

SCOTTISH EXECUTIVE HEALTH DEPARTMENT

**NHS SCOTLAND PROPERTY
TRANSACTIONS HANDBOOK**

November 2000 Edition

NHS SCOTLAND PROPERTY TRANSACTIONS HANDBOOK

CONTENTS

- Glossary
- Introduction

PART A MANAGEMENT

1. Management and Organisation
2. Responsibilities
3. Statutory Background and Delegation
4. Option Appraisal
5. PPP/PFI
6. Income Generation
7. Post-transaction Monitoring

PART B MANDATORY REQUIREMENTS

1. General
2. Mandatory Requirements: Disposal by Sale, Lease or Excambion.
3. Mandatory Requirements: Acquisition by Purchase, Lease or Excambion.

PART C PROCEDURES

1. General
2. Sale of Property
3. Sale of Houses to Sitting Tenants
4. Leasing of NHS Scotland Property
5. Sale of Health Centres/Surgeries
6. Acquisition of Property

ANNEXES

- I Transactions Subject to Notification to the Accountable Officer
- II Procedures for Notifications to the Accountable Officer
- III Certification Arrangements.
- IV List of Statutory Instruments, Directions and Authorisations Covering Powers of Holding Bodies.
- V List of Circulars and Legislation.
- VI Trawl Procedures

GLOSSARY

DEPARTMENT:	The Scottish Executive Health Department (SEHD).
HEALTH BOARD AREA:	The geographic area covered by a Health Board including in the case of mainland Boards the areas served by NHS Trusts.
HOLDING BODIES:	Bodies covered by the Handbook holding property on behalf of the Scottish Ministers ie Health Boards, the Common Services Agency, the State Hospitals Board for Scotland, the Scottish Ambulance Service Board, the Scottish Council for Post graduate Medical and Dental Education, the Health Education Board for Scotland, the Clinical Standards Board for Scotland, the Health Technology Board for Scotland or, in the case of NHS Trusts, on their own behalf.
MANDATORY REQUIREMENTS:	The mandatory requirements on property transactions with which all Holding Bodies must comply.
ACCOUNTABLE OFFICER:	The Chief Executive of NHS Scotland.
PROPERTY:	Covers rights in land, buildings, houses and any other heritable property within the control of the Holding Body and includes temporary buildings which have service connections with the permanent building.
ESSENTIAL PROPERTY:	Property considered necessary for a Holding Body's operational purposes beyond a 5 year service provision planning horizon.
NON-ESSENTIAL PROPERTY:	Property not considered necessary for a Holding Body's operational purposes beyond a 5 year service provision planning horizon.
SURPLUS PROPERTY:	Property that is non-essential and non-operational, or, if it is non-essential but still operational, if plans that will enable it to become non-operational are agreed, are being implemented, are expected to result in non-operational status within 18 months, and where there is no wider NHS Scotland interest in the property.
EXCAMBION:	An exchange of heritable property. Such an exchange may or may not involve the passing of money, depending on the value of the properties exchanged. Exchanges are often dealt with by simultaneous dispositions transferring the properties between the parties to the transaction.

PROPERTY ADVISER:

The professionally qualified external adviser appointed by the Holding Body to assume overall responsibility for advising on the value and other non-legal aspects of a transaction (usually the marketing agent for sales).

LEGAL ADVISER:

The qualified legal adviser appointed by the Holding Body (Central Legal Office or in the case of NHS Trusts any qualified and appropriately appointed legal adviser).

INDEPENDENT VALUER:

A suitably qualified valuer appointed in addition to the property adviser in major or potentially difficult cases as defined in the Property Transactions Handbook (can be a suitably qualified private sector valuer or the District Valuer normally appointed by competitive tender).

NHS IN SCOTLAND PROPERTY TRANSACTIONS HANDBOOK

Introduction

1. This Handbook is intended to be a ready source of reference on Departmental policy and related requirements, guidance thereon and on the more operational aspects of all heritable property transactions with the exception of endowment property. It is intended to be informative, comprehensive and accessible.

2. Endowment property is deemed to be private property which should be managed by the Trustees in accordance with the terms of the endowment, albeit that Endowment Trustees may choose to draw on the guidance in the Handbook when taking forward property transactions.

3. Holding Bodies should ensure that their staff and external advisers are fully familiar with the contents of the Handbook, particularly when they are seeking advice on specific issues. The Handbook continues to be available in hard copy loose leaf format. To assist accessibility this edition of the Handbook is also available on the Scottish Executive Health Department website under "Property Matters".

4. The Handbook is arranged in separate parts, each dealing with distinctive aspects. The 3 parts, Management (Part A), Mandatory Requirements (Part B) and Procedures (Part C) constitute essential reading for the conduct of property transactions. A comprehensive range of Annexes provides detail where required.

Accountability

5. **The Handbook is intended to ensure that property is bought, sold and leased at a price and on other conditions which are the best obtainable for the public interest at that time.** Primary day-to-day responsibility for achieving these objectives rests with the Chief Executive of the Holding Body. This is a significant responsibility and he/she is answerable to the Accountable Officer, to ensure that procedures are followed - and that it can be demonstrated, publicly if necessary, that the best obtainable outcome for the public interest has been achieved in every case. Property transactions can attract considerable

public interest and are subject to scrutiny by the Scottish Parliament and Audit Scotland.

6. It is essential that management of transactions is based upon best commercial practice informed by public accountability requirements. The Department has overall responsibility for monitoring the property transactions work of Holding Bodies on behalf of Scottish Ministers. The Audit Committee of Holding Bodies are responsible for the oversight of the internal audit programme of post-transaction monitoring. They report to the Board of the Holding Body which, in turn, is responsible for submitting periodic reports to the Department.

Holding Bodies

7. All Holding Bodies must follow the terms of this Handbook. Holding Bodies are required to notify certain property transactions to the Accountable Officer (see Annex I).

Contacts

8. Enquiries about the contents of the Handbook should be addressed to:

Building and Estates Adviser
SEHD – Directorate of Finance
St Andrews House
EDINBURGH
EH1 3DG
Tel: 0131- 244-2079
Fax: 0131-244-2323

PART A: MANAGEMENT

- 1. Management and Organisation**
- 2. Responsibilities**
- 3. Statutory Background and Delegation**
- 4. Option Appraisal**
- 5. PPP/PFI**
- 6. Income Generation**
- 7. Post-transaction Monitoring**

1. MANAGEMENT AND ORGANISATION

Objectives

1.1 This Part of the Handbook deals with the management of NHS Scotland property transactions - a day-to-day responsibility of Holding Bodies. Without proper management and organisation property transactions are likely to take longer than necessary to complete, and, equally important, efficient and effective management of transactions will assist the Holding Body to achieve the outcome which is the best obtainable for the public interest - the key objective for all property dealings in the public sector. Failure in either respect can leave the Chief Executive of the Holding Body open to serious criticism from the Scottish Parliament.

Framework

1.2 The key general management issues on property transactions are dealt with in Part A. However proper management of transactions also depends on Holding Bodies relating these general issues to the detailed aspects of organisation dealt with elsewhere in the Handbook. This part of the Handbook therefore deals with the basic organisational framework which runs through the rest of the Handbook. It also places in context and highlights some of the practical issues such as option appraisal and post-transaction monitoring which form the cornerstones of the arrangements for NHS Scotland property transactions - and which are mentioned frequently throughout the Handbook.

2. RESPONSIBILITIES

Introduction

2.1 A key requirement for the efficient handling of property transactions is a clear understanding of who does what. Without that there is likely to be inefficient sharing of responsibility, duplication of effort, misunderstanding and insufficient accountability for decisions. It is necessary therefore to allocate responsibilities and ensure that all those involved are aware of their role. These roles are as follows.

Department

2.2 The Department has no day-to-day involvement in property transactions. In relation to **individual transactions**, the Department's role is to consider any cases notified to the Accountable Officer by Holding Bodies as required by the Handbook. It is for Holding Bodies to provide the necessary supporting information when transactions are so notified; if such supporting information is not provided, the papers received will be returned to the Body for completion of the necessary action. The Department is not responsible for undertaking the preparation of supporting material, instructing Legal Advisers or commissioning the necessary advice from other advisers. This is the responsibility of Holding Bodies. In short, the Department has no operational role in the management of transactions.

2.3 The Department's other responsibilities on property transactions reflect the Accountable Officer's continuing overall responsibility. Key responsibilities here are financial accountability and supporting the delivery of national and local healthcare strategies and priorities by underscoring the need to identify essential and non-essential property and to translate the latter to surplus and dispose of it. Broadly the Department's role in support of these responsibilities is reflected within the requirements for Property Strategies, the maintenance and review of transaction procedures, and overall post-transaction monitoring. Detailed responsibilities are:

2.3.1 the maintenance and review of property transactions procedures to ensure compliance with general Scottish Executive policy and to reflect experience;

2.3.2 the maintenance of mandatory requirements;

2.3.3 consideration of transactions notified to the Accountable Officer as required by the Handbook;

2.3.4 arrangements for post-transaction monitoring;

2.3.5 action arising from unacceptable monitoring exception reports submitted by Audit Committees of Holding Bodies;

2.3.6 integration of efforts to dispose of surplus property and acquire property with general property management action to improve its utilisation and rationalisation.

Holding Bodies

2.4 Holding Bodies are responsible for the management of all property transactions. This includes identifying property for disposal or acquisition, initiating the necessary preparatory investigations (including planning), arranging sales marketing, supervising progress, certification and overseeing completion of transactions. They are also responsible for notifying transactions to the Accountable Officer where required by this Handbook. In particular Bodies are responsible for:

2.4.1 Considering priority interests, ie

- Other NHS Scotland interests (prior to formal declaration as surplus);
- Other Scottish Executive/ related body interest-trawl procedures;
- Other priority interests – former owners, health related interests, special purchaser.

2.4.2 seeking appropriate professional advice where positive interest received from priority interest.

PART A: MANAGEMENT

2.4.3 ensuring that the mandatory requirements are followed;

2.4.4 commissioning professional advice;

2.4.5 issuing the necessary instructions to legal and other professional advisers;

2.4.6 in the case of disposals, ensuring that the planning potential of the property is completely clarified, agreeing the marketing arrangements, arranging for offers to be opened, and taking account of professional advice on the acceptance of offers;

2.4.7 in the case of acquisitions, ensuring that the need for additional property has been clearly established, that best value is obtained and where leasing of property is proposed that it is the most cost effective option;

2.4.8 resolving any differences with professional advisers;

2.4.9 deciding when transactions should be notified to the Accountable Officer;

2.4.10 acceptance of offer following submission to and approval of Accountable Officer where required;

2.4.11 supervising the completion of the transaction, and co-ordinating the necessary input from legal and other advisers;

2.4.12 completion of all appropriate certification, including the commissioning of supporting certification from appropriate professional advisers;

2.4.13 completion of monitoring proformas and provision of further supporting information to assist and support post-transaction monitoring;

2.5 Holding Bodies have a particular responsibility for co-ordinating receipt of

advice from those involved in transactions, ensuring that the necessary action is taken and ultimately making the required decisions following any necessary notification to the Accountable Officer.

Property Advisers

2.6 The arrangements for handling NHS Scotland property transactions provide for the appointment of a Property Adviser to supply key professional advice to the Holding Body. (Guidance on the appointment of Property Advisers is given in paragraphs 1.7 to 1.11 of Part C).

Independent Valuer

2.7 An Independent Valuer must be appointed in major or potentially difficult disposal cases to provide additional professional advice. The Independent Valuer must be independent of the marketing agent appointed to handle the sale. The circumstances in which an Independent Valuer must be appointed are;

2.7.1 where the property itself is of an unusual or exceptional nature; or

2.7.2 where it is likely to be difficult to establish what planning uses might be permitted, or the uses upon which prospective purchasers might base their bids; or

2.7.3 where the selling price is likely to be in excess of £3m; or

2.7.4 where direct sale to a commercial organisation is involved (see Part C paragraph 2.30.7)

2.8 The Independent Valuer's main responsibilities are:

- to establish the guide price;
- to advise, in consultation with the marketing agent on the final price in sales on the open market;
- to advise on the acceptability of offers and bids received within the sale deadline;

- to advise on the handling of any late or revised bids received after the closing date;
- and where the final price is at a price below the guide price to certify jointly with the marketing agent that it is the best offer reasonably obtainable.

Valuation Office Agency

2.9 The Valuation Office Agency Scotland Group - consisting of the Chief Valuer (Scotland) Office, 4 District Valuers' offices and a Mineral Valuer - is charged among other things with advising Government Departments and other public bodies in relation to property matters. District Valuers offer a range of services including valuing property, negotiating the terms of purchases, sales or leases, considering planning and other specialist topics (for example, mineral rights) and providing information for option appraisals.

2.10 District Valuers can be appointed as Property Advisers following competitive tendering. They can also be appointed as Independent Valuer in major or potentially difficult disposal cases (see paragraph 2.7 above).

Scottish Executive DAS Land and Property Division

2.11 The Chartered Surveyors of DAS Land and Property Division can provide wide-ranging advice on all aspects of property transactions. They are the Department's principal advisers on property transactions and Holding Bodies should also feel free to contact them for advice without charge. Their services may be particularly helpful in assisting Bodies to determine the extent of property which may be suitable for disposal or where complicated or unusual transactions are involved.

2.12 Because of their range of contacts across the public and private sectors, DAS Land and Property Division are particularly well placed to offer general advice on current market conditions, planning issues etc. They can also advise on whether specialist advice should be sought from external

sources such as private firms with particular expertise. DAS Land and Property Division are particularly well placed to advise upon the potential impact of disposals on other areas of Scottish Ministers' responsibilities (eg planning appeals, listed buildings consents) and precedents elsewhere in Scotland and the UK. Advice is also available from DAS Land and Property Division on suitable professional advisers.

2.13 Consultations with DAS Land and Property Division do not substitute for contact with the Department. They may however assist Bodies in the preparation of the necessary supporting information where notification to the Accountable Officer is required. The Head of Land and Property Division can be contacted on telephone no. 0131-244-4521, by fax no: 0131-244-4529.

Property Planning/Marketing Agents

2.14 A wide range of specialist advice is available and it is important that Holding Bodies choose appropriate professional advice for each transaction. It may be appropriate to appoint more than one professional adviser for the same transaction, for example a planning consultant may be appointed in the early stages of a disposal to advise on appropriate alternative uses with a different consultant being appointed to advise on marketing. Many firms now provide multi-disciplinary advice combining for example specialist planning valuation and marketing skills within the same organisation. Using such firms for complex disposals may secure better value and a saving in time.

2.15 The advice of marketing agents must be sought in every disposal case, except where modest individual staff houses are involved (if a Body has a number of small sales, it is open to them to negotiate a contract with an agent covering all these properties). Agents should be appointed following competitive tender.

Central Legal Office

2.16 Unless the Holding Body is a NHS Trust, all legal aspects of NHS Scotland property transactions must be handled by Central Legal Office (NHS Trusts may use CLO, but it is open to them to appoint any

PART A: MANAGEMENT

qualified legal adviser subject to complying with the Department's requirements and guidance. Bodies using CLO are responsible for issuing all the necessary instructions to them covering their requirements and it is for CLO to advise Bodies on how these requirements can best be met in legal terms.

2.17 Where required it is for CLO to list the legal options open to Bodies in managing transactions and to recommend the best course in legal terms, in the light of a Body's objectives and priorities (it is for Bodies themselves to take account of wider considerations). If the Department is involved, it will be for CLO to advise Bodies on how any requirements laid down by the Department can be satisfied from the legal perspective. In advising Bodies on all transactions, CLO will have regard for guidance issued by the Department.

Other Legal Advisers

2.18 Where a NHS Trust appoint a Legal Adviser other than CLO, they should expect the Adviser to fulfil the same role as CLO, as outlined at paragraphs 2.16 and 2.17 above.

Professional Advisers

2.19 Professional advisers will normally be appointed following competitive tender – see Part C paragraph 2.24. The advice of professional advisers must be included in the supporting information provided with the transactions notified to the Accountable Officer. Professional advisers are required to provide supporting certification in the prescribed form covering the advice within the adviser's expertise to assist the Chief Executive of the Holding Body consider whether he or she can sign the principal certification. (See Annexes I, II, and III).

3. STATUTORY BACKGROUND AND DELEGATION

General

3.1 This Section provides the statutory background to NHS Scotland property transactions. It is these statutes which provide the legal basis for the conduct of property transactions in NHS Scotland and Holding Bodies should be aware of the limits of their powers in this area. The statutes also provide the basis for the delegation of powers from the Scottish Ministers to Holding Bodies, through the Accountable Officer, which is also explained here.

NHS in Scotland Property

3.2 Ownership of NHS Scotland property rests with:-

3.2.1 Holding Bodies in the form of National Health Service Trusts;

3.2.2 Scottish Ministers on whose behalf property is managed by other Holding Bodies; ie Health Boards, the Common Services Agency, the State Hospitals Board for Scotland, the Scottish Ambulance Service Board, the Scottish Council for Postgraduate Medical and Dental Education, the Clinical Standards Board for Scotland, the Health Technology Board for Scotland and the Health Education Board for Scotland and;

3.2.3 Holding Bodies acting as Trustees for endowment property **which is deemed to be private property** and managed by the Trustees in accordance with the terms of each endowment.

Statutory Background

3.3 Under Section 79 of the **National Health Service (Scotland) Act 1978** (the 1978 Act), as amended by the Health and Social Services and Social Security Adjudications Act 1983, the National Health Service and Community Care Act 1990 (the 1990 Act) and the Health Act 1999, Scottish Ministers may acquire (either by agreement or compulsorily) any land required for the purposes of carrying out the functions of the

1978 Act and may dispose of that which is identified as surplus to the operational requirements of the health service. Under Section 7(1) of the **Health and Medicines Act 1988** (the 1988 Act), as amended by the 1990 Act, Scottish Ministers may acquire land by agreement and manage and deal with land in order to generate income for the health service.

3.4 Scottish Ministers have delegated most of the powers conferred by the 1978 Act to Holding Bodies (other than NHS Trusts) through the laying of Statutory Instruments. These Statutory Instruments, together with Directions and Authorisations covering delegation of detailed duties, are listed at Annex IV.

3.5 In the case of NHS Trusts, their powers on property transactions are derived from the legislation which established them - the 1978 Act as amended by the 1990 Act. Scottish Ministers have a power under the 1990 Act enabling them to prevent the disposal of property above a specified threshold value where this would be against the interests of NHS Scotland. This threshold is property valued in excess of £500,000. Trusts have to notify the Department of planned disposals above the threshold. The Act also provides that where a Trust wishes to purchase property compulsorily it must arrange for Scottish Ministers to do so on its behalf.

Delegation

3.6 Annex I lists the transactions which have not been wholly delegated. It lists those transactions which are subject to notification to the Accountable Officer.

3.7 The 1978 Act (as amended) does **not** give Scottish Ministers power to delegate responsibility for acquiring property compulsorily. Any such proposal by a Holding Body must therefore be notified to the Department in terms of Annex I. A similar restriction applies to Holding Bodies, other than NHS Trusts, in relation to any proposed disposal of property which would continue to be used for the purposes of NHS Scotland by another party following disposal (eg health centres/other medical practice

PART A: MANAGEMENT

accommodation or partnership projects). In these cases Scottish Ministers cannot delegate the powers of disposal under the 1978 Act and the execution of instruments for such transactions by these Holding Bodies must be done by the Department (although the responsibility for day to day management of the transaction still rests with the Holding Body concerned).

Income Generation

3.8 The position of Holding Bodies is as follows:

3.8.1 **Health Boards and the CSA**
Income generation powers conferred on the Secretary of State by the 1988 Act have been transferred to Health Boards and CSA under Directions of 1 September 1989 attached to SHHD/DGM(1989)66.

3.8.2 **NHS Trusts**
Trusts have the same powers as other Holding Bodies, but through the 1988 Act as amended by Schedule 6 of the 1990 Act.

3.9 Guidance on income generation is given in Section 6.

Execution of Instruments

3.10 Any legal documents or instruments which require to be signed at the conclusion of any property transaction may, in the case of property owned by NHS Trusts, be signed on its behalf by a Director of the Trust concerned or by any person authorised generally or specifically by the Trust. In the case of other Holding Bodies, Directions issued to them give responsibility in this area subject to the following limitations:

3.10.1 signing of documentation to raise and complete an acquisition by Compulsory Purchase Order must be carried out by the Department (see paragraph 3.7 above);

3.10.2 the Department has responsibility for the signing of dispositions for property which would continue to be used for the purposes of the NHS by another party following disposal eg the title deed for the disposal of a health centre (whole, or in part) or other medical practice accommodation. Any lease-back agreement associated with such a transaction may be signed by the Holding Body even where the transaction is outwith its delegated authority provided any required approval for the transaction has been obtained from the Accountable Officer.

3.10.3 any other instrument should not be signed until the arrangements for notification to the Accountable Officer in terms of Annex I have been completed.

3.11 For Holding Bodies other than NHS Trusts, such legal documents can be signed only by officers formally designated by the Department as authorised signatories. To be meaningful, such action needs to be carried out at a senior level by officers with more than a passing knowledge of property matters who are fully aware of the importance attached to signing such documents. Normally, the Chief Executive and the Director of Finance will be the authorised signatories. No other signatory is acceptable unless prior approval has been obtained in writing from the Department. The presumption should generally be that any additional signatory, or (exceptionally) signatories, should be a Director at board level with responsibility for, property, planning or capital expenditure matters.

3.12 Holding Bodies should seek advice from Central Legal Office (or in the case of NHS Trusts any appropriately appointed legal adviser) on any matters relating to statutory powers or the signing of documents. A Body's Legal Adviser can consult the Scottish Executive Solicitor's Health and Community Care Group if necessary on any particular aspects.

4. OPTION APPRAISAL

Introduction

4.1 Holding Bodies will be aware of the need to use option appraisal techniques from the guidance issued by the Department and through their experience with major capital developments such as the acquisition of a site for the construction of a new hospital or a new health centre. Such appraisal techniques can also be relevant to the handling of property transactions. All property transactions but particularly the acquisition of property where alternative courses of action are available must be subject to option appraisal.

General

4.2 A specific obligation is placed on all Holding Bodies to provide details of option appraisals undertaken in relation to any acquisition or, if appropriate, disposal (whether by purchase, sale or lease) where notification to the Accountable Officer is required in terms of Annex 1. It is assumed however that even where notification is not required, such techniques will be employed by all Holding Bodies (and that details will be available on the case file) to test the validity of the preferred course of action. The extent of any appraisal should be in scale with the amount of expenditure or savings, or generally the importance of the decision involved.

4.3 Advice on option appraisal can be found in the Scottish Capital Investment Manual.

Sources of Professional Advice

4.4 The Scottish Executive DAS Land and Property Division and the Department's Economics and Information Division can provide assistance with option appraisal. Their staff, will be pleased to offer free specific advice on particular cases either formally or informally.

4.5 Advice is also available from the District Valuer (of the Valuation Office Agency Scotland Group) and (if different) the Holding Body's appointed Property Adviser. Formal advice from either may be subject to payment of a fee - and this needs to be negotiated in advance. Informal contact by telephone initially is recommended.

Post-transaction Monitoring Procedures

4.6 In their monitoring of property transactions (see Section 7), the inspectors take account of the use made of the option appraisal tool.

5. PPP/PFI (Public Private Partnerships/Private Finance Initiative)

General

5.1 PPP/PFI may involve property transactions. Holding Bodies must have regard for MEL (1993)²⁶ which sets out the principles of Private Finance, to the criteria for deciding whether Private Finance is involved, to the Private Finance Guide issued under cover of MEL (1995)⁴³ and to improvements to Public Private Partnerships including PFI set out in MEL (1999)⁵⁵. Property transactions within PPP/PFI projects are not subject to separate notification in terms of Annex I or certification (Annex III) but Holding Bodies should draw on the guidance in the Handbook in handling the property transactions element. Typical examples to date of Private Finance schemes involving property are:-

5.1.1 Partnership ventures with private sector health care companies. This can involve Holding Bodies contracting for long stay beds for elderly, mentally infirm or other similar categories of patients in a facility built by the private sector partner, and on a site usually (but not always) provided by the Holding Body by sale or lease at Open Market Value (OMV) or Open Market Rental Value (OMRV) subject to a special assumption that the site can only be used for health care or similar use in terms of Use Class 13 [Residential Institutions] of the Town and Country Planning (Use Classes) (Scotland) Amended Order 1998.

5.1.2 Sale of health centre/surgery property (or sites for such provision) involving the lease back to the Holding Body of part of the premises for the provision of accommodation for community health (or allied) staff. The lease-back element is considered to be a form of Private Finance (for more on health centre sales see Section 5 of Part C).

Approvals

5.2 Although as stated above property transactions within PPP/PFI projects are not subject to separate notification in terms of Annex I, the property element needs to be

taken into account in the financial assessment of whether such schemes offer value for money. Surplus land resulting from a PPP/PFI deal should only be included in such deals where it is clearly better value for money to do so. Holding Bodies are still subject to existing approval requirements for PPP/PFI projects involving property transactions even though separate notification in terms of Annex I is not required (reference MEL (1998) 46). The Scottish Capital Investment Manual provides detailed guidance.

5.3 Unless the Holding Body is a NHS Trust, the execution of the Disposition (ie, title deed) for all disposals related to PPP/PFI projects must be completed by the Department where the property concerned would continue to be used for the purposes of NHS Scotland by another party (see Section 3) - even if the transaction does not otherwise require to be referred to the Accountable Officer.

6. INCOME GENERATION

Introduction

6.1 Income generation is intended to benefit NHS Scotland by generating additional funds to enhance and improve patient care. Circular SHHD/DGM (1989)66, along with NHS Circular GEN (1993)15 and MEL (2000)13, embody the current Department guidance on income generation schemes.

6.2 Such schemes may involve acquisition, sale or lease of property. Typically however they will encompass short or medium term leasing arrangements for NHS Scotland property. The most obvious examples of such transactions are leases of retail units (whose construction costs have been funded by the Holding Body) in hospital complexes. Generally these are of 5 years duration and may provide for a guaranteed minimum annual rental plus a percentage of any turnover in excess of the estimated net annual turnover for each year of the lease. This is agreed with the tenant before the completion of the lease formalities.

6.3 To achieve the best outcome for the public interest, such leases should be marketed with the advice of the Holding Body's Property Adviser. The Property Adviser and Legal Adviser should also be consulted on the tenders or offers received. No lease or other property aspect of an income generation scheme should be concluded without reference to the Property Adviser and the Body's Legal Adviser (Central Legal Office hold copies of a typical lease). Holding Bodies should avoid informal or other contacts with prospective tenants (or their agents) prejudicing the Body's future negotiating position. Bodies should be guided by their Property Adviser on this.

Maximising Return

6.4 Long-term leasing of surplus property should beg the question of why the land or property cannot be sold. Normally surplus property should be sold. It should only be leased if this is the only option open for property management reasons or if professional advice indicates that the net present value of the future income stream would be greater than the proceeds obtained from outright sale. Whether the return from an income generation scheme involving property

will exceed the proceeds from straightforward sale of the property concerned is a critical consideration for a Holding Body when considering utilisation of surplus buildings and land.

Private Finance

6.5 Any income generation scheme which involves an element of PPP/PFI within a proposed property transaction should be considered in the light of the guidance at Section 5.

Consultations with Department

6.6 Health Care Policy Division (Branch 4) of the Department has the policy remit for income generation matters. HCP-4 will consult with the Department's Building and Estates Adviser on any general enquiries about income generation matters or proposals which include a reference to property transactions. This arrangement should not be confused with the need for Holding Bodies to notify the Accountable Officer of certain property transactions in terms of Annex I. Where notification to the Accountable Officer is necessary for a property transaction within an income generation scheme, Holding Bodies should have regard to the guidance set out in Sections 4 and 5, and in Part C, including that relating to the need to undertake option appraisal.

Holding Bodies' Powers

6.7 Section 7 (1) of the Health and Medicines Act 1988 (the 1988 Act) as amended by the 1990 Act allows the Scottish Ministers, and by direction Health Boards, to (i) use NHS Scotland property to develop commercial opportunities not directly related to health care, and (ii) acquire land by agreement and manage and deal with land. Reference SHHD/DGM (1989)66. Section 7 (1) provides greater flexibility for property transactions. It also makes possible (subject to necessary controls) the more profitable forms of property transaction which are available to private sector landowners but all such property transactions must be fully appraised and give definable and well-judged benefits compared to alternative means of property disposal. Highly speculative activities

PART A: MANAGEMENT

(eg direct commercial developments, or speculating in property investment and land dealing markets) will not be permitted - nor, normally, will the commercial development of land for private sector housing.

6.8 NHS Trusts have the same powers as other Holding Bodies on income generation through the 1988 Act as amended by Schedule 6 of the 1990 Act.

7. POST-TRANSACTION MONITORING

Introduction

7.1 In return for the operational independence Holding Bodies have in property transactions, they are monitored on their implementation of the procedures in this Handbook. The results of this post-transaction monitoring are considered carefully by the Department.

7.2 The arrangements described in this Section apply to all Holding Bodies.

Monitoring Arrangements

7.3 Post-transaction monitoring must be an integral part of the internal audit programme. The Audit Committees of the Boards of Holding Bodies are responsible for the oversight of the programme. The Internal Auditor reports his/her findings to the Audit Committee. The Audit Committee's oversight of the work of the Internal Auditor includes reporting to the Board. The Board is responsible for submitting periodic monitoring reports to the Department. It is open to the Department to request further information following such reports, including case papers, and to stipulate action requirements. The Department may also establish its own (external) monitoring arrangements if required in particular circumstances. Holding Bodies are required to conduct post-transaction monitoring in accordance with the arrangements set out in this Section.

7.4 The Internal Auditor, through the Audit Committee, should commission appropriate external support in undertaking post-transaction monitoring. The main task of such support will be to provide professional input into the inspection of transactions and assistance in the preparation of monitoring reports. Those undertaking the inspection should therefore have access to appropriate expertise in the property field. It is open to the Internal Auditor to appoint from the private sector, to use DAS Land and Property Division of the Scottish Executive, or the Valuation Office Agency. In appointing from the private sector, Holding Bodies should not engage firms who have acted as consultants or agents to the Holding Body during the period being monitored.

7.5 In the detailed arrangements for monitoring, the Boards of Holding Bodies and Audit Committees should provide for appropriate functional separation between officers responsible for carrying out the monitoring/audit tasks, and those handling property transactions.

Monitoring Proformas

7.6 The basis for monitoring is a monitoring proforma which should be completed by Holding Bodies for every transaction. A copy of the form, which should be copied locally, is attached. These forms should be used to assist in the selection of cases for detailed examination during the annual monitoring exercise.

Preparation of Monitoring Reports

7.7 Monitoring is carried out on the basis of an annual cycle. The monitoring cycle should normally commence no later than May each year when the staff of the Holding Body responsible for property transactions should provide the Audit Committee with details of property transactions (including addresses and monetary values) completed during the previous financial year. The details should include completed monitoring proformas for every transaction together with any appropriate certification required. (see Annex III)

7.8 The monitoring proforma can also be a useful aide - memoire. It is recommended that a copy is attached to the front of each transaction file, and is updated as the transaction progresses. Such action will facilitate provision of such documentation to the Holding Body's Audit Committee with other papers at the start of each monitoring cycle.

PART A: MANAGEMENT

Monitoring Categories

7.9 For the purposes of monitoring, transactions are broken down into the following categories:

- 7.9.1 sale involving proceeds:
 - 7.9.1.1 of under £100,000 or,
 - 7.9.1.2 of £100,000 or more;
- 7.9.2 sale of NHS houses/residential accommodation:
 - 7.9.2.1 to sitting tenants;
 - 7.9.2.2 on the open market;
- 7.9.3 grant of lease with a rental value:
 - 7.9.3.1 under £10,000 per annum or,
 - 7.9.3.2 of £10,000 per annum or more;
- 7.9.4 acquisition of property:
 - 7.9.4.1 by purchase,
 - 7.9.4.2 by lease;
- 7.9.5 transactions involving excambions.

Sample Monitoring

7.10 From the completed proformas, the Internal Auditor, with the advice of a professional adviser, selects a sample of cases for detailed inspection. The intention is selection of up to 50% of cases for inspection or all cases if only a few are involved. Inspection of case files is normally undertaken in the course of a visit by the Internal Auditor, with assistance from a professional adviser, to the offices of those responsible for property transactions. A report on the monitoring exercise and the inspection should be prepared. This should take account of written and other advice and assistance from a professional adviser. Detailed arrangements for annual monitoring exercises should be issued by the Audit Committee before the exercise commences.

7.11 In preparing inspection reports on individual transactions, Internal Auditors and professional advisers are required to use the following categorisation:

- A. transaction has been properly conducted;
- B. there are reservations on how the transaction was conducted;
- C. a serious error of judgement has occurred in the handling of the transaction.

Monitoring Report

7.12 From a start in May, inspection of individual transactions should normally be carried out no later than June of that year. Holding Bodies are required to prepare a monitoring report (on transactions completed during the previous financial year) for submission to the Department by 31 August of each year.

7.13 That report must include a summary of transactions completed during the year using the categories at paragraphs 7.9 and 7.11; confirmation that they have been appropriately audited and that the audit report has been confirmed by the Audit Committee and the Holding Body's management board. If a transaction is categorised as either B or C (paragraph 7.11) the report must give reasons and advise on the consequent actions. There is no need to submit copies of monitoring proformas or property transaction certification. If there have been no transactions completed during the year a NIL return should be made.

7.14 The report should be sent to:

The Building and Estates Adviser
SEHD
Directorate of Finance
St Andrews House
EDINBURGH
EH1 3DG

MONITORING PROFORMA

PROPERTY TRANSACTIONS PROCEDURES: MONITORING PROFORMA

A. GENERAL

- 1. Holding Body
- 2. Name of Property and Location
-
-
- 3. Type of Transaction Sale/lease by NHS
Purchase by/lease to NHS
Excambion
- 4. Purchaser/Leaseholder
-
-
-
- 5. Proposed Use of Property
- 6. Proceeds/Purchase Price/
Lease: Rental Value and term £
- 7. Is transaction subject to
notification to the YES/NO
Accountable Officer?

B. SALE/LEASE BY NHS

- 8. Date Required Approval for
Closure Received
- 9. Any other NHS Scotland Interest YES/NO
- 10. Date Property Declared Surplus
- 11. Date Trawl Procedures
Completed
- 12. Date Legal Adviser's
Advice Sought
- 13. Crichel Down Rules Apply? YES/NO
- 14. Any other Priority Interest Noted YES/NO
- 15. Advice Sought on Appointment
of Agents? YES/NO
- 16. Date Property Adviser Appointed
- 17. (If applicable) Date
Independent Valuer Appointed

PART A: MANAGEMENT

- 18. Was Planning Authority Consulted on Future Permissible Use? YES/NO
- 19. Was Planning Consent Sought before Sale/Lease? YES/NO
- 20. Was Advice of Property Planning/ Marketing Agent Sought? YES/NO
- 21. Professional Valuation/ Recommended rental £.....
- 22. Was Property Sold/Leased on Open Market to Highest Bidder? (If "No" give brief details) YES/NO

- 23. If Property Leased Give Reason Why Property Not Sold

- 24. Was Clawback/Right of Pre-emption/ Use Restriction or Other Provision Covering Future Change in Circumstances Included in Terms of Sale? YES/NO
- 25. Date Any Necessary Notification to the Accountable Officer submitted
- 26. Date of Acceptance of Offer
- 27. Date Proceeds Received/Lease Commenced
- 28. Date Certification Completed

- C. PURCHASE BY /LEASE TO NHS**
- 29. Date Property Adviser's/ District Valuer's Advice Sought
- 30. Date Legal Adviser's Advice Sought
- 31. Date of Option Appraisal

PART A: MANAGEMENT

- 32. If Leased, Reason Why Property Not Purchased
- 33. Date Any Necessary Notification to the Accountable Officer submitted
- 34. Date of acceptance of Body's Offer for Property
- 35. Date Purchase Price Paid/Lease to Body Commenced
- 36. Date Certification Completed
- D. CONTACT POINT AT HOLDING BODY**
- 37. Name
- 38. Address
-
-
-
-
- 39. Telephone Number

