THE SCOTTISH OFFICE

Department of Health

NHS
MEL(1996)7

NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG

23 January 1996

Dear Colleague

SALE OF SURPLUS AND OBSOLETE GOODS AND EQUIPMENT

NHS Circular No 1976(GEN)60 is cancelled

Addressees

For action:
General Managers,
Health Boards

General Manager,
Common Services Agency

Chief Executives,
NHS Trusts

For information:
General Manager,
State Hospitals Board for Scotland

General Manager,
Health Education Board for Scotland

Executive Director,
SCPMDE

Enquiries to:

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Summary

1. As part of the continuous process of devolving responsibilities to Trusts, this letter abolishes the Hospital Equipment Transfer Scheme set up by NHS Circular No 1976 (GEN)60 issued on 9 August 1976, which is now cancelled, gives guidance in Annex A on the sale of surplus goods and used goods, and supplements in Annex B the guidance issued on the Consumer Protection Act.

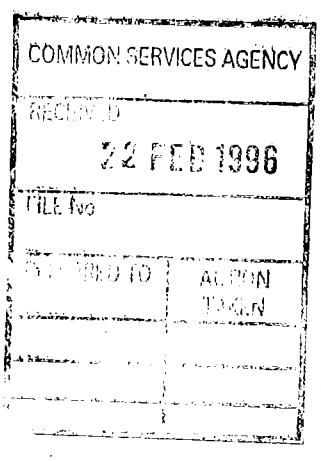
Action

2. This letter should be drawn to the attention of all staff likely to be involved in the sale of goods or equipment.

Other Information

3. The Hospital Equipment Transfer Scheme was established in 1976 to ensure that equipment replaced before the end of its useful life or otherwise no longer required would not be wasted if it could perform a useful function elsewhere in the NHS. The structure of the NHS has changed considerably since 1976, and the Scheme is no longer appropriate.

4. The sale of used equipment, whether to other NHS establishments or otherwise, may lay a Health Board, NHS Trust or CSA Division open to action under the Consumer Protection Act 1987 and other Health and Safety legislation. This also applies to the sale of goods and equipment which are new, but surplus to requirements. Annex A to this letter is a note of some factors which should be considered when selling equipment. Scottish Healthcare Supplies, formerly the Common Services Agency Supplies Division, Trinity Park House, South Trinity Road, Edinburgh EH5 3SH, Tel: 0131 552 6255, Fax: 0131 552 6535, can provide further advice and if desired model conditions of contract.



5. It should be noted that if goods to be sold have been obtained through a Scottish Healthcare Supplies (CSA) contract, the seller should inform Scottish Healthcare Supplies before proceeding with the sale.

6. Attached at Annex B is a brief note of the effects of the Consumer Protection Act 1987 on the sale of goods or equipment. This supplements the guidance on the Act issued in SHHD/DGM (1988)6 issued on 28 February 1988 and SHHD/DGM (1988)20 issued on 20 May 1988. Like that guidance, it cannot provide an authoritative interpretation of the Act. It is for the Courts to decide how the Act applies in any particular circumstances.

Yours sincerely

PAUL WILSON
Director, NHS Trusts

ANNEX A
TO NHS: MEL(1995)

SALE OF SURPLUS OF USED GOODS AND EQUIPMENT

Background

1. The sale of equipment which has been replaced or become surplus to requirements but has not reached the end of its useful life is an acceptable form of Income Generation. Under the former Hospital Equipment Transfer Scheme Health Boards were required to advertise such equipment through the Scheme, administered by the Common Services Agency Supplies Division. It was not possible to sell the equipment outside the NHS until it had been advertised throughout the UK without attracting any NHS Customers.

2. The purpose of this requirement was to ensure that potential NHS customers would have the opportunity to benefit from access to usable second-hand equipment before any other customers. In practice, however, it led to very long delays before Health Boards could dispose of equipment.

3. In the future, if a Health Board, NHS Trust or CSA Division can identify a customer, whether within or without the NHS, for replaced equipment the sale may proceed. The income generated will still benefit the NHS.

Equipment to be Covered

4. All items of equipment used in hospitals (except for items on stock control) may be sold but most transactions are likely to involve ward, medical and surgical equipment. The following criteria should be satisfied:

4.1 the equipment should be in good repair, or at most require a readily available replacement part or a minor repair;

4.2 fixed equipment (for example X-ray machines, autoclaves) should have a sufficient estimated further life to warrant the cost of dismantling, transfer and installation at the new location, including any associated structural alterations; this would seem to imply a further life of at least 3 years, but each case would need to be considered on its merits and in conjunction with the potential recipient;

4.3 there should be a reasonable expectation that replacement parts will continue to be available for the estimated life of the equipment;

4.4 the equipment should comply with statutory or other recognised safety requirements and the appropriate British or other applicable standards;

4.5 in the case of laboratory equipment, results obtained when the equipment was last in use should have been of an acceptable standard and reliability.

Description of Equipment

5. The equipment should be described in sufficiently comprehensive and precise detail to enable a potential recipient to assess provisionally the value of the equipment without inspection. The information should include:

5.1 Name of Equipment;

5.2 Price/indicative price.

5.3 Functions of the equipment.

5.4 As appropriate - maker's name, supplier's name, year of purchase or installation, any relevant details of contract of purchase, catalogue year and number, serial number.

5.5 Whether an operating manual is available, and details of servicing and maintenance arrangements and costs.

5.6 If information in 5.5 is lacking, the capabilities of the equipment should be described in greater detail where this would assist the potential recipient to reach a preliminary decision.

5.7 The space and services required, and where appropriate the floored loading of the equipment.

5.8 It should be clearly stated if an item of equipment is being withdrawn from use because it has been failed to reach performance expectations.

Potential Buyers

6. Potential customers for equipment are:

6.1 NHS Hospitals;

6.2 non-NHS hospitals;

6.3 local authorities;

6.4 Vets;

6.5 bodies interested in purchasing surplus/obsolete medical equipment for overseas missions;

6.6 to anyone else for use; or

6.7 as scrap.

If not sold as scrap, the conditions of contract guidance should be framed to protect the seller from possible action under the Consumer Protection Act. Sellers should also be aware, however, that there are other laws governing the sale or disposal of equipment. Advice on these should be obtained from legal advisers. Model conditions or contract can be supplied by Scottish Healthcare Supplies, Trinity Park House, South Trinity Road, Edinburgh, EH5 3SH, Tel: 0131-552 6255 Fax: 0131-552 6535.

ANNEX B
TO NHS: MEL(1995)

CONSUMER PROTECTION ACT 1987

(with reference to the Sale of Goods)

1. The Act raises 2 areas of possible liability, Part 1 is concerned with civil liability and compensation and Part II with criminal liability and prosecution.

2. In considering the effects of the Act a distinction must be made between:

2.1 Criminal and Civil liabilities;

2.2 New goods, second-hand and scrap;

2.3 Consumer goods and other types;

2.4 Sold for use in the UK or abroad (which includes EC countries for the time being).

3. Part I: Civil Liability

Strict civil liability arises if a defective product causes damage.

The provisions apply whether the goods are new or second-hand but not if they were sold as scrap.

Liability can be avoided provided the producer can be identified or if the producer is outside the EC, the original importer. Good records are crucial if this defence is to be effective. Other defences are available.

If goods are re-labelled or are imported directly from outside the EC then liability will be created.

No distinction is made between consumer and other types of goods.

4. Part II: Criminal Liability

Under Part II of the Act the concept of general safety requirement is created (GSR). The supply of unsafe consumer goods is an offence liable to prosecution.

Only consumer goods are involved defined as "ordinarily intended for private use or consumption" and certain items are excluded such as controlled drugs and licensed medical products.

Excluded are any goods which the supplier believed would not be used or consumed in the UK.

Excluded are second-hand goods and scrap goods but the contract of sale should clearly identify the goods as "not new" or "scrap".

An offence will be committed only if the goods are "not reasonably safe" and in interpreting this any warnings about the keeping, use or consumption given in the contract of sale would be taken into account.