



## THE SCOTTISH OFFICE

### National Health Service in Scotland Management Executive

NHS  
MEL(1995)14

St. Andrew's House  
Edinburgh EH1 3DG

Dear Colleague

#### **TRANSFER OF HERITABLE PROPERTY TO NHS TRUSTS**

##### **Summary**

1. This letter is to clarify the principles which the Management Executive wish to be followed in relation to the transfer of heritable property to NHS Trusts and to set out the policy decisions taken by the Chief Executive on specific transfer issues. This guidance updates and supersedes MEL(1993)65 and MEL(1993)146 which should now be regarded as defunct.

##### **Action**

2. Trust Chief Executives and Health Board General Managers are invited to consider the transfer policy outlined in paragraphs 9 onwards and to ensure that their plans for the transfer of heritable property are in line with the principle and policy stated. Where list of properties have not yet been agreed between Health Board and Trust, the Management Executive should be informed by the Health Board by end of February. If a Health Board proposes to retain any particular property not covered in this guidance, it should explain the reasons.

3. It is also important that Trusts provide the Management Executive by end of February with full details of cases involving major and minor users of sites where an exception to the general principle outlined in paragraph 9.1 is being sought.

4. Full details of the properties to be transferred and retained including site plans should already be with CLO but Trusts and Health Boards should now check with CLO whether any further information is required in light of clarification of the policy.

5. CLO will require to be instructed by Trusts to draw up leases for those part sites or properties which are used by other parties. This should await the terms of the model lease to be agreed with the Management Executive.

6. It would be helpful if you could nominate a specific contact person to deal with transfer of assets and provide the information. Please let Mr G Tucker (Ext 2269) have a note of the name, address and telephone number of the designated member of your staff who will be responsible for action on transfer of property titles.

17 February 1995

##### **Addressees**

###### For action:

Chief Executives, NHS Trusts

Acting Chief Executives, shadow Trusts

General Managers, Health Boards

###### For information:

General Manager, Common Services Agency

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##### General enquiries to:

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## **Background**

7. The NHS (Scotland) Act 1978 (as amended by the NHS and Community Care Act 1990) provides that a Trust will own the assets it requires to perform its functions and that the extent of the estate will be determined by agreement between the Trust and the Health Board or, in default, by the Secretary of State. Subsequent guidance MEL(1993)65 and MEL(1993)146 indicated that with few exceptions Health Boards should endeavour to transfer all property to established or emerging Trusts. In essence, the underlying intention of the legislation was to secure the transfer to Trusts of only those assets essential to their healthcare functions and to leave surplus and unusable properties with the Secretary of State to be disposed of by Health Boards as his agents. However with the run down of Health Board staff with estate responsibilities, it is considered that Trusts would be better placed to deal with surplus properties. They have the experienced staff and the incentive to dispose in view of the effect on costs of unused capital assets. Accordingly the onus for disposal of surplus property is shifted from Health Boards to Trusts.

8. With the increase in the number of Trusts and the emergence of Community Trusts and shortly the Scottish Ambulance Service Trust, a number of new property issues have been identified. Accordingly it is considered that the existing guidance is outdated and requires to be revised with more detailed explanations. The various issues have been considered by the Chief Executive, NHS Management Executive and following consultations he has defined the following principle and policy for the transfer of heritable property to Trusts.

## **Principle**

9. The main principle and elements of the transfer policy are:-

9.1 Except in special circumstances, the bulk of heritable property on each site should transfer to the major user Trust. In this way the integrity of the larger NHS sites will be retained and complications in relation to services, maintenance and future sales should be minimised. Health Boards should have already agreed with the Trusts lists of the heritable property to be transferred. Where this has not happened, Health Boards should inform the Management Executive as soon as possible and seek a ruling if retaining any particular property not covered by what follows.

## **Policy re minor user Trusts including Scottish Ambulance Service**

9.2 Exceptions to the general principle will be considered on an ad hoc basis with a view to transfer to the minor user Trust if appropriate. It is intended that as far as practicable, each Trust will own the assets it requires to perform its functions. However, bearing in mind the principle at 9.1 above, decisions on special cases must reflect the integrity of the particular site. Therefore, for example, a free-standing peripheral building may transfer to a minor user Trust whereas integral premises are unlikely to. It is important that the Management Executive is provided with full details of cases seeking exception by the end of February 1995.

### **Blood Transfusion sites/Postgraduate Centres**

9.3 Similarly, where Scottish National Blood Transfusion Service premises are readily separated from the remainder of a site, ownership of those premises will remain with the Secretary of State. Otherwise the premises will transfer to the major user Trust with a lease back to the CSA. The final decision will be made by the Management Executive in cases of dispute and the terms of the lease agreed before title is transferred. Similar arrangements are proposed for Postgraduate Centres but with lease back of shared premises to the Secretary of State.

### **Colleges of Nursing and Midwifery**

9.4 Colleges of Nursing and Midwifery and related accommodation will be considered individually. When the market testing of nursing education is complete the position will be reviewed in relation to the possible transfer to a major user Trust if appropriate. The lease to the successful tenderers and, or sale, if appropriate, is also still under consideration. Final decision will rest with the Secretary of State.

### **Leases**

9.5 Premises leased by the major user Trust to another NHS user will generally be leased in accordance with a model lease which should ensure that neither party is disadvantaged and that there are no extra costs to the National Health Service because the title of the property has been transferred. These leases will require to be in place before the relevant property transfers from the ownership of the Secretary of State. The terms of the model lease have yet to be determined. This arrangement for leases which have a cost neutral effect is related to facilitating the transfer of assets but should not be regarded as the appropriate type of lease in other circumstances between NHS users and third parties where market rate leases would be the correct approach.

### **Responsibility for Disposals**

9.6 Trusts rather than Health Boards will be responsible for the disposal of surplus property. In order to allow Health Boards to focus on their purchasing role without the distractions of property management and sales, property for disposal should normally transfer to Trusts. However, there may be special circumstances where it is more appropriate for property for disposal to be undertaken by the Health Board and the Management Executive should be advised by the end of February of such cases and the reasons.

### **Universities etc**

9.7 Negotiations in relation to any third party (Universities and the Medical Research Council) interest in the ownership of NHS property will proceed as necessary to secure the Secretary of State's interest in the property before transfer to the appropriate Trust takes place. The recent survey of Trust property issues has identified a number of instances where there is or may be third party interest in ownership. These are in addition to the cases involving Aberdeen

Royal Hospitals and Dundee Teaching Hospitals. Transfers in these cases cannot be effected until such time as agreement has been reached between the Secretary of State and the third party. It would be difficult and messy to deal with these sites piecemeal. We will be contacting those Trusts who share sites with Universities to identify problems and work out a solution.

### **Indemnities**

9.8 Trusts will not be given formal indemnity in the case of defects in title or breaches of title conditions. The Scottish Office Solicitor's Office together with Central Legal Office will consider whether there are alternative means of dealing with such problems. Although there will be some instances where Trusts will acquire property which is the subject of faulty title and which may in future give rise to legal challenge. It is not possible at this time to assess the risk and numbers of claims likely. But it is considered that there should not be many cases and therefore that the wholesale issue of letters of indemnity is neither necessary or appropriate.

### **Health Centres**

10. The Management Executive is currently considering the policy for transfer of titles in respect of health centres against the objective of encouraging GP ownership. For the time being therefore no health centre premises will be transferred to NHS Trusts but will remain in the ownership of the Secretary of State. We shall come back to Boards and Trusts further on this in due course. There is a need to define what is meant by health centre since the term may also cover clinics and GP surgeries. The issue of leases, agreements and standard charges are under consideration.

### **Timescale**

11. An exercise is currently being undertaken by the General Manager, CSA to establish the timescale within which the transfer of heritable property to NHS Trusts can be realistically completed. Until transfer is effected any disposal of property to third parties whether by sale or lease will require to be granted by the Secretary of State subject to the consent of the relevant Trust. The Secretary of State recognises the right of NHS Trusts to deal with heritable property comprised within the hospital undertakings referred to in their Establishment Orders as if those Trusts were the legal owners. Trusts are in no way prejudiced through not being owners of their heritable estate and therefore sales can proceed in accordance with a Trust's plans.

Yours sincerely



**PAUL WILSON**  
Director of NHS Trusts