of the contract terms as to duration. The implications of this require to be taken into account prior to agreeing to the arrangement

1.22 Holding Bodies should consult Health Facilities Scotland for technical advice regarding any concerns over the health implications of telecommunications equipment.

SALE OF PROPERTY

Scope

2.1 This Section provides guidance on the sale of NHSScotland property. It should be read alongside Section 1, which gives an overview of certain procedural matters common to all NHSScotland property transactions.

2.2 Where specific procedures are not laid down, **Holding Bodies must act in accordance with the best professional advice.**

Stage 1: Identification of Surplus Property

2.3 The Scottish Government attaches great importance to public bodies, including NHSScotland, minimising their property holdings in order to reduce management costs and make extra funds available for reinvestment in health care. Holding Bodies must therefore regularly review their property in order to identify any which may be disposed of – either by outright sale or by lease. This is one of the aims of Health and Social Care Directorates policy and the purpose of a Property and Asset Management Strategy. Professional advice should be obtained in order to maximise the value of the property put on the market. Holding Bodies should take particular care to ensure that they have considered:

- That in the light of strategic plans they themselves, or other NHSScotland interests have no foreseeable use for the property.
- The current and future use of all NHSScotland property on site or in the vicinity, whether or not it is immediately surplus, in order to identify the maximum disposal package;
- The effect of disposal on adjacent NHSScotland property (e.g. preserving suitable means of access in case additional land subsequently becomes surplus, and ensuring that services are not interrupted); and
- Whether there is adjoining land which, if acquired, would help construct a better disposal package – or whether collaboration with an adjoining landowner would allow a larger more attractive site to be sold.

2.4 If the potential sale is complex (e.g. because planning permission for an alternative use could greatly increase its value, because of relationships with other NHS property, or because it is linked to investment in new or refurbished facilities), it is particularly important that Holding Bodies should take professional advice at this stage. Such advice should help to ensure that the right package of land is declared surplus, to identify opportunities to enhance its value by a change of planning status, or to give valuation advice to inform the option appraisal for any investment which may be necessary before the property can be vacated and sold. The preparations for sale (described in Paragraph 2.9 below) may be put in hand at this stage, in the interest of speed.

2.5 The aim should be to market surplus property in advance of vacant possession being available in order to minimise abortive heating, maintenance and security costs which will arise if the property is left empty. Property which stands empty for a considerable time can also be difficult to sell. **Bodies should not therefore wait until the property has been vacated before initiating action.** In doing so care must be taken to ensure that no legally binding commitment is entered into which obliges the Holding Body to give vacant possession of the property before the Holding Body is in a position so to do. Holding Bodies are responsible for setting the timescale for disposal and ensuring (without prejudicing the achievement of the best available outcome) that the timescale is achieved. Some of the factors affecting speed of progress (notably obtaining planning permission) are not within Holding Bodies' control, but every effort should be made to expedite sale procedures.

Stage 2: Preliminaries to Sale

2.6 Once identified as surplus to NHSScotland requirements, property should normally be sold on the open market for the best price (or other consideration) obtainable at that time. Leasing may, however, be considered as an alternative – see Paragraph 2.17.7 and Procedures: Section 3. Paragraph 2.39 below describes specific alternative approaches which may be used where large areas of land with significant development potential, are to be sold.

2.7 Although Holding Bodies should not involve the Accountable Officer precipitately, they should consider at this stage whether any of the notification requirements of Annex I suggest that early consultation with the Accountable Officer is advisable. Even if not, Holding Bodies should consider whether the Health and Social Care Directorates should be informed at this point of any issues of the kind detailed at Section 1: Paragraph 1.15.

2.8 Holding Bodies should take 4 important steps before putting property on the market.

These 4 steps, which should be taken **concurrently** are:

- To make the necessary **preparations for sale**;
- To secure **professional guidance** on the valuation and marketing of the property;
- To establish the **planning position**;
- To check whether there is a **priority interest** in the property.

2.9 **Preparations for Sale.** To make the necessary preparations for the sale, the Holding Body should ensure that all necessary information is available. This includes full details of the site, together with a detailed plan (showing, in particular, boundaries, accesses, servitudes and any services crossing the site) and any known features of the property which may hinder or complicate the sale. Also, obtain a title report from the Legal Adviser which should identify any title restrictions and consider whether any action should be taken to remove any or all of the restrictions. If the required information does not already exist, it must be assembled and passed to the Property Adviser and the Legal Adviser before the property is placed on the open market for disposal. The preparation of a title report may prove to be a precursor to

further action being required, e.g. the correction of a defect identified by the report. Such further action can prove time consuming and Holding Bodies should consider liaising with the Legal Adviser at the earliest possible stage to prepare the title report leaving sufficient time thereafter for remedial action to be undertaken prior to the planned disposal procedure.

2.10 Professional Guidance. In securing professional guidance on the valuation and the marketing of property, the key step will normally be the appointment of the Property Adviser (see of Section 1: Paragraphs 1.7 to 1.9) a mandatory requirement for all property transactions. For disposals, the Property Adviser will normally be the marketing agent unless the Holding Body for some reason concludes that the roles should be separate. For certain disposals (see Management: Paragraph 1.7) an Independent Valuer must be appointed in addition to the Property Adviser. If a Property Adviser and Independent Valuer are required, both appointments should usually be made at the same time (if the need for an Independent Valuer is not recognised until a report has been received from the Property Adviser, the appointment should be made as quickly as possible thereafter). The Property Adviser and Independent Valuer must be independent of each other: e.g. it would not be permissible to appoint 2 individuals from the same firm to fill the 2 roles even if internal arrangements to avoid a conflict of interest were proposed.

2.11 The agent must be a firm with specialist knowledge of the market for the particular type of property involved and its locality. The expertise of agency firms varies considerably and SG Property Division can advise on a range of appropriate firms. In some cases such as house sales in localities where the bulk of such sales are carried out by solicitors then a solicitor estate agent with wide and appropriate experience of the property market concerned may be employed.

2.12 SG Property Division and the Legal Adviser can provide advice to the Holding Body on all aspects of the agent/client relationship. This includes the handling of the disposal or the arrangements for fees. SG Property Division can assist with monitoring the performance of the marketing agent to avoid unnecessary delay or the oversight of some important feature.

2.13 With appropriate legal assistance, the appointment of the Property Adviser and Independent Valuer should be on the basis of competitive tender of 3 to 5 property planning/valuation/marketing agents depending on the estimated value of the service/contract. However, the Scottish Government normally uses marketing and valuation services that have been subject to competitive tender as such has access to a number of framework agreements that have previously been tendered these Service Level Agreements are available to NHSScotland and can save the time and effort needed to tender separately. Where any Holding Body is in doubt as to an appropriate Property Adviser, advice is available from SG Property Division (see Management: Paragraph 1.9). If a special tendering exercise is required SG Property Division can advise on the specification, assist drawing up a short-list, liaise with Scottish Procurement Directorate and assist in interviews and analysis of tenders. <http://www.gov.scot/Topics/Government/Finance/spfm/procure>

2.14 A meeting involving the Holding Body and the Legal Adviser may be invaluable at this stage in identifying potential opportunities and problems, arranging

how they should be pursued and agreeing arrangements for the appointment of the Property Adviser and, if required, an Independent Valuer. This is also an opportunity for the Legal Adviser to draw to the attention of the Holding Body any peculiarities of the sale (e.g. time restrictions) and the lesson of any previous cases.

2.15 *Planning Position.* The future planning potential of the property must be thoroughly investigated and clarified before it is marketed. Investigations regarding the planning potential should be begun when the property is first identified as non-essential. In seeking professional advice Holding Bodies should also ask for explicit advice on whether there is likely to be potential for redevelopment or change of use and on the nature of such redevelopment (e.g. conversion to residential use, commercial purposes, etc) or change of use (e.g. from healthcare to housing or industry). Advice on the planning position at the date of sale should be a key item in the brief prepared by the Holding Body for a sale. The Holding Body should normally pass the responsibility for obtaining planning permission to the purchaser where the disposal is likely to give rise to controversy or in cases where there is doubt on the most valuable use. Where the Property Adviser concludes that there is no scope for enhancing the likely sale price by taking advantage of the property's potential for development or change of use he/she should nevertheless consult the planning authority about the development potential and possible changes of use which may be permissible and report in writing to the Holding Body with appropriate recommendations. The Holding Body with the benefit of this professional advice from the Property Adviser must then ensure that it and not the eventual purchaser gets the benefit of enhanced development value of the property or any enhanced value following a change of use.

2.16 If the uncertainty about the planning position is small (e.g. the number of houses which may be built on a site), the sale may be concluded with a profit-sharing agreement under which (for example) a further sum is payable if planning consent for more than a specified number of houses is permitted. If there is greater uncertainty the Holding Body should consider obtaining planning permission for the new use/s, or agree with the Planning Authority a Planning Brief (specifying permissible use/s); alternatively if advised to do so by a Property Adviser, the Holding Body may seek offers containing suspensive conditions regarding future use but strict timetables must be agreed in the missives of sale for purification of any such suspensive conditions; in some circumstances it may be necessary to appeal to Scottish Ministers to ensure that the full development potential has been realised. The process of establishing the alternative uses of the land may take some time – and the speed of the planning process is not under the control of the Holding Body. It is essential that plenty of time is left for this stage, because it may greatly enhance the selling price of the property. Holding Bodies should consider in every case whether clawback/right of pre-emption/title restriction or other provision covering future changes of use or other circumstances is required. The effect of such provisions on purchaser interest and sale price should also be assessed. Guidance on clawback and right of pre-emption should be sought from the Property Adviser and Legal Adviser.

2.17 *Priority interest.* Property should normally be offered for sale on the open market. But to check whether there is a priority interest in the property, the Holding

Body should consider whether it is in the public interest to dispose of it in any of the following ways:

2.17.1 *Another Function of Scottish Ministers/or Related Bodies.* In order to ensure that Scottish Ministers are not put in the position of competing on the open market to acquire for one function property which is being sold because it is surplus to another of their functions, Holding Bodies should carry out trawl procedures. Where a positive interest in the property is expressed, the Holding Body should follow the procedure detailed at: <http://www.gov.scot/Topics/Government/Finance/spfm/PropertyManagement/TransferofProperty>

The requirement for assessment of the transfer price applies whether or not private sector agents are acting for the Holding Body owning the property to be transferred in some other capacity. Once the property is transferred, and amount equivalent to the transfer price is credited to the Holding Body.

Where the disposal of land or buildings is to be included as part of a PPP package there is no need to follow the trawl procedures.

2.17.2 *Former owners.* In certain circumstances – the “Crichel Down” rules may apply – surplus NHS property acquired by (or in the presence of) compulsory purchase powers must be offered back to former owners before it is put on the market. The detailed rules are contained at: [Scottish Planning Series: Planning Circular 5 2011: Disposal of Surplus Government Land - The Crichel Down Rules](#)
“The Land and property to which the Rules apply, Para. 6-9”

If the Holding Body considers that these circumstances may apply, it must seek confirmation from the Legal Adviser who should advise on the terms on which the property would be offered back to the original owners or successors. The Legal Adviser should consult the Property Adviser about the need to establish the development potential of the land, and its selling price (normally the existing use value or value for alternative permissible use, whichever is the higher). In certain circumstances, proposals for disposal of land which have been considered under the Crichel Down rules require notification to the Accountable Officer in terms of Annex I.

2.17.3 *Excambion.* Holding Bodies may agree an excambion (exchange) as an alternative to selling one piece of property and buying another, if they can demonstrate with the advice of their Property Adviser and Legal Adviser that it is in the public interest to do so. Valuations for the purposes of excambion can be undertaken by the District Valuer or any appropriately qualified external valuer. The parties to the excambion should agree who should carry out the valuation and any procedures required.

2.17.4 *Health Related interest from non-NHSScotland bodies.* Holding Bodies should consider whether there is a health related interest (a person or organisation providing health related interest (a person or organisation providing health care, social care services or some other form of community

care, complementary to the services provided by the body) which, if it acquired the property without it being put on the open market, would offer significant financial or other advantages to NHSScotland (for sales of medical practice premises, see 2.17.5 below). In such a case, the Holding Body should:-

- Take care to ensure that the health related interest has no reason to believe that the Holding Body is in any way committed to disposal on a preferential basis, before a formal decision is taken;
- Carry out an appraisal of the benefits (e.g. in the form of revenue savings over a number of years) which might justify selling the property preferentially, rather than establishing its planning potential and arranging an open market sale (see Management: Section 3).

The selling price, set by a professional valuer, should be Market Value, as defined by the RICS Appraisal and Valuation Manual (the “Red Book”), subject to the following special assumptions:

- that planning permission would only be available for a use contained in the same use class under The Town and Country Planning (Use Classes) (Scotland) Order 1997;
http://www.oqps.gov.uk/legislation/uk/si/si1997/uksi_19973061_en_1
- and reflecting the value of any adaptations, alterations and extensions; and
- that only one health-related interest is permitted to be in the market to use the premises for the appropriate health-related purpose at any one time and that any element of goodwill attaching to the premises is excluded.

2.17.5 Medical Practice Premises. Holding Bodies may sell health centres or surgery premises to either the practices which operate from them, or to third parties intending to develop the premises for more effective NHSScotland and community care use if it can be demonstrated to be the best solution in the public interest. Such sales are subject to certain safeguards to protect the interests of the Holding Body and Scottish Ministers. Detailed procedures are at Section 4.

2.17.6 Special Purchasers. Where it is clear beyond doubt that one purchaser will submit a bid, which will not be exceeded by open tender, the property may be sold following direct negotiation. Examples include the sale of access land or the sale to a sitting tenant or adjacent owner. Such sales should take place only if there is *explicit agreement* from the Property Adviser (and if appointed the Independent Valuer) that this is the best course in line with the requirements of this Handbook (the certification for sales – see Annex III – includes provision for off market sales). Even where there is only one prospective purchaser, the sole bidder should still formally tender. Where

direct off market sale to a commercial organisation is involved an Independent Valuer should be appointed (see Management: Paragraph 1.7).

2.17.7 Lease. If a property is temporarily unused, or where the sale of part is not feasible or desirable, it may be leased until such time as it is needed for NHS purposes or can be declared surplus and sold. Property within a health service site may also be leased to a commercial or voluntary organisation for the purpose of providing a service to the Holding Body, patients or staff – or if expert professional advice demonstrates that leasing would generate income greater than would accrue from outright sale. Detailed procedures are at Section 3.

2.17.8 Social Housing. Where surplus housing is located in an area of priority need then in the first instance the Holding Body should offer the property for social housing use, e.g. to the local authority or a housing association. Such sales should be at market value as assessed by a professional valuer. An “area of priority need” is defined as an area which has been designated as a formal regeneration partnership by Scottish Ministers or by the local authority or which has been identified in the Local Housing Strategy or Strategic Housing Investment Plan as a priority for housing investment. A Holding Body with surplus housing should therefore contact the local authority and SG Housing Investment Division in the first instance giving a reasonable period of notice before offering the house for sale on the open market.

2.18 Clawback/right of pre-emption or a title restriction or any or all of them should be included in the terms of sale for all off market disposals and all disposals of health-related interests under paragraph 2.17.4 (unless a general waiver has been agreed with SGHSC).

Sale of Residential Properties and Sitting Tenants

2.19 Residential tenancies entered into on or after 1 April 1990 are subject to the coverage of the relevant statutory provisions including those establishing an assured tenancy. Tenancies entered into prior to that date may be exempt from certain statutory provisions. Accordingly, if a residential property becomes surplus to requirements, careful consideration of the facts of each individual instance is required. Documentation on all tenancies should be passed to the Legal Adviser for a definitive opinion on the rights of the tenant affected.

In cases where a house is occupied as a condition of employment, tenants of tied houses owned by Scottish Ministers and surplus to requirements should be offered the opportunity to purchase the property in accordance with the Scottish Public Finance Manual.

Disposal of tied houses and sales to other sitting tenants

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

Where a tenant is not occupying the property as a condition of employment, they may be offered the opportunity to purchase their home, although this could be potentially concessionary, unless to do so would be:

- to the detriment of the value of other property. For example, if a house is situated within the curtilage of a hospital which itself has been declared surplus, or is likely to be declared surplus in the foreseeable future, the piecemeal sale of parts of the site might detract from its total value.
- very difficult for practical reasons. For instance, if a house forms part of a hospital or other building, or if its access or services are shared with other NHS property, it may be practically impossible to sell the house separately.
- against sound financial policy. For instance, if a house stands in a large area of grounds which have a development value, demolition of the house and development of the complete site would make better financial sense.

The opportunity to purchase the property **is not at discount**. Advice on procedures, discounts etc are available from the Scottish Government's Property Division and Housing Directorate. Any discount would qualify as a gift and be subject to the procedures described in the section of the SPFM on **Gifts**. <http://www.gov.scot/Topics/Government/Finance/spfm/gifts>

Leasehold Property and Flats

2.20 In instances where Scottish Ministers occupy NHSScotland property under a long lease, such leasehold property may be assigned to occupiers for a premium where the terms of the lease permit and where the lease has 21 years or more to run.

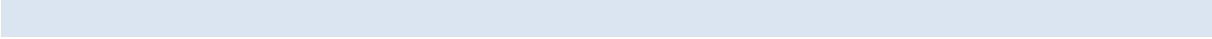
2.21 Where a minority of flats are empty or a minority of the tenants do not wish to buy, the Holding Body should arrange for the preparation of a Deed of Conditions, covering repairs and maintenance, prior to the sale of individual flats. If a majority of flats are empty or a majority of the occupiers do not wish to buy, the Holding Body should consider sale to a Housing Association as an alternative to sale on the open market. Any Deed of Conditions should also take account of any roads, footpaths, amenity areas etc., which have not been taken over by the Local Authority (although every effort should be made where possible to ensure that the Local Authority does take over such responsibilities). Holding Bodies must consult their professional advisers in any such cases.

Valuation

2.22 As with other NHSScotland disposals, a house for sale to a sitting tenant must be professionally valued.

2.23 The appointed Property Adviser/professional valuer must be instructed to value the house on the following assumptions:

- Vacant possession - on the assumption that the tenant or the tenant's family are not in the market.

- Exclusion of tenant's improvements - which should be agreed before the professional valuer is instructed.
 - Exclusion of tenant's liability for repairs under the terms of the lease.
- 

Stage 3: Marketing

Appointment of a Marketing Agent and Marketing of the Property

2.24 Where it is estimated the value of the property will be under £10,000 disposal may proceed without the appointment of a marketing agent. If it is proposed to dispense with a marketing agent for any other reason the relevant Accountable Officer must be informed.

2.25 The marketing agent, in consultation with the Holding Body responsible for the disposal, will normally:

- carry out a full appraisal of the property, clarify the legal position with the Legal Adviser, analyse the appropriate markets and advise on the type, extent and cost of advertising required.
- prepare an advertisement and insert it in appropriate newspapers and property journals. The advertisement and its cost must be cleared in advance with the Holding Body concerned.
- draw up marketing particulars in consultation with the Holding Body, and circulate them to interested parties.
- handle all contact with potential purchasers, including telephone enquiries, meetings and correspondence.
- arrange for the land and buildings to be inspected by or on behalf of potential purchasers.
- agree a closing date for offers with the Holding Body and the independent valuer if appointed and advise all potential purchasers. A fixed date and time must be set for the receipt of formal offers.
- offer should be received in accordance with the Holding Body's Standing Financial Instructions and opened by the Holding Body in the presence of the marketing agent who should assess offers.
- after discussion with the Holding Body make a recommendation in writing as to which offer to accept.

2.26 SG Property Division and the Legal Adviser can provide advice to the Holding Body on all aspects of the agent/client relationship.

2.27 Once the property is placed on the market, unless there was agreement to adhere to the Guidelines for the Transfer of Property within the Scottish Public Sector, all enquiries from prospective purchasers or their agents should be directed to the marketing agent/solicitor handling the sale. If enquirers approach the Holding Body directly before the property is put on the market Holding Bodies must not offer any advice on price, asking price or closing date. The onus is on the purchaser to inform himself/herself about the property and make up his/her own mind.

2.28 The Holding Body, with the assistance of the Legal Adviser if necessary, must monitor the work of the marketing agent to avoid the risk that unnecessary delay occurs or that any important feature is overlooked.

2.29 After the property has been put on the market, all enquiries from, or on behalf of, prospective purchasers should be directed to the marketing agent (or Legal

Adviser if no agents have been appointed). Others involved in the sale must not advise prospective purchasers – for instance about how much they should offer or whether a particular offer is likely to be successful. They should always make clear that it is for the prospective purchaser to make up his own mind, with such professional advice as he considers necessary. In any case of doubt, the advice of the Legal Adviser should be sought.

Stage 4: Consideration of Offers

2.30 As soon as practicable after the closing date, the Holding Body should arrange for offers to be opened, in accordance with the Standing Financial Instructions. The Property Adviser (whose representative should be present when offers are opened) should then provide a written report which includes either a recommendation to accept the best offer or, if this is not clear, advice as to the strategy to be pursued as regards further evaluation of the offers or negotiation with one or more of the offerors. The report to be copied with a copy to the Legal Adviser and the Independent Valuer if appointed. The Holding Body with the advice of the Legal Adviser, the Property Adviser and the Independent Valuer, if appointed, should reach a conclusion on which offer, if any, should be accepted. A meeting of interested parties is often invaluable in order to reach a speedy decision. Where necessary in order to clarify issues of Planning, timing and Unit valuation, those submitting, or a short list of those submitting, offers may be asked to present to the Holding Body and its professional advisers prior to a preferred bidder being identified.

2.31 The acceptability of an offer will depend on whether it is subject to conditions, whether these conditions can be accepted or amended; the financial standing of those making the offers; and the possibility of obtaining a better price by offering the land for sale afresh (bearing in mind security and maintenance costs in the meantime). Sometimes the terms of an offer may make it appropriate to carry out a financial appraisal e.g. where the transaction forms part of a wider investment decision or is of an unusual nature such as where payment by instalments or phased sale is involved. The Property Adviser and Legal Adviser should assist here, but assistance with the appraisal is available from SG Property Division. The best offer (taking account of price and any relevant conditions) should normally be accepted if it is above the guide price. When a decision has been reached on which offer should be accepted, certification should be completed by the Chief Executive of the Holding Body in the light of the certification provided by advisers (see Section 1: Paragraphs 1.17 to 1.18).

2.32 The circumstances in which the Accountable Officer must be notified before acceptance of an offer for property are listed at Annex I. These circumstances include those where any appointed Independent Valuer and the Property Adviser are unable to agree on any particular aspect. If notification is required, the Holding Body must provide all the necessary supporting information, (see Section 1: Paragraph 1.16 and Annex II), including certification (see Section 1: Paragraphs 1.17 to 1.18 and Annex III).

2.33 Late bids or revisions to offers require careful consideration. Holding Bodies which receive a late or revised offer after the closing date, but before the sale has become legally binding, which is significantly higher than those received before the deadline, may consider such an offer. **However, if so, it is of utmost importance that the review and report processes above must be undertaken. It will be mandatory to reference to SGHSC as a matter of Ministerial interest and there could be potential for litigation in some cases.**

2.34 The credit-worthiness of the offerors should be examined in sales on the open market before any bid is accepted. Where the Property Adviser is used to establish the credit-worthiness of offerors, Holding Bodies should ensure that they obtain in writing the advice, and the nature of the evidence on which it is based, in respect of the offer which it is proposed to accept and any higher bids which are recommended for rejection because of doubts about the offerors' financial credentials.

2.35 Unconditional bids (i.e. offers which are not tied to planning or related requirements) need very careful consideration. In circumstances where there is doubt as to the potential use, or the planning position, an unconditional bid is likely to be either at a substantial discount to the real value or will give rise to an unacceptable risk of loss of income. However, where it is well established what type of development will occur, it may be appropriate to entertain an unconditional bid; where an unconditional bid is acceptable it provides proceeds quickly to the Holding Body. Professional advice is particularly important in these circumstances. It should include the Property Adviser's written assurance that the unconditional bid to be accepted is the highest offer in monetary terms.

Stage 5: Formal Conclusion of Sale

2.36 Once a decision has been taken on which offer to accept, the Legal Adviser should arrange for missives to be concluded in consultation with the Holding Body and the Property Adviser. Once missives have been concluded, the Legal Adviser should complete the transaction by handling the conveyancing. The Holding Body is ultimately responsible for co-ordinating the necessary action on completion of the transaction and ensuring that the legal arrangements provide the maximum possible protection of Scottish Ministers interests.

2.37 The disposition should be signed in accordance with the arrangements which are set out at Management: Paragraph 2.3. The Holding Body should notify the Health and Social Care Directorates of the amount of the receipt. Final certification must be completed by the Chief Executive of the Holding Body when the proceeds are received (i.e. date of settlement of transaction).

Monitoring

2.38 Holding Bodies' handling of property transactions is subject to post disposal monitoring of individual cases. Monitoring is carried out on the basis of an annual cycle. The basis for monitoring is a monitoring pro-forma which should be completed by bodies for every transaction as it progresses. The results of post disposal monitoring exercises are considered carefully by the Scottish Government Health and Social Care Directorates. The monitoring procedures are explained in Management: Section 6.

Large Areas of Land with significant developmental potential

2.39 There are sites with developmental potential where an outright sale may not realise the full potential value of the land for the Holding Body. Special participation or profit sharing arrangements may yield a better return. These cases need a greater degree of legal, marketing and monitoring expertise than straightforward sales and **it is essential that appropriate advice is obtained**. In particular, it is important to check that the purchaser is backed by adequate financial resources and offers the best combination of financial status and proven track record of successful development, involving the resolution of town planning and other project problems.

2.39.1 Profit Sharing (often described as Joint Venture Agreements). These arrangements allow the Holding Body to participate in a substantial growth in values if a development is highly successful. The main disadvantage is that negotiation to settle the terms of the arrangement can be complex and time consuming. Great care must be taken to ensure that any reduced payment at the outset is more than offset by a realistic estimate of later profits – and that the developers' costs and sale terms are realistic and can be professionally checked to ensure that the predicted profit share is in practice likely to be achieved. The key technique is the agreement of a "base value" which is paid at the outset (or in stages at regular intervals, or as the development proceeds), together with a shared "development profit" (which is the difference between the development value and the development costs) to be shared between the parties in accordance with agreed terms.

LEASING OF NHSSCOTLAND PROPERTY

Note on arrangements for Special NHS Boards

The Scottish Government has published a new approach to location policy which embeds the principles contained in the Asset Management Review. The new policy and the principles contained therein apply to the core Scottish Government estate, its agencies and NDPBs and, within the context of NHSScotland, will apply to the office-based accommodation of the following bodies:

- NHS National Services Scotland
- NHS Healthcare Improvement Scotland
- NHS Health Scotland
- NHS Education for Scotland
- NHS 24

The key principles are that major estate management decisions will be overseen by Scottish Ministers; decisions relating to the existing estate will be taken by Facilities and Estates Directorate. The Cabinet Secretary for Finance and Sustainable Growth will approve all new commitments (i.e. leases and acquisitions), confirm location decisions and arbitrate in any disputes relating to the existing estate; similar procedures will be put in place within Scottish Government Health and Social Care Directorates.

The Report setting out the Scottish Government's policy covering better asset management can be accessed via the following link: <http://www.scotland.gov.uk/Publications/2009/02/26142659/0>

General

3.1 This Section provides guidance on the leasing of NHSScotland property (except for the leasing of accommodation to staff, on which separate instructions have been issued). It should be read alongside the overview of procedural matters which are common to all NHSScotland property transactions.

3.2 Surplus NHSScotland property should normally be sold, but where property is temporarily unused, or where a part of a property is unused and disposal of that part is not feasible or desirable, the property may be let until such time as it is needed for NHSScotland use or declared surplus. Property within an NHSScotland site may also be leased to a commercial or voluntary organisation for the purpose of providing a service to the patients or staff. Property may also be leased if expert professional advice demonstrates that leasing would generate income greater than would accrue from outright sale, i.e. the net present value of the future income stream would be greater than that accruing from outright sale.

3.3 The aim of these procedures is to ensure that NHSScotland grants leases of property in circumstances where, and in a manner in which, the best outcome for the public interest is obtained. It is essential that Holding Bodies are able to demonstrate publicly that that aim has been achieved in every case.

3.4 The achievement of the aim depends crucially on obtaining good professional advice, as described in Section 1: Paragraphs 1.6 to 1.13. Where specific procedures are not laid down, Holding Bodies must act in accordance with the best professional advice. Leasehold arrangements, especially those involving commercial leases, are necessarily more complicated than straightforward sale. Special care, and expert advice, must be taken to assess the risk element in commercial leases (especially the development prospects and likely income, the developer's status and track record) and to safeguard the NHS's position through the terms of the lease. New leases between NHSScotland Holding Bodies can be established on a cost sharing agreement basis. Such agreements will be similar to Memoranda of Terms

of Occupation used within the Scottish Government and other public sector bodies in similar situations. SG Property Division and Central Legal Office can advise Holding Bodies on such agreements.

Notifications to Accountable Officer

3.5 Holding Bodies are free to conclude property disposals by lease without involving the Health and Social Care Directorates unless notification to the Accountable Officer is required in the specific circumstances listed at Annex I. The notification arrangements and certification requirements are described at Section 1: Paragraphs 1.14 to 1.19.

Lease Terms

3.6 The Central Legal Office holds standard terms and conditions which can be adapted from the leases normally entered into by Holding Bodies. This includes in particular commercial leases of retail properties.

3.7 The lease should normally provide for a fixed rental payable quarterly/monthly in advance (as appropriate), with provision for rent reviews at stated intervals on the recommendation of the Property Adviser and Legal Adviser but not exceeding 5 years. Where rental values are difficult to assess (e.g. because there is too little market evidence), a “turnover rent” may be useful - this is where the tenant pays a base rent plus a negotiated percentage of business turnover.

3.8 The terms of the lease must avoid creating security of tenure which could prove to be an obstruction to future good property management. This is a particular problem with seasonal cropping, grazing or mowing leases - see Paragraphs 3.19 and 3.20.

3.9 Intending lessees should not be allowed to occupy NHSScotland premises before the lease is granted.

3.10 The duration of a lease will depend on local circumstances but it must not exceed the life of the property, nor should it go beyond the time when the property may again be required for NHSScotland purposes or for disposal.

3.11 The tenant should normally be given a Full Repairing and Insuring Lease where the tenant is responsible for all repairs, maintenance, insurance etc. When this is not possible, the cost of repairs, heating etc should be recoverable under a service charge which can be reviewed annually. The tenant must also be responsible for complying with the requirements of Planning, and other Regulations.

3.12 The lease should not allow tenants to make improvements or alterations to the property without obtaining the landlord’s approval in writing to the plans for the proposed alterations and improvements, before works commence. Occasionally, it may be appropriate for the lease to provide for compensation to be paid by the landlord, at the termination of the lease, for improvements made by a tenant (although see paragraph 3.14). The Legal Adviser should be consulted about any compensation rights for improvements. At a rent review, tenant improvements are

normally excluded from the assessment of the reviewed rent. When the Property Adviser is instructed to negotiate the review of rent he should therefore be advised of any improvements which have been carried out to the premises.

3.13 The position of any buildings erected on a leased site needs to be given careful consideration in the drafting of a ground lease. Generally the terms should avoid any commitment on the part of the Holding Body to the purchase of redeveloped property or any buildings erected on a leased site, or other form of compensation. This can create an actual or contingent liability requiring to be agreed by Scottish Government Finance Group and notified to the Scottish Parliament where the amount of the financial liability could exceed £1 million (see Annex I). It is however open to Holding Bodies in certain circumstances to negotiate, in suitable terms, an option to “buy back” following consideration of the financial consequences and subject to any required Scottish Government Finance Group approval and notification to Parliament. Any proposal to create an actual or contingent liability where the amount of the financial liability could exceed £1 million requires to be notified to the Accountable Officer (see Annex I). A clause to leave the building or to demolish at the tenants expense will however be preferable.

Action during the Term of the Lease

3.14 Holding Bodies must ensure that tenants comply with the terms and conditions of leases - especially commercial leases. This should be done by appropriate monitoring (including, if necessary, visits to the property); a periodic check that any repair, decoration, insurance etc requirements of the lease are being maintained; that the rent is paid; and to review the future of the lease shortly before it expires. When Holding Bodies propose to take action for any alleged breach of the terms of a lease, they should obtain the Legal Adviser’s advice.

3.15 Holding Bodies must ensure that the rent review process is started in time for the Property Adviser to report on the proposed new rent, and for notification to be given to the tenant in accordance with the terms of the lease.

3.16 At the termination of the stated period of a lease, the tenant may request either an extension or renewal. At this point, Holding Bodies must consider whether the property should still be leased rather than sold; whether the lease should be re-advertised (particularly where there is any indication of possible competition for the property); and whether any terms of the lease should be altered. If the tenant merely wishes to extend the lease for a short period, the Legal Adviser should (after consultation with the Property Adviser) draft a Minute of Extension for the appropriate period continuing the conditions of the lease, subject to any appropriate changes of rent. If a total renewal of the lease is contemplated, a fresh Minute of Lease is more appropriate.

Use of NHSScotland Property by Local Authorities

3.17 Scottish Ministers may, under Section 15(1)(d) of the National Health Service (Scotland) Act 1978, make premises available to local authorities (including education authorities). A formal lease on terms recommended by the Property

Adviser will generally be appropriate for the use of NHSScotland property in such circumstances.

3.18 Where a new permanent building is required for a hospital, special school for the education of mentally handicapped and/or other long-stay children and young people in hospital, land may be leased or sold to the local authority.

Leasing Agricultural Land

3.19 Land retained for future NHSScotland use can sometimes be leased for seasonal grazing or mowing. The Central Legal Office has standard leases which can be adapted to particular circumstances. Competitive tenders should normally be sought, but Holding Bodies have discretion to relax this procedure where there is no evidence of competing interests. Many agricultural Auction Markets have auctions of land for seasonal grazing. Using such auctions is an appropriate method for leasing seasonal grazing. Before lets are renewed or put out to tender, Holding Bodies should always specifically consider whether there is still good reason for retaining ownership of the land.

3.20 It should be noted that there are significant technical details associated with seasonal grazing and mowing lets with a risk of security of tenure being established by the tenant if these details are not satisfied. Holding Bodies must seek advice from their professional advisers when considering any form of seasonal or other agricultural lease.

University Medical School Facilities

3.21 Where a joint hospital/university medical school development takes place, the arrangements between the Holding Body and the University will be as follows (unless other special arrangements have been agreed with the Health and Social Care Directorates):

3.21.1 where Scottish Ministers purchase a new site for a development, the University must pay a proportionate share of the development costs, plus either a share of the land acquisition costs and a nominal ground rent or a market rent in relation to the ground lease for the land;

3.21.2 where the development is on an existing NHSScotland site, the University must pay a proportionate share of the development costs, plus a market rent in respect of a ground lease for the land; and

3.21.3 where existing NHS premises are to be used, the University must pay a market rent. Where a market rent is payable, it should normally be capitalised and paid as a grassum at the commencement of the lease by the University and the lease granted at a nominal rent.

3.22 Normal terms and conditions should be incorporated in any lease of land or buildings. The following additional provisions should be noted:

3.22.1 where ground lease is proposed the term should normally be for 99 years;

3.22.2 where it is agreed that a grassum will not be paid at the commencement of the lease the rent payable under the lease should be subject to review at no more than 5 year intervals;

3.22.3 a clause to be included enabling a University at any time after the tenth anniversary of the commencement of the lease to serve a notice of the University's intention to cease using the building for the purpose for which it was initially erected;

3.22.4 on receipt of a notice referred to in 3.22.3 NHSScotland to have the option to assume ownership of the building on payment to the University of the market value of the property at the appropriate date. Notice of a Holding Body's intention to exercise this option must be given not later than 6 months before the notice referred to in 3.22.3 expires and the compensation to be paid to the university will be determined by the District Valuer or a suitably qualified external valuer. The lease will terminate on the date the notice takes effect;

3.22.5 if the option in 3.22.3 is not exercised the University will have the right after the expiry of the notice to use the building for University purposes other than the specific purpose for which it was erected providing these purposes are compatible with NHS use. The consent of Scottish Ministers will be required but such consent will not be unreasonably withheld to this other use; and

3.22.6 the University will be responsible for obtaining all consents, building warrants, etc, required under Planning Acts, Building Regulations, Health and Safety, etc in the event of Scottish Ministers consenting to alterations or additions to the building.

3.23 Where the building is shared, the following conditions should also apply:

3.23.1 the lease to define the nature and basis of charging for operating costs; and

3.23.2 Scottish Ministers to carry the insurance risks for damage or loss. (In the event of either, the Holding Body and the Scottish Higher Education Funding Council should jointly consider the question of the costs and assess the apportionment of the cost of replacement/reinstatement. NHSScotland should not be liable for replacement of University equipment or furniture in University areas of the hospital.)

3.24 Where existing NHSScotland accommodation is leased and the arrangement is intended to be on a permanent basis, it will generally be appropriate to grant a long lease - i.e., 21 years and upwards depending on the life of the building. A break option exercisable only by the University to be included at year 10 of the lease.

Concessionary Leases

3.25 No charge should be made for accommodation provided by a Holding Body for use as a shop/canteen and staffed by a voluntary organisation. Where NHS land is made available to a voluntary organisation to erect premises (hospital canteens, shops etc) a nominal rent must be charged. However, other than in these cases, a concessionary lease - whether that be at no rental charge, peppercorn level or at a rental below market level - should be considered only in the most exceptional circumstances. It is important that the cost of occupying property should be transparent.

3.26 Where a Holding Body judge that an organisation or company should receive financial support with the rental of such property, any support should normally be provided in the form of additional funding (e.g., in the case of voluntary organisations, in the form of extra funds from a sponsoring Health and Social Care Directorate) rather than a concessionary rental arrangement, which represents a hidden subsidy.

3.27 Concessionary leases other than in the specific circumstances described above should only be considered, exceptionally, where:

- a voluntary body proposes to use NHS property (which is surplus or temporarily unused or has no foreseeable future use) for a service which complements a NHSScotland service or which would otherwise have to be provided by the Holding Body;
- the financial loss will be matched by an equivalent financial or service benefit to NHSScotland.

3.28 Concessionary leases should not be given to:

- Scottish Government funded bodies - which should seek additional funds from their sponsoring Health and Social Care Directorate.
- Local authorities - which should be covered by Joint financing arrangements.
- Commercial undertakings unless, exceptionally, they provide a service to staff and/or patients (e.g., a bank) and can demonstrate that the service would be uneconomic if a market rent was charged. (Any granting of a concessionary lease to a commercial undertaking in these exceptional circumstances should follow a full survey and testing of the market to ensure that the competitors of the chosen undertaking were not also interested, except as concessionaires).

3.29 Holding Bodies may grant “concessionary” leases where the total value of the concession is £5,000 or less. Proposed concessionary leases in excess of that amount should be notified to the Accountable Officer in terms of Annex I (before any commitment to granting the lease is made) with the appropriate supporting information. The amount of supporting information needed depends on the circumstances of the case but it should cover the following points:

- A copy of the Property Adviser’s report giving the current market value for both a lease and a sale.
- A statement of the reasons for the Holding Body’s recommendation, including details of the expected advantages to NHSScotland, both general and financial (including an assessment of how the financial loss will be matched by equivalent financial or service benefit to NHSScotland).
- The reasons why the organisation concerned cannot pay the full market rent.
- Details of the other options considered for delivery of the service concerned, including financial details (see Management: Section 3).
- Any additional relevant Information.

3.30 The length of a concessionary lease should not exceed 7 years unless there are sound health service related reasons for a longer period (e.g., the tenant proposes to erect a “care in the community” building on the site, in which case the term of the lease should match the expected life of the building). Otherwise terms should be as for a normal lease but with the following additional clauses:

- The property to be used solely for the purpose of the concessionary lease (a “use clause”).
- The tenant to permit the Holding Body to carry out regular checks to ensure that the terms of the lease are being properly adhered to, and that the property continues to be used for the purpose of the concessionary lease.
- The lease to terminate, and the premises to revert to Scottish Ministers / NHS Board as appropriate, if the premises are no longer used for, or are no longer required for, the purposes of the concessionary lease or if an attempt is made to change the use to other purposes.
- If the lease relates to a site which, although not yet declared surplus, is considered non- essential with no future NHS use, it must be a condition that any building constructed on the site would revert to Scottish Ministers/NHS Board as appropriate on termination of the lease (the Property Adviser should be told of any such condition so that this can be taken into account when giving an opinion of value).

3.31 The points on purchase of property, or other form of compensation, mentioned at Paragraph 3.14, should be noted since these are issues which are particularly liable to be raised where a concessionary lease is also an issue.

3.32 If it is proposed to renew a concessionary lease on expiry (whether on the same terms or not), the proposal should be evaluated afresh and a fresh notification submitted to the Accountable Officer if appropriate. Holding Bodies must not give prior indication to the leaseholder that renewal will be automatically given. Renewal must always be considered well in advance of the expiry of the current lease.

SALE OF HEALTH CENTRES/SURGERIES

Introduction

4.1 This section provides detailed guidance for staff and advisers who are involved day to day in property transactions, on the sale of health centres - and other medical practice premises in NHSScotland ownership - to either the general medical practitioners who operate from them or to 3rd parties intending to develop the premises for more effective NHSScotland and community care use. It should be read alongside Section 1 which gives an overview of certain procedural matters which are common to all property transactions.

General

4.2 Health centres have for many years served the purpose of improving practice premises whilst bringing together under one roof the primary care team. There is no weakening of the commitment to the provision and operation of suitable accommodation to fulfil that aim. Many practices already operate, in a similarly integrated manner, from high-quality premises either owned by the practice or, increasingly, leased from 3rd parties. There is no reason in principle why health centres should not be sold and operated in a similar manner provided. This is to the benefit of NHSScotland and patients. The consequences of the strategic shift to primary care in terms of premises, the increasing integration of GP community health and outreach services, and the desirability of GP leadership within primary care should be recognised in any such sale arrangements.

4.3 This guidance applies to health centres where title rests with NHS Health Boards. The Holding Body with whom title rests is responsible for considering applications to purchase health centres either from occupying GPs or 3rd parties.

GP Rent and Rates Scheme

4.4 Under these arrangements GP's may be eligible to apply for a cost rent in relation to the acquisition of premises where these are being acquired for substantial modification in accordance with the relevant sections of the Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004; otherwise GP's will qualify for reimbursement under the relevant sections of the Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004.

4.5 Alternatively, GP's may seek reimbursement in respect of redeveloped premises under the GP Rent and Rates Scheme where the premises are leased from 3rd parties. Dependent on the extent of the accommodation needed for the extended primary care team a separate lease may be required.

4.6 Nothing in this section overrides the provisions of the relevant sections of the Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004 as may be from time to time in-force.

Costs and Benefits

4.7 Each proposal to sell a health centre should be considered on its own merits along with the costs and benefits of sale.

4.8 Transfer of ownership of health centres to GP occupiers or 3rd parties may offer the following advantages:

- The new owner would be able to undertake direct improvement in the quality and standards of primary care premises for patients; particularly where the health centre currently requires extension or replacement on the same site;
- The GP practice may be able to expand the range of primary care services that could be offered to patients;
- Better space utilisation of the accommodation may be achieved;
- GPs would have a greater say in the use of the centre, service provision and future development consistent with the concept of GP-led primary care.

4.9 Potentially there are also a number of financial benefits which may accrue to the wider NHSScotland. Holding Bodies may be able:

- to rationalise their property holdings;
- to reduce expenditure on health centre running costs;
- to focus expenditure on service provision;
- to secure a reduction in their capital debt and consequently in the payment of capital charge equivalents; and
- to arrange appropriate and cost effective arrangements for its own staff accommodation in respect of the services it would continue to provide.

4.10 Against these benefits may need to be set any of the following potential disadvantages:

- any costs to Holding Bodies and other agencies in leasing the community health and outreach services portion of the health centre; and
- the incurring of legal and other costs involved in arranging the sale and of resourcing and facilitation of any major initiative. However a Holding Body will be able to set off its legal costs against the capital receipt.

Option Appraisal

4.11 Before taking a decision to sell, or notifying a proposed sale to the Accountable Officer if required, the Holding Body should carry out an appropriate appraisal of the options having regard for Management: Section 3 of this Handbook.

4.12 The Holding Body must be satisfied that any sale would be consistent with its service and related strategies and take account of the overall interests of the occupiers of the premises. The following specific factors should be considered:

- Degree of GMS utilisation;

Where less than 10% of the existing space in a health centre is used for non-GMS, and non primary health care team purposes, the projected requirements of the GP and Primary Health Care Team occupiers should be paramount. Where non-GMS use is more extensive, careful consideration should be given to the needs of other NHS users (see paragraph 4.16);

- Upgrading required;

Careful consideration should be given to the extent of upgrading necessary to meet the developing space demands for services to be provided from the premises, the potential for appropriate development, and the suitability of the premises for finance under the relevant sections of the Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004;

- Prioritisation of development;

Proposals should receive attention in the light of the need for premises development as identified in the Holding Body's Property and Asset Management Strategy, and the need to prioritise all development requiring Rent and Rates Scheme funding;

- Formal process to identify preferred 3rd party developer;

A formal procedure should be followed, in conjunction with prospective tenants such as GP practices, in the selection of any preferred 3rd party developer to purchase for redevelopment an existing Health Centre.

- Best value;

Arrangements detailed in the relevant sections of the Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004 plus any supplementary guidance from time to time in-force are intended to achieve best value for NHSScotland in respect of the provision of leasehold accommodation for GPs.

Professional Advice

4.13 As with other NHSScotland disposals, the health centre or other medical practice property to be sold to a practice or 3rd party must be professionally valued. The Property Adviser is also expected to provide advice on related matters such as planning potential. See also Section 1: Paragraphs 1.7 to 1.9.

Safeguards

4.14 If the outcome of the option appraisal concludes that a sale is the best way forward, Holding Bodies should consider the need for safeguards, taking advice as necessary from professional advisers. Such safeguards may be necessary if there is concern that the land involved could attract planning consent for a more financially valuable use at a later date. The available safeguards are clawback, right of pre-emption, title restriction or a combination of such measures in the same way as could apply for any other sale of NHSScotland property. Careful consideration however should be given to the extent of safeguards introduced for sales to general medical practitioners. It is important to ensure that the purchaser of the health centre or practice premises cannot sell on the property for significant profit particularly within the 5 year period immediately following the sale, although due allowance should be made for subsequent investment in improved facilities. It should be borne in mind that the restrictions in the terms of sale for any disposal may have the effect of lowering the sale price or preventing significant financial investment into related patient benefits.

4.15 Holding Bodies should therefore include in the conditions of sale the minimum safeguards to ensure that the public sector are achieving the best possible price in the case of a sale to a GP practice. They should consider why the opportunities available to Holding Bodies as commissioner of GMS services should not themselves provide sufficient safeguards for ongoing NHSScotland use. In any event, the Property Adviser should advise on these aspects.

4.16 In the case of a health centre where there is multi-occupancy, careful consideration should be given to how a potential sale may be achieved which safeguards the interest of all current occupiers. Where several GP practices occupy a health centre and not all wish to purchase, or there are other occupiers, such as dentists, appropriate leaseback facilities must be available to those who wish to continue as tenants of the new landlord. Circumstances may also arise in which a GP practice does not wish to acquire the whole property or exceptionally that retention of part of the centre is in the public interest. Whilst it may in some cases be possible to separate physically part of the building, in the majority of health centres this will not be practical.

Pharmacies

4.17 The considerations in Paragraph 4.16 may be particularly relevant where the health centre provides a pharmacy since a community pharmacist may not enter into any association with a medical practitioner which may compromise the pharmacist's professional independence. In the case of pharmacies, particular care may be necessary to ensure that sale rather than lease offers the best return for

NHSScotland. Sale of pharmacy accommodation may need to be accompanied by suitable safeguards in the legal agreements to ensure that NHSScotland enjoys the benefits of any subsequent increase in turnover or rental income. It should be borne in mind that the proximity of a pharmacy to a medical practice, even where physically separate, materially increases the rent and thus the capital value of the premises.

Future Use

4.18 Where disposal of a health centre to a GP practice is contemplated, and where existing GMS and primary health care team space utilisation is less than 90%, the Holding Body should consult with other existing occupiers in order to consider what accommodation to be used for community health or allied purposes should properly be retained. In this regard the Holding Body should ensure that sufficient area is reserved for future use and that appropriate arrangements are negotiated in the form of tenancy agreements.

Protection of NHS and Scottish Ministers Interests

4.19 It is the responsibility of the Holding Body as advised by the Legal Adviser, to ensure that the terms of sale do not give rise to any subsequent suggestion that NHSScotland has not achieved best value as a result of the disposal. Since the circumstances of sales may vary greatly, depending on the users and other aspects, the protection necessary and the legal means of doing so may need to be tailored to each case.

Notifications to the Accountable Officer

4.20 Holding Bodies are free to progress sales of health centre/surgery property (or sites for such provision) without involving the Health and Social Care Directorates unless notifications to the Accountable Officer is required in the specific circumstances listed at Annex I. The notification arrangements and certification requirements are described at Section 1: Paragraphs 1.17 to 1.18. However, because the statutory powers of Holding Bodies are limited in this area it is necessary for the execution of instruments for all such disposals by these Bodies to be carried out by the Scottish Government Health and Social Care Directorates. Certification, as required by Annex III, should be provided by the Holding Body at the notification stage.

Terms of Sale

4.21 When an option appraisal concludes that a sale should take place to the resident GP/GP practice/consortium of GP practices, the Holding Body should write to the Property Adviser (with copy to the Legal Adviser) asking for a formal valuation of the property. The Property Adviser will provide a Market Value (MV as per the RICS Appraisal and Valuation to update) subject to the special assumptions detailed below. At the same time, his advice should be sought on any other aspects, such as development potential (see Paragraph 4.13) which may be relevant to the terms of the sale. If there is development value there should be a clawback for at least 5 years for the sale to the sitting GP or 3rd party. He may also advise on the suitability of the premises for cost rent in accordance with the relevant sections of the

Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004 if the sale is to a GP or GP practice. The Holding Body should then instruct the Legal Adviser to make a formal offer to the purchaser, at the selling price recommended by the Property Adviser and the Holding Body should indicate to the GP practice whether and to what extent extra cost rent finance may be available. The special assumptions are:

- (a) Planning permission would only be available for Use Class 2 (Use Classes)(Scotland) Order 1997 and reflecting the value of the adaptations, alterations and extensions not only to an incoming doctor but also to competing users such as dentists, veterinary surgeons and other professionals, and
- (b) That only one General Practitioner (or one General Practice) is permitted to be in the market to use the premises for practice purposes and any element of goodwill attaching to the premises by reason of the fact that a medical practice has previously been established is excluded.

4.22 If the purchaser is unwilling to accept one, or more, of the conditions attached to the sale, the Holding Body should seek the advice of the Property Adviser and the Legal Adviser on the implications of accepting the purchasers' wishes. If the sale is covered by notification requirements, a fresh notification should be submitted to the Accountable Officer if the basis on which the original approval was given materially changes.

Completion of Sale

4.23 If the offer for sale is accepted, the Legal Adviser should carry out the necessary conveyancing. However, the Holding Body is ultimately responsible for co-ordinating the necessary action on completion of the sale and for ensuring that the legal arrangements provide the appropriate level of protection of NHSScotland interest. Final certification should be completed at the conclusion of the sale.

Notification of Decision

4.24 When the Holding Body reaches a conclusion on an application to purchase a health centre, it should inform the interested parties in writing of its decision and the reasons underlying the decision.

Other Proposals

4.25 Holding Bodies may also receive proposals from GPs for the purchase of surgery premises with little or no community health provision, or unused sites. Such proposals should be considered against the broad principles in this Section and take account of other parts of the Handbook e.g., those covering health related sales and the importance of avoiding piecemeal sales prejudicing wider disposal action. In considering the sale of a site, other potential interest in the land and possible proceeds should be taken into account in the appraisal of options, with the assistance of the Property Adviser. Consideration of the need for clawback may be

particularly relevant where disposal of an unused site is involved (see Paragraph 4.14).

Other Considerations Relating to Proposals by Third Parties

4.26 All potential sales should be assessed as outlined above, with the modifications noted at Paragraphs 4.26-4.28 and 4.30 for proposals from 3rd parties. Sales to 3rd parties should be at Market Value subject to special assumption to consider any potential bid by a special purchaser.

4.27 In respect of the potential benefits identified at Paragraph 4.8, Holding Bodies will need to consider how far such potential benefits could be realised by GPs as tenants of a third party and what safeguards could be introduced to ensure that the developing needs of GP and other tenants would be appropriately addressed. Holding Bodies should place due weight on the possible benefits to be gained where PPP would allow renovation, development or extension of the premises, with all current occupiers becoming tenants of the new landlord, set against the potential return required by the third party.

4.28 In the case of potential sales to third parties, consultation should involve the GP practice(s) occupying the Health Centre and should not proceed without the agreement of all existing tenants. The guidance at Paragraph 4.14 on safeguards of sale with particular reference to potential third party sales should be carefully considered.

Health Centres on Shared Sites

4.29 Where the health centre is on a site shared with other NHSScotland facilities, the Holding Body should, in conjunction with all interested parties including occupying GPs, appraise both the ongoing ownership options for the health centre separately and for the site as a whole.

Health Centres to be sold for demolition and replacement with new purpose built facilities for lease by GP's and other occupiers

4.30 Applications of this kind should be considered in the light of the guidance outlined above. The valuation of the existing property should take all relevant factors into account.

ACQUISITION OF PROPERTY

Scope

5.1 This Section provides detailed guidance on the procedures and safeguards to be adopted in any proposal to acquire property whether by outright purchase, lease, excambion, inter-departmental sale/transfer or as part of a services package under a PPP initiative. It should be read alongside Section 1 which gives an overview of certain procedural matters which are common to all NHSScotland property transactions.

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

Professional Advice

5.3 Where private sector valuers are appointed to provide advice it is important that appropriately qualified professional firms are retained i.e. those firms having members of the Royal Institution of Chartered Surveyors among their partners should normally be appointed.

Action

5.4 The key to the speedy and successful purchase of property is to ensure that the procedural guidance is followed, that as much activity as possible is carried out concurrently and that appropriately qualified professional advisers are consulted at an early stage and kept fully informed at key stages thereafter.

5.5 The process of property acquisition must be started in sufficient time to ensure that development is not held up. This is particularly important if it is likely that the use of compulsory purchase powers may be necessary as such procedures are lengthy and may take 18 months or more to promote in contentious cases.

5.6 Where there may be a lapse of time between the acquisition of a property and the start of development on it, it is essential that the Holding Body should not let the property lie vacant or unoccupied if an alternative temporary use can be found. Land can, for example, be used to provide car parking or may be let for agricultural use. Buildings may be used for storage etc (subject to any necessary, planning consents). Every attempt must be made to avoid criticism that newly acquired property is unused and to prevent unauthorised use of empty property. Legal advice must be sought in respect of any temporary use so that this is properly documented and any such arrangement can be terminated timeously.

5.7 Ultimately the Holding Body is responsible for co-ordinating the necessary input and taking appropriate decisions (if necessary after consultation with the Health and Social Care Directorates). After any notification of a property transaction to the Accountable Officer the responsibility for the implementation of any action required rests with the holding Body concerned.

Key Stages

5.8 The following are the key stages in the acquisition of property:

- Statement of Need;
- Space Audit;
- Financial and Option Appraisals;
- Property Search;
- Identification of Shortleets;
- Agreement of Purchase Price/ Heads of Terms of Lease;
- Completion of Legal Arrangements;
- Fitout of New Accommodation;
- Physical Relocation.

Further detailed information on most of the above stages is contained in the [Scottish Capital Investment Manual](#).

Statement of Need

5.9 The decision to acquire property should be driven by a Holding Body's overall strategic plan for the delivery of healthcare. The need for additional property must be established after a systematic review of existing property as required by a Holding Body's Property and Asset Management Strategy.

Space Audit

5.10 In the majority of cases the requirement will be for land to be developed for a specialised use. The area of land required will be identified from a detailed analysis of the service provision required to meet the strategic objectives of the Holding Body.

5.11 Where property to be acquired is of the type found generally on the market, e.g. offices, then the space audit should identify:

- Number and function of all staff to be accommodated and any other specialised space such as conference rooms, records storage, etc.;
- The underlying objective must be stated e.g., Health Board offices;
- The date of occupation must be established together with the period of occupation;
- As property is a relatively inflexible asset often requiring a long-term commitment any potential breaks or variations in the requirement that can be anticipated over the life of the project should be highlighted at the beginning in order that provision can be made for this;
- Holding Bodies should be aware that any break option in a commercial lease will have a direct impact on rental.

5.12 The above criteria will enable a wide range of alternative options to be considered including different locations, types of properties and tenures. The space audit together with the statement of need will give a clear direction to the search and forms the foundation for any instruction to Property Advisers when appointed to identify suitable properties.

Financial and Option Appraisals

5.13 A financial appraisal is necessary to demonstrate that investing in the new accommodation is affordable to the Holding Body. An initial option appraisal in line with the Scottish Capital Investment Manual should be undertaken to establish the comparative costs of the various options in Net Present Value (NPV) or Net Present Cost (NPC) terms. A more detailed financial appraisal should follow for each option short-listed.

Property Search

5.14 Holding Bodies should initially consider whether or not property is available from other Holding Bodies within the immediate area. If no such accommodation is available Holding Bodies can consult SG Property Division to ascertain whether there is suitable existing property available within the Scottish Government estate or the Government's Civil estate. These procedures are designed to ensure that public money is not wasted in acquiring a property on the open market when suitable property exists within the wider public sector estate.

5.15 When no suitable property is available from within the public sector the Property Adviser will undertake a search of the property market to establish a long list of suitable land and/or buildings.

Identification of Shortleat

5.16 The long list of options will need to be reduced for full evaluation to a number that provides a real choice but is manageable - at least 3 options are recommended. Costs may not have been explicitly identified at this stage but sufficient information should be available to sift the long list and eliminate options which are clearly unaffordable or which would result in inferior service provision when compared to other options.

5.17 The costs to be appraised for the Shortleat of options will include:

- for new build the construction costs including cost of land, consultants' fees, fitting out, etc;
- for existing properties the purchase price and expenditure in adapting the property to meet the specific needs of the Holding Body;
- rent, service charge, rates, annual repair costs, insurance if appropriate (including capital charges);
- transaction costs e.g. professional fees, premiums paid on lease etc;

- estimated repairs both immediate and cyclical and decoration;
- in the case of leases any future costs for dilapidations;
- running costs, services, cleaning, security costs, etc;
- staff costs, travel relocation expenses, removal costs;
- any unusual or onerous lease conditions; and
- any penalties for break options in any lease.

5.18 A decision should not be taken on a particular solution before a range of options has been fully considered and appraised. All costs should be as at the date of the appraisal and must be on a comparable basis throughout the appraisal period which must be defined. No adjustments should be made for future inflation but future significant relative price changes should be included in the calculations.

5.19 The Shortleat of options should also be subjected to sensitivity testing i.e. the options are tested to see how they respond to changes such as an unexpected rise in costs, the exercising of lease break options or premature termination.

Agreement of Purchase Price/Heads of Terms Under Lease

5.20 It is most important that negotiations are not hampered by premature or ill-considered contacts with the existing owner. An owner/landlord must not be given the impression that his site is essential - this may inflate his expectations of the selling price or rent. When enquiring about the availability of a property, Holding Bodies or their Property Advisers should simply inform the owner (or his agents) of the Holding Body's possible interest in acquiring the property. Conditions of any kind should not be discussed to ensure that the Property Adviser's later negotiations are not prejudiced.

5.21 If purchase is identified as the preferred option the Holding Body should advise the Legal Adviser and Property Adviser (or other adviser if alternative arrangements have been agreed with the Health and Social Care Directorates). The Property Adviser should carry out negotiations with the owner with appropriate support from the Legal Adviser. The Holding Body should ensure, by consulting the planning authority, that planning consent exists or will be forthcoming for the proposed use of the property (whether or not that is different from its existing use).

5.22 When acquiring property by lease the Property Adviser should negotiate and provisionally agree Heads of Terms. All correspondence should be copied to the Legal Adviser and, in the case of transfers between Crown Bodies, to the District Valuer (if he is not already participating in the negotiations as Property Adviser) or to the Property Adviser as appropriate.

5.23 Whether acquiring property by purchase or by lease it is advisable to have a second option which can be pursued should negotiations for the preferred option fail.

5.24 Holding Bodies must ensure that the chosen property is technically suitable for the intended use. This will involve obtaining a full building survey. The appointed Property Adviser, building consultant or the Holding Body's own staff may be able to supply the necessary advice.

5.25 The advice of the Legal Adviser must be obtained on all terms for purchase or lease before a binding commitment is entered into.

Completion of Legal Arrangements

5.26 Having considered the terms provisionally agreed by the Property Adviser and any comments from the Legal Adviser the final decision should be taken by the Holding Body. A meeting of interested parties is often invaluable in order to help reach a speedy decision.

5.27 There may be occasions when normal procedures must be short circuited because the market is very active. In such instances a Holding Body should brief the Legal Adviser, the Property Adviser and (where notification to the Accountable Officer is required) the Scottish Government Health and Social Care Directorates in advance about the possibility of expediting the procedures. A final decision can then be taken speedily by telephone if necessary when a suitable property comes onto the market.

5.28 Once a final decision is taken to acquire a property a formal offer should be submitted by the Legal Adviser on behalf of the Holding Body. The Legal Adviser is responsible for investigating the seller's title and carrying out the conveyancing. The Holding Body's payment in settlement of the transaction should be passed to the Legal Adviser for transmission to the seller. However it is the Holding Body which is ultimately responsible for protecting the Scottish Ministers' interests. Certification should also be completed at this point.

Fitout Requirements

5.29 Where the preferred option is to lease existing accommodation it is good practice to have a Schedule of Condition prepared by a building surveyor and agreed by the landlord prior to occupation. This will record the condition and state of repair and decoration and assist with the assessment of any dilapidations claim by the landlord at the end of the lease. A Schedule of Condition will normally be annexed as a Schedule to the lease itself so that it forms part of the signed lease between the parties.

5.30 Fit-out of a building can be an expensive item and Holding Bodies must ensure that adequate provision has been made for such costs in the initial option appraisals. Fitting out a new building or converting and fitting out an existing building is specialised work and SG Property Division can advise on appropriate surveyors or property consultants to supervise the work. Alternatively if agreed by the Health and Social Care Directorates supervision can be undertaken by the Holding Bodies' own staff.

Physical Relocation

5.31 Adequate time should be allowed for physically relocating the service to the new accommodation.

Notification to Accountable Officer

5.32 Holding Bodies are free to conclude property acquisition (including acquisitions by lease) without reference to the Health and Social Care Directorates unless notification to the Accountable Officer is required in the specific circumstances listed at Annex I. These circumstances include acquisition by lease where the annual rent exceeds £250,000 per annum or where a premium exceeding £1 million is proposed (including extension of an existing lease). The notification arrangements and certification requirements are described at Section 1: Paragraphs 1.17 to 1.19.

Supporting Information

5.33 Where notification to the Accountable Officer is required for a proposed course of action, full supporting information must be provided in line with the requirements of Annex II. The amount of supporting information needed depends on the circumstances of the acquisition but it will be noted from Annex II that the supporting information should always cover the following points:

- a Statement of Need justifying the proposed acquisition and the consideration which has been given to using either existing NHSScotland property or other suitable property within the public sector estates;
- a description of the sites and/or buildings which have been identified together with the reasons for the choice of the preferred option;
- a financial appraisal supporting the choice of the preferred option (see Management: Section 3);
- two copies of a plan showing the buildings (existing and proposed) and the boundary measurements of the preferred option;
- whether there are any title restrictions (if this is known) and whether the local planning authority have indicated that the proposed use of the property is acceptable;
- technical reports showing that the property (including existing buildings if relevant) is suitable for the purpose for which it is being acquired. and
- an estimate of the acquisition cost.

Compulsory Purchase

5.34 Scottish Ministers have the power to acquire property compulsorily where it is not possible to acquire by agreement – provided that the property concerned is needed for Health Service purposes and that there are no other suitable alternative properties available. There is no power to acquire property compulsorily to facilitate the disposal or enhance the value of surplus NHSScotland property. Holding Bodies do not have powers of compulsory purchase. Where a Holding Body considers that there is justification for using compulsory powers they must notify the Scottish Government Health and Social Care Directorates setting out the full circumstances of the case including the supporting information detailed at Paragraph 5.33 above and Annex II. If the Accountable Officer (following any consultation with Ministers) agrees that compulsory purchase should proceed, any action deemed necessary will be taken by the Holding Body on the instructions of the Health and Social Care Directorates. The Appendix to this Section sets out detailed arrangements for acquisition by compulsory purchase order.

Excambion

5.35 There are very occasional circumstances where excambion (an exchange of property) is the most satisfactory way of acquiring property. In these circumstances the Holding Body should obtain a valuation for both the property which is being acquired and the surplus property for which it is to be exchanged – and an assessment of any balancing payment which is needed. Where excambion between Crown Bodies is involved a valuation must be provided by the District Valuer or a suitably qualified Property Adviser acceptable to both parties to the transaction. Otherwise an appointed Property Adviser (who may in any case be the District Valuer) should undertake the work under the normal arrangements. The requirement for the valuation work to be done by the District Valuer or Property Adviser where Crown Bodies (including local authorities) are involved applies whether or not private sector agents are acting for the Holding Body or the Crown Body (or local authority) owning the other property involved in the excambion. The Legal Adviser should be involved in the normal way.

Acquisition by Lease

5.36 The option appraisal process described at Paragraph 5.13 may result in the lease of accommodation being preferred to an outright purchase. Holding Bodies should not enter into leases unless the option appraisal clearly indicates that leasing is the most cost-effective option. The circumstances where an acquisition by lease requires notification to the Accountable Officer are described at Annex I. The views of the Legal Adviser and the Property Adviser must be sought on the terms of a proposed lease in every case.

5.37 The procedures described above for acquiring property should generally be followed where leasing is the preferred option. When proceeding by way of a lease Holding Bodies should ensure that:

- The period of lease is sufficiently long to meet the service need;

- The Legal Adviser is fully involved in agreeing the terms of lease to ensure that the Holding Body is not entering into a significant financial commitment on termination either in the form of reinstatement or dilapidations. The Legal Adviser should also identify any unacceptable restrictions or unduly onerous renewal terms;
 - When property is to be leased from a local authority or another public sector body all lease terms (other than the rent) should be agreed between the parties' Legal Advisers and thereafter the rent will be determined by the District Valuer or a suitably qualified Property Adviser. Where the annual rental is less than £1,000 per annum, discretion will be given to Holding Bodies to agree the rent without obtaining a determination from the District Valuer or Property Adviser.
-

Public Bodies (Joint Working) (Scotland) Act 2014 – a brief introduction

The Public Bodies (Joint Working) (Scotland) Act 2014 allows the formation of a wider range of joint venture structures and to form joint ventures for a wider range of purposes than at present.

The Act is intended to deliver opportunities for more effective use of public services and resources by the integration of health and social care and by the delegation of functions. Health Boards will be able to contract on behalf of other Health Boards for contracts that involve providing facilities and to collaborate effectively with Local Authorities to enable a joint approach to asset management and disposal.

Integration through the delegation of functions can be established by one of two methods:

- The Health Board and Local Authority delegate responsibility to an Integration Joint Board; or
- The Health Board or Local Authority takes lead responsibility.

Under the Act, it is up to Health Boards and Local Authorities to agree which approach is best suited for local needs.

Amendments to Section 84B of the National Health Service (Scotland) Act 1978

Section 66 of the Public Bodies (Joint Working) (Scotland) Act 2014 amends Section 84B of the National Health Service (Scotland) Act 1978 covering joint ventures. The amendment enables Scottish Ministers to form, participate in, transfer assets to or invest in, any type of body corporate. This includes Limited Liability Partnerships and Scottish Charitable Incorporated Organisations.

This amendment also allows such bodies corporate to be used for the purpose of management, development or disposal of assets and permits Scottish Ministers to prescribe additional purposes for which bodies corporate may be used in future, as a means of avoiding statutory difficulties associated with the emergence of further innovative ways of achieving best value in the delivery of health services.