

Disposal of Surplus Public Sector Property in Northern Ireland



An Agency within the Department of

**Finance and
Personnel**

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CENTRAL ADVISORY UNIT

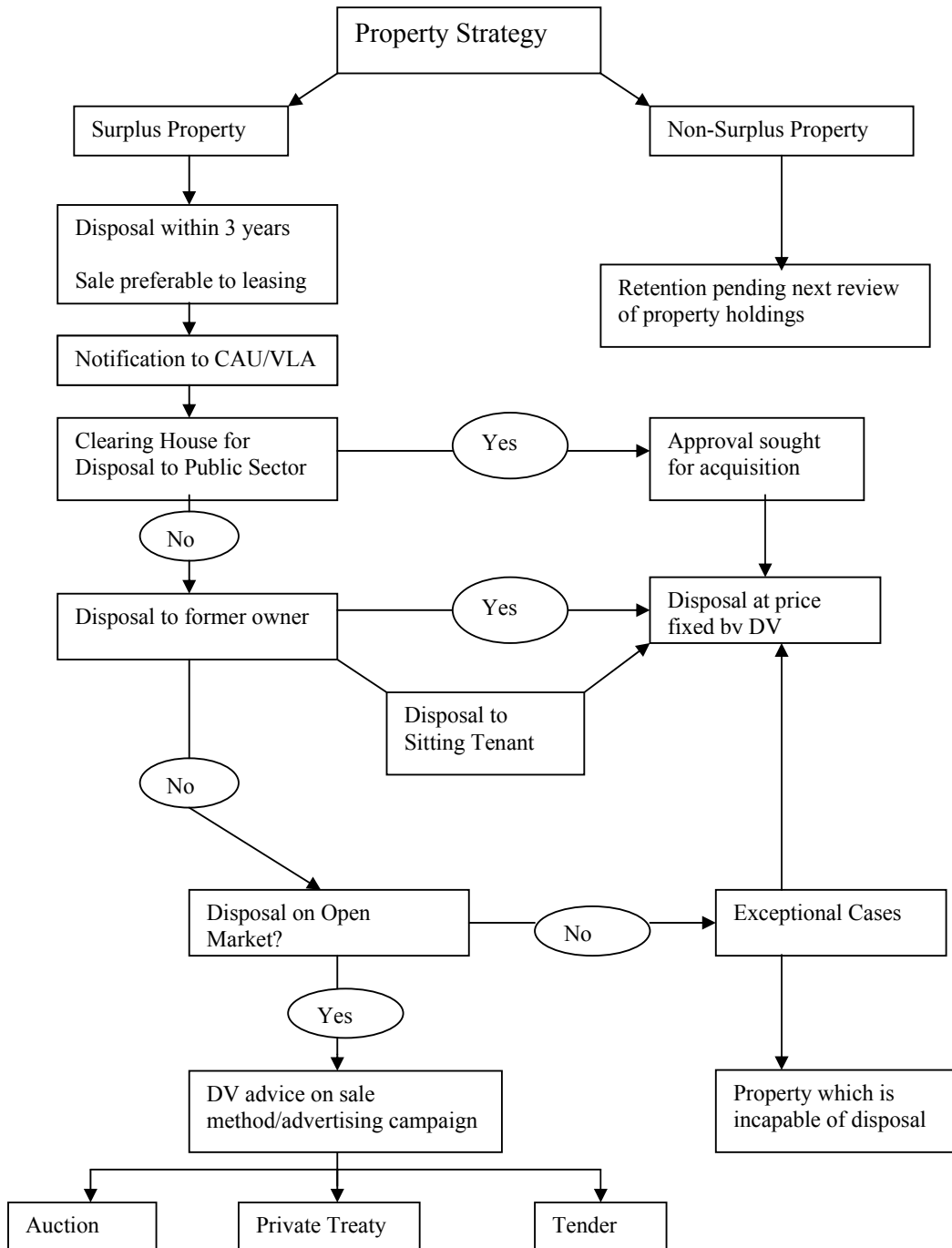


**VALUATION & LANDS
AGENCY**

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DISPOSAL OF SURPLUS LAND FLOWCHART



1.0 INTRODUCTION

1.1 The guidance in this circular follows earlier Central Advisory Unit (CAU) Northern Ireland guidelines of January 1997, January 1999 and September 2001. Relevant public bodies are asked to ensure that this new guidance is incorporated into their property disposal procedures.

1.2 It is for Property Centres and Accounting Officers to ensure that good value for money is achieved and that high standards of propriety are maintained. They should not normally depart from the guidance unless there is a very good reason to do so.

Compliance with these guidelines can be important in the context of a Judicial Review or an investigation by the Parliamentary Ombudsman or other similar body.

1.3 The requirements of Government Accounting continue to apply, as do any delegation limits set bilaterally between DFP and individual departments.

1.4 The guidelines apply to all disposals in Northern Ireland of surplus land and buildings by public sector bodies where the property was acquired by or under threat of vesting. A threat of compulsion will be assumed in the case of a sale by agreement if power to acquire the land compulsorily existed at the time. The only exception is if the property was offered for sale either publicly or privately immediately before negotiations begin.

1.5 Properties that are identified as part of a contract with a developer for a PPP/PFI project are not considered to be surplus and, therefore the guidance as specified in this document does not apply to those properties. Government Accounting guidelines state "Departments then need to consider the relative costs and benefits of selling the asset on the open market against those of transferring the asset as part of a project"

1.6 Property transferred to another body, whether in the public sector or not, to carry out the same functions of the disposing body is not subject to this guidance.

1.7 These guidelines are also recommended to the bodies in the private sector such as a Government Owned Company, to which public land holdings have been transferred, for example on privatisation.

2.0 IDENTIFICATION AND DISPOSAL OF SURPLUS PROPERTY

- 2.1 Identification of surplus land is the responsibility of individual public bodies that should keep their land holdings under continual review. The objective should be to release surplus property with the least possible delay, subject to the need to realise full value for the Exchequer.
- 2.2 Public bodies are reminded of the importance of limiting their holdings of land and buildings to the minimum required for the performance of their present and clearly foreseen responsibilities. In accordance with the report by the Northern Ireland Efficiency Scrutiny on the Management and Disposal of Government Owned Land, public bodies are required to have a property strategy in which they **justify the retention** of all current land holdings by a system of continuing review.

There may be opportunities for periodic pruning of operational holdings, pruning being defined as the economic disposal of land and buildings, or part thereof, achievable without prejudice to the operational business and objectives. A formal surplus property audit should be carried out every 3 to 5 years.

- 2.3 It is in the public interest to dispose of surplus land with the least possible delay and it should be possible in almost all circumstances to do so. Delays can be avoided if time is taken at the start to ensure difficulties with title or boundaries are dealt with expediently. All disposing bodies should be aware of any rights of way, encumbrances, restrictive covenants or boundary difficulties **prior** to formally declaring property surplus. Nevertheless, there may be exceptional cases where a longer period may be appropriate or inevitable to produce a better return for the public purse. These could, for example, be disposal of very large areas of land which might flood the local market, heavily contaminated sites, sites where the planning position is unusually complex or where a higher price may be obtained by marketing several properties at the same time.
- 2.4 Even in these cases disposal should only be delayed after careful appraisal Of the financial implications based on professional advice from the District Valuer covering both the current value and the amount likely to be achieved by a later disposal. The possibility that prices may rise at some time in the future does not justify delay. Public bodies must be able to show that delaying disposal is cost effective and that a disposal strategy exists for the property.
- 2.5 The introduction of resource accounting requires bodies to compile opening and closing balance sheets in each financial year. Property Centres should therefore advise their finance departments of any surplus land so that the correct valuations can be recorded on the balance sheet, the asset register noted and the appropriate accounting entries made when the sale is undertaken.

3.0 SALE OR LEASE

- 3.1 Sale is normally preferable to lease and public bodies should endeavour to dispose of their entire interest (usually freehold) in the surplus property. However, there may be exceptional cases where a long term lease may be appropriate. Professional advice should be taken in cases where a sale of the entire interest is considered inappropriate. Under the Property (NI) Order 1997 a fee farm grant can no longer be created.
- 3.2 If any body has any historical, internal statutory or any other special arrangements regarding the leasing of property the matter should be referred to CAU for comment and analysis of its effect on good management practices.

4.0 NOTIFICATION OF DISPOSAL TO VLA & CAU

- 4.1 Once a property becomes surplus and all details about title are available a property centre should fill in a form called a D1. This form must be accompanied with good quality maps and should issue to CAU for trawling purposes and to the local VLA who will provide an estimate of value and marketing advice, if applicable. Any difficulties with title, or the encroachment of boundaries etc should have been resolved prior to issue of D1 to CAU/VLA. This will help reduce the time involved to complete a sale of the property. CAU are responsible for the clearing house function described in section 5 below. Copies of the D1 form are available directly from CAU.

A list of VLA offices is available on VLA website contacts page
<http://vla.nics.gov.uk/office.htm>

- 4.2 It is essential that D1 forms are completed as fully and as accurately as possible to prevent any undue delay in marketing which may result in a lesser amount being realised from the sale.

5.0 CLEARING HOUSE ARRANGEMENTS

- 5.1 The circulation of surplus land to relevant public bodies is the first stage of the disposal process and precedes any offer to the former owner or an open market sale.

On receipt of the completed D1 form CAU will circulate details of surplus land to those Property Centres it considers relevant. Relevant bodies in the clearing house arrangements will be given three weeks to notify CAU of their potential interest in the property. Any delay in response after this time period may prejudice their opportunity to acquire the property.

The limited circulation of these selected properties is on the clear understanding that action to sell to the former owner or on the open market will not be unduly delayed and, where sale on the open market is deemed appropriate, disposing bodies should continue with this procedure (up to the point of the District Valuer instructing agents) concurrently with the circulation of Property Centres.

6.0 TRANSFERS WITHIN THE PUBLIC SECTOR

- 6.1 Surplus land will be transferred within the public sector only if:
- I. The prospective transferee has proved strong and exceptional reasons of public interest **and** immediate need **and** has compulsory acquisition powers for the purpose for which the land is required; and
 - II. a. The transfer is authorised by the Minister or Ministers for both the transferee and transferor; or

b. The value of the land is not more than £100,000 and the transfer is authorised by a senior officer or officers within the Northern Ireland Government Department (or delegated officers of equivalent rank in NDPBs, Area Boards or the NIHE); or

c. The value of the land is not more than £20,000 and the transfer is authorised by an officer or officers of not less than Principal rank within the Northern Ireland Government Department (or delegated officers of equivalent rank in NDPBs, Area Boards or the NIHE).
- 6.2 A public sector transfer may be made to an organisation which does not have compulsory purchase powers itself, but which has a sponsor body or Department that does hold such powers of acquisition. The sponsor body or Department must be willing to endorse such a transfer on their behalf. A classic example is where land can be transferred to a Housing Association because NIHE have compulsory purchase powers in relation to social housing needs although the funding comes from the Department of Social Development.
- 6.3 For a public sector transfer to take place a prospective acquiring body should have all the necessary approvals and the business case in place within a 6 month period of declaring the a firm interest in the property. Other than in particularly complex cases transfers should be completed within 12 months of a firm expression of interest by the acquiring body.
- 6.4 The most recent government accounting guidance issued in December 2004 is known as Government Accounting in Northern Ireland (GANI). In particular, Chapter 24 deals with the best practice required with regard the disposal of assets including property. The most recent version can be accessed on the website www.aasdni.gov.uk
- The estimated value should have a time limit of 3-6 months, depending on the nature and circumstances of the subject property. After the expiration of the time limit the District Valuer should be requested to carry out a review.
- 6.5 In the event of a relevant body declaring an interest in acquiring a surplus property they must keep the disposing body apprised of all major steps and timescales in the process e.g the preparation of an economic appraisal under the HM Treasury Guide – “Appraisal and Evaluation in Central Government” (plus the NI Practical Guide produced by DFP in 2003). Any

delays or unforeseen problems in the transfer process should be notified to the disposing body together with a brief summary of the corrective action proposed and the timescale involved.

6.6 Submission to Ministers and delegated officers should contain the following information:

- I. Description of the land and its size, approximate value, date, mode of and reason for acquisition and whether compulsory purchase powers were available to the acquiring authority for the purchase.
 - II. A statement of the reasons for the proposed transfer and whether compulsory purchase powers are available for the purpose for which the land is required.
- 6.5 The aim of the submission is to seek, in principle, approval for the transfer of the surplus property, subject to the subsequent carrying out of an Economic Appraisal under the Green Book. – See Annexe C

7.0 FORMER OWNERS

- 7.1 The Crichel Down rules * are specific to GB. Northern Ireland has incorporated them into this guidance with some amendments to reflect local statute and practice.

Where a department wishes to dispose of land to which the guidelines apply, former owners will, as a general rule, be given a first opportunity to repurchase the land previously in their ownership, provided that its character has not materially changed since acquisition. The character of the land may be considered to have “materially changed” where, for example, dwellings or offices have been erected on open land, mainly open land has been afforested, or where substantial works to an existing building have effectively altered its character. The erection of temporary buildings on land, however, is not necessarily a material change. When deciding whether any works have materially altered the character of the land, the disposing department should consider the likely cost of restoring the land to its original use.

There are several other exceptions that can apply and these are detailed at Para 8.0

Any land offered back would be at its current market value i.e. on the same basis under which it was originally acquired.

Any queries can be addressed to Central Advisory Unit.

*

rules established following a Public Inquiry ordered by the Minister of Agriculture into the disposal of land at Crichel Down, June 1954. The rules were reviewed in GB, the most recent version (October 2004 Circular 06/2004) is available on the Office of the Deputy Prime Minister website www.odpm.gov.uk

8.0 OTHER EXCEPTIONS TO OFFER BACK TO THE FORMER OWNER

- 8.1 There is no requirement to offer surplus land to the former owner if any of the following circumstances apply:
- I. Where the land has been declared surplus more than 25 years after the date of acquisition (date of the instrument of conveyance or transfer or vesting declaration) from the private sector.
 - II. Where there is authorisation as described in para 6.1 to transfer the surplus land and within the public sector i.e. that it is not, in a wider sense, surplus to public sector requirements.
 - III. Where, in the opinion of the disposing body, the surplus land consists of small and inconsequential areas of land which would be of no satisfactory or reasonable beneficial use to the former owner either alone or in conjunction with other land already in his possession, or would contribute more effectively to the development of an area if sold on the open market either separately or with adjoining land, or would be prejudicial to the disposal of other significant areas held by that body or any relevant public body.
 - IV. Where it would be to the mutual advantage of the public sector and an adjoining landowner to make minor adjustments in boundaries through an exchange of land.
 - V Where it would be inconsistent with the purpose of the original acquisition eg where property has been acquired for a regeneration purpose, land acquired specifically to encourage industrial usage or dwellings bought for onward sale to a Registered Social Landlord. In all these cases the property must be disposed of in pursuance of that purpose to be considered an exception.
 - VI Where a disposal is in respect of either :-
 - a. A site for development or redevelopment which comprises two or more previous land holdings, or
 - b. A site which consists partly of land which has been materially changed in character and part which is not,and there is a risk of a fragmented sale of such a site realising substantially less than the market value of the site as a whole. However, in such cases any former owner who has remained in continuous occupation of the whole part of his former property (by virtue of tenancy or licence) will be given a right of first refusal of that property or part of the property as the case may be, and in the first type of case special consideration will be given to any case where a consortium of former owners has indicated a desire to purchase collectively;
 - VII Where the market value of the land is so uncertain that clawback provisions would be insufficient to safeguard the public purse and where competitive sale is advised by the Department's professionally qualified valuer and specifically agreed by the responsible Minister.

- VIII Where no powers of compulsion were available for the acquisition or where even though compulsory powers were available, the land was acquired by agreement in advance of any liability under blight provisions, or where the land was offered for sale publicly or privately immediately before negotiations for acquisition.
- IX Where the former owner or his successor has disposed of lands from which the surplus land was severed and the disposing authority considers that it would be inequitable not to offer the surplus land to the present owner of the land from which the surplus land was severed. Such circumstances are most likely to arise in relation to small areas of land which adjoin lands subsequently sold by the former owner or his successor.

9.0 FORMER OWNER WHOSE ADDRESS IS KNOWN

- 9.1 In all appropriate cases the disposing body will write to the former owner by recorded delivery post offering to sell to him his former interest in the land and asking him to indicate in not **later than 8 weeks** time whether or not he is interested in purchasing. The letter will indicate that sale to him will be at a price to be determined by the District Valuer as representing current market value. If he fails to respond or indicates that he does not wish to purchase, the land will be otherwise disposed of.

9.0 FORMER OWNER WHOSE WHEREABOUTS ARE NOT KNOWN

- 10.1 The disposing body will contact the solicitor or agent or any other known professional adviser who acted for the former owner when the land was acquired with a view to establishing the former owner's whereabouts and, failing that, may advertise locally or on a Northern Ireland basis taking into account the value of the disposal relative to advertising costs.

The advertisement should invite him to contact that body **within 4 weeks** of the last date on which the advertisement appears. The solicitor or agent or any other professional adviser contacted would be informed about the advertisement. If there is no response within the 4 weeks period or if any other party contacted is unable to confirm the former owners whereabouts by the end of that period the land should be otherwise disposed of.

- 10.2 Advertising to find the former owner should be such that it adequately covers the whole community.

11.0 LAND CLAUSES CONSOLIDATION ACT 1845

- 11.1 An individual has a right under this legislation to have land offered back where some land was vested and other land was retained. There are specific criteria applicable and all must be satisfied for these paragraphs to apply. Legal advice may be required to ascertain whether this legislation will be applicable.

Paragraphs 128 – 131 of the above legislation are still applicable in Northern Ireland. They are also reiterated within the Local Government Act 1972. As with most legislation it is best to read all the paragraphs in their own context. There are specific criteria that must be fulfilled in order for somebody to have land returned to them if they still retain other lands not vested from them.

This applies only to land that is outside of a town and is specific to land in Northern Ireland only.

12.0 NEGOTIATIONS ON SALE PRICE

- 12.1 Negotiations on the price at which a sale to the former owner will take place will be conducted by the District Valuer.

13.0 TIME LIMITS ON NEGOTIATIONS ON SALE PRICE

- 13.1 If the former owner enters into negotiations under either Land Clauses Legislation or Northern Ireland Disposal Guidelines the former owner is given **6 weeks** from date of the formal approach by the District Valuer to agree terms. If agreement on price cannot be reached then **if** that land falls within the Land Clauses Legislation the matter should be referred to Lands Tribunal. If Northern Ireland Disposal Guidelines apply then there is no formal right of appeal to any other body with regards to the amount assessed by way of market value by the District Valuer. The former owner should be notified when it is put on the open market.

14.0 EXTENSION OF TIME LIMITS

- 14.1 If, for sound reasons, an extension of the stipulated time limits is warranted additional periods may be allowed at the discretion of the disposing body. The overall objective should, however, be to complete transactions in as orderly and as expeditious a manner as possible (see para 2.0)

15.0 INTERESTS QUALIFYING FOR OFFER BACK

- 15.1 Land will normally be offered back to the former freeholder. If the land was, at the time of acquisition, subject to a long lease and more than 21 years of the term would have remained unexpired at the time of disposal, departments may at their own discretion, offer the freehold to the former leaseholder, if the freeholder is not interested in buying back the land. If neither the former freeholder or leaseholder is identifiable or interested in buying back the land then the freehold freed from any lease can be disposed of.

16.0 SUCCESSOR

- 16.1 If at the time of disposal of surplus land the former owner is deceased the land will be offered to his successor, that is the person on whom the interest in the property would clearly have devolved had it not been compulsorily acquired. The successor does not include any person who purchased from a former owner the balance of a holding, part of which was compulsorily purchased and part not. References to the former owner in these guidelines include the successor where appropriate.
Also refer to para 8 (ix).

17.0 RECORDING OF DISPOSALS

- 17.1 Disposing Departments will maintain a central record or file of all transactions covered by the guidance including all cases where the offer back to a former owner is made or the exceptions to offer back are applicable.
Departments are encouraged to discuss with the former owner all aspects of the sale from the outset of negotiations and of the decisions affecting the sale of his former property.

18.0 SPECIALISED PROPERTIES

18.1 In exceptional circumstances a public body may wish to sell a specialised or singular property to a selected purchaser (eg a “heritage” body such as the National Trust) by means of private treaty, on the basis of a market valuation only.

In such circumstances the same principles as set out in Section 6.1 (transfers within the Public Sector) will apply. As it is envisaged that this type of transfer would only be in exceptional circumstances the need to have compulsory purchase powers may be waived if considered appropriate.

19.0 SALE PRICE AND MARKET VALUE

- 19.1 Generally the legislation under which surplus sector property is disposed of is Section 5 of the Stormont Regulation and Government Property Act (NI) 1933. This states that “a sale, exchange, lease or surrender of land under this section shall be at the best price or for the best rent or otherwise on the best terms which, in the opinion of the Ministry of Finance*, can reasonably be obtained”.

Disposal of assets is considered in Government Accounting Northern Ireland 2004 (GANI), which states that,

“ A department or NDPB should take appropriate professional advice to ensure that the consideration obtained for the property is “the best that can reasonably be obtained””

- 19.2 The District Valuer will be able to act in an intelligent client role when an agent is appointed and when no agent has been appointed he can supply a direct service to the disposing body.
- 19.3 Normally all disposals whether within the public sector or not, should be made at the market value (see paragraph 19.4) of the property. However, there may occasionally be cases where it will be reasonable to consider wider issues and accept a lower amount. This should only be done in exceptional circumstances and must be justified by the public body’s Accounting Officer**. In these cases the benefits which are expected to result from the disposal must be clearly identified. Disposing bodies should note that current EU regulations on the sale of public sector property restrict the scope for such concessions and professional advice must be taken in this regard if a sale at below market value is being considered.

Values assessed should have a time limit of 3 –6 months. Depending on the nature and circumstances of the subject property. After expiration of the time unit the valuer should be requested to carry out a review.

* Now Department of Finance and Personnel (DFP) acting on recommendations made by Valuation and Lands Agency.

** Or the senior full time official of an NDPB if he has not been formally designated as Accounting Officer.

19.4 Market value is defined by RICS in “The Red Book” as

“The estimated amount for which a property should exchange on the date of valuation, between a willing buyer and a willing seller in a arm’s-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion”

Market Value is measured as most probable price reasonably obtainable in the market at the date of valuation in keeping with the Market Value definition.

There is a presumption “that both the willing buyer and seller are reasonably informed about the nature and characteristics of the property, its actual and potential uses and the state of the market as of the date of valuation. Each is further presumed to act for self-interest with that knowledge and prudently seek the best price for their respective positions in the transaction. Prudence is assessed by referring to the state of the market at the date of valuation, not with the benefit of hindsight at some later date. It is not necessarily imprudent for a seller to sell property in a market with falling prices at a price, which is lower than previous market levels. In such cases, as is true for other purchase and sale situations in markets with changing prices, the prudent buyer and seller will act in accordance with the best market information available at the time”

A price which is depressed because of general economic situation or because a particular property does not prove attractive to bidders is still market price. It is the disposing body’s responsibility to ensure that the property is promptly and properly marketed and that professional advice is taken on its value (which will reflect the nature of the property, its condition, the planning position and location as well as the economic circumstances).

The only reason for delay would be if a public body had clear professional advice that holding on to the property for a limited period would enable a significantly higher price to be obtained e.g. because planning permission was likely to be granted.

19.5 The highest bid then made would normally be accepted provided that the professional advisers consider it reasonable, even if only a single bid is received. The mere possibility that prices may rise at sometime in the future does not justify delay but in large disposals care must be taken by appropriate phasing or timing of the sale, taking professional advice, not to flood the market and so depress the price. To minimise the risk of the price being reduced because the market, particularly at the local level, might become flooded, it is advisable where major disposals are contemplated to liase with the Central Advisory Unit which is informed of all public sector surplus land disposals in Northern Ireland (see para 5.1)

20.0 DISPOSAL OF SURPLUS HISTORIC BUILDINGS

20.1 This section should be read in conjunction with the rest of the guidelines and in the disposal of Historic Buildings the basic principles as stated in Section 19 should still be the prime objectives. However, it is Government policy that the maximisation of receipts should not be the overriding objective in such disposals. The aim should be to obtain the best return for the taxpayer having regard to:

- I. the provisions of the statutory development plan for the area.
- II. Government policies for historic buildings and areas;
- III. The fact that these policies are likely to restrict the opportunities for realisation of development value;
- IV. The clear recognition that the most appropriate long term use for an historic building may not be the use which generates the optimum financial return;
- V. The building's current state of repair, and the likely costs of future maintenance and repair.

20.2 All surplus historic buildings should be disposed of as quickly as possible; this may point to a particular method of disposal.

If the building is economically viable, has been kept in good order and has a positive value in a recognised use for which there would be demand in the market, normal methods of open market sale will be sufficient.

20.3 Historic buildings are defined as:

- I. Listed building;
- II. Scheduled ancient monuments;
- III. Unlisted buildings, which make a positive contribution to the character or appearance of a designated conservation area
- IV. Locally listed buildings where policies for their protection have been formally adopted by the planning authority and are either incorporated in, or linked to, the statutory development plan for the area.

The status of buildings should be clarified before formal disposal procedures are put in place.

- 20.4 If a historic building is surplus to requirements in its present use consideration should first be given to a cost effective alternative use. This will involve assessing the feasibility of alternative uses (which will require suitable professional advice), the likely cost of adapting the building to a new use compared with alternative means of accommodating that use the prospects for disposal and likely receipts.

In appraising these options maintenance and running costs need careful assessment, taking account of the advice given in the Conservation Guide (see 20.6). It should not be assumed that historic buildings are necessarily more expensive to run than modern buildings.

In assessing the financial prospects for disposal account should be taken of:

- I. the cost of maintaining the building prior to disposal; and
- II. the extent to which sale value may be depressed by restrictions on future use, or by costs of repair or adaptation which a purchaser would have to meet.

All appraisals should look at the overall costs of retention/disposal. In the case of a substantial building, or where buildings are grouped, the economic appraisal should also include an assessment of any wider costs and benefits.

- 20.5 Paragraph 2.4 of these guidelines stipulates disposal within 3 years of a property being declared surplus. This may not always be achievable in complex cases involving historic buildings but, as a general rule, it is particularly important to set disposal procedures in train as soon as possible after historic buildings are judged surplus to requirements, even if they have not yet become vacant. Risks of deterioration, vandalism and theft are a serious threat to historic buildings and wherever possible it is better to keep them in full or at least partial use up to the point of disposal. Where buildings are unavoidably vacant during disposal it is essential that they are inspected and maintenance regimes strictly adhered to. Inadequate maintenance will make the disposal more difficult.
- 20.6 Additional guidance called The Disposal of Historic Buildings 1999 has been produced by the Department of Culture, Media and Sport and is available within their website www.culture.gov.uk.

21.0 SITES WITH DEVELOPMENT POTENTIAL

21.1 In seeking professional guidance on the sale of surplus property disposing bodies are advised to obtain explicit advice from the local DOE Planning Service on whether there is likely to be potential for development, the nature of such development and/or whether there are particularly sensitive planning issues. This request will be a key item in the advice offered by the District Valuer on the conduct of the sale. In order to obtain the best price when disposing sites, it is important that the proposals for the future use are in accord with the planning framework set out in the local area plan, unless material considerations indicate otherwise.

21.2 The disposing public body or the District Valuer on its behalf, will wish to liaise with DOE Planning Service particularly where large and/or sensitive sites are involved. Close liaison with Planning Service is essential for public bodies with large land holdings who are considering longer term disposals so that their disposal programmes can be properly co-ordinated and integrated with the local area plan. This will also help to achieve a programmed series of disposals and avoid placing too many major sites on the market at the same time which could depress the price.

To minimise the risk of the price being reduced because the market particularly at the local level, might become flooded, it is advisable where major disposals are contemplated to liaise with CAU, which is informed of all public sector surplus land disposals in Northern Ireland (see para 5.1).

21.3 Previously guidance in disposal of surplus land with development potential stressed that with the benefit of planning permission was the best way of ensuring that receipts were maximised. Recent changes in the planning regime have called this policy in question.

Applicants for outline planning permission may be called upon to provide environmental impact assessments, traffic studies and other details for consideration by the planners. This implies an investment of time and expense which may make the exercise counter-productive from a public sector viewpoint. For example, if a substantial delay is involved this would be at odds with the requirement to expedite disposal of surplus land.

Experience has also shown that after providing the information needed the conditions attached to the planning permission eventually granted may make it unattractive to the market.

Despite the above it is possible that applying for planning permission prior to disposal might still be the course of action recommended by professional advisers.

21.4 Where it is decided to proceed without applying for planning permission there are various alternative schemes which can be used to protect the public interest and these are detailed in Section 22.1

21.5 Professional advice is particularly important in cases where the surplus land being disposed of has development potential. This advice should be obtained as early as possible in the disposal process so that the optimum course of action can be chosen.

22.0 CLAWBACK

- 22.1 Where there are, or are likely to be, unusual delays in resolving uncertainties about the planning permission of a property which is considered to have development potential, or where there is doubt as to the use which would generate the best price, a public body may decide that it should sell the property without the benefit of planning permission before those uncertainties have been resolved.

Where this is the case the public body should carefully consider, in the interests of the taxpayer, whether they should seek to secure from the purchaser, by suitable wording of the disposal terms, part of an increase in value which is realised subsequent to the original disposal.

This can be achieved by various methods which will depend on the particular circumstances of the case. These methods may include:

(i) selling land subject to a restriction on use – the normal scenario here is that a developer would want to change the use so as to maximise the development potential of the land. In order to change the use he would have to buy out the restrictive covenant and the disposing body would therefore share in the full development value of the land.

(ii) selling land subject to a restriction on access (sometimes referred to as “ransom strips”)-similar to (i) but the restriction is physical rather than legal in nature. The disposing body would in this case sell its land but retain a narrow strip, usually along the road frontage. Again the developer would have to buy out this remaining interest in order to achieve his aims.

(iii) selling an option to purchase - there may be circumstances where it is in the disposing body’s interest to retain legal ownership of the surplus land but to sell an option to purchase to a developer. This might be the chosen method where the land being disposed of has complex planning issues attaching to it and where the property market is buoyant. The eventual full disposal would be triggered by some future event, for example the obtaining of planning permission, resulting in payment of the market value for the permitted use (less the amount already paid for the option) assessed at the relevant time.

(iv) disposal via a developer’s brief and /or a building agreement – this is a method used in urban situations where the public sector is keen to influence the type of development which takes place on the surplus land. This should be a relatively rare occurrence and would be influenced by the strategic importance of the site in question. Typically a developer will make a down payment for the land of a relatively small percentage of its open market value. The balance will then be paid in stages as the development proceeds.

The District Valuer will be able to give an assessment of the likely effect of the above schemes on the sale price.

- 22.2 In cases where land has been sold with planning permission disposing bodies will also wish to consider with the appropriate professional advisors whether a clawback provision should be included to cover the purchaser significantly enhancing a planning consent to his advantage, should this seem to be a possibility.
- 22.3 **All schemes aimed at securing the disposing body a share in the development value of surplus land depend on the definition of a “trigger event” e.g. the obtaining of planning permission. This definition requires careful drafting and sound legal advice is essential.**
- 22.4 Another aspect of disposing of some surplus public sector property can be a difficulty in gauging the commercial potential of property which has been used in the past for a purpose which is peculiar to the public sector. Increases in market demand can lead to an unforeseen increase in the value of the property after it has been sold.

For those reasons, a public body which has sold property for a price on terms which were defensible at the time of sale may be criticised if the property is later resold for a higher price or used for a purpose which suggests that a higher price could have been obtained by the disposing body. Once again this sort of scenario can usually be avoided by good advice and, possibly, use of one of the clawback schemes described above.

- 22.5 The failure of disposing bodies to secure a share in the development value of surplus land has in the past attracted audit criticism. These cases tend to produce difficult issues and raise questions to which there may be no single correct solution. To minimise the risk of criticism bodies should follow these guidelines and obtain good advice.

23.0 SMALL OR INCONSEQUENTIAL SITES – LIMITED MARKET VALUE SALE RESTRICTED TO ADJACENT OWNERS

- 23.1 There may be occasions when, in the opinion of the District Valuer, portions of land have no marketing potential where, for instance, the cost of marketing the site may be higher than the expected purchase price. The type of site envisaged is amenity or agricultural land that will be subsumed into a contiguous site to enhance the appeal of the main site without materially increasing the value of the new enlarged site.

The site should be contiguous with only one other land holding, and may or may not have direct vehicle or pedestrian access.

It is permissible in these cases to open ‘confined’ negotiations with the adjacent owner in order to achieve the most advantageous financial result. However, departure from open marketing should only be considered in the circumstances as outlined in this section and on professional advice.

In cases where there is more than one other contiguous land holding consideration should be given to alternative disposal strategies (e.g. sealed tenders) to obtain the best price.

- 23.2 Where the District Valuer has estimated the value of the land at £1,000 or less there is DFP approval for disposal to proceed at less than that estimated value provided an appraisal has been carried out which shows that the projected costs exceed the projected returns.

24.0 UNMARKETABLE PROPERTY

- 24.1 There will be occasions when property will be incapable of disposal. This type of property will be identified either by testing the market or by professional advice. The reasons may be varied and may relate to size, shape, location, access difficulties or disinterest on the part of the market.

In the case of obviously unmarketable property initial professional advice should highlight the problem and provide suitable advice on what action to take.

For property that has been exposed to the market and has attracted no interest in a 6 month period from the date it is first marketed it should be reviewed by the District Valuer and a recommendation made to the disposing body. If it is decided to continue with disposal action progress should be reviewed in conjunction with the District Valuer at regular intervals of no more than six months

It may be that the disposing body will be faced with continuing responsibility for the property. The District Valuer will, in his reporting letter offer whatever advice is considered appropriate for dealing with the situation which may be one of continuing, long term management.

25.0 OPEN MARKET SALES – APPOINTMENT OF AGENTS

25.1 If property is to proceed to the open market the disposing body will have issued a CAU/D1 form to the District Valuer and received a preliminary report containing the following:

- I. An estimated current value, if appropriate.
- II. Advice on disposal.
- III. Advice on any potential difficulties in the way of disposal.

25.2 The functions of the District Valuer will include:

- I. Liaising with DOE Planning Service and, where appropriate, making a formal planning application;
- II. Selecting and appointing a selling agent, taking account of the type of property, location etc and ensuring that the appointed agent will have the required expertise; establishing the initial guide price;
- III. Devising a marketing strategy in consultation with the selling agent;
- IV. Advising, in consultation with the selling agent, on the final reserve price in sales by tender or auction;
- V. Advising on the acceptability of offers and bids received within the sale deadline;
- VI. In private treaty sales advising on any authentic late or revised bids received after the closing date, but before the sale has become legally binding, which are higher than bids received within deadline;
- VII. When the final sale is at a price below the initial guide price, certifying, jointly with the selling agent, that it is the best offer reasonably obtainable.

25.3 Where private sector agents are used to carry out sales of property only those firms with membership of a professional body such as the Royal Institute of Chartered Surveyors, Irish Auctioneers and Valuers Institute or National Association of Estate Agents among their partners or directors, will normally be considered eligible for appointment,

A check should be made on the professional indemnity insurance carried by the agents and that they have the appropriate experience for the commission being offered.

- 25.4 Where land is sold for development, offers may be received where the receipts depend on the outcome of the purchaser's scheme, often involving some form of deferred completion.

In such cases it is essential to consider the way changes in the market may affect the receipts and the other inherent risks and to weigh these against other offers or ways of disposing of the property. The contract should provide express time limits for actions which are the purchaser's responsibility, for example applying for planning permission and provisions which prevent indefinite or lengthy delays in completion.

The use of staged payments of interest may be helpful in achieving these aims, but other approaches are possible. As any contract term may affect the price, it is important that disposing bodies obtain proper professional advice as to the most appropriate methods having regard to the particular transactions.

26.0 OPEN MARKET SALES – NO AGENT ACTING

26.1 On the advice of the District Valuer it may be considered more cost effective for the disposing body of VLA to act autonomously and sell the property without an Agent.

26.2 The normal method of disposal should be to place an advertisement in the appropriate section (Property Sales) of the local newspaper(s) giving brief details of the property together with a contact name and telephone number. The contact should be available to take enquires on the next working day the advertisement appears.

26.3 **All offers** must be recorded on an offer record sheet that cover:

Name, address, telephone number or offeror

Date and time of offer.

Amount of offer.

Conditions of offer (if any).

If competitive bidding cannot be brought to a swift conclusion consideration should be given to:

I. Bringing the bidders together for a closed auction; or

II. Taking final written offers.

26.4 The highest bidder should be informed in writing that his bid has been accepted, subject to contract.

27.0 SALE METHODS

- 27.1 Professional advice should be obtained on the appropriate sale methods having regard to the particular transaction. The sale method will take account of the nature of the property and will form part of an overall marketing strategy. Normally sales are by private treaty although sale by auction or tender may occasionally be more appropriate.

Disposing bodies should bear in mind that sale by tender requires much more in terms of administrative oversight than the other two methods. It also usually involves the prospective purchasers in carrying out detailed investigation of the property being sold without them knowing whether they have any real chance of acquiring it. For these reasons sale by tender should not be considered in a weak market.

28.0 SALE BY PRIVATE TREATY

28.1 The following guidance applies to sales by private treaty:

- I. In private treaty disposals offers are normally accepted on a “subject to contract” basis, which allows either party to withdraw. The selling agent will be asked to advise on the precise sale terms, which will depend on the particular circumstances of the case, e.g. it may be desirable to seek binding offers by a specified date, i.e. an informal tender, or offers subject to contract or other conditions, such as funding.
- II. Disposing bodies should take care to ensure that they are neither legally nor morally committed to proceed with the sale until contracts are exchanged in case it becomes necessary or desirable to break off negotiations at an advanced stage.
- III. If a deadline for receipt of offers has been set this should not prevent consideration of higher offers received after the deadline nor should a further offer be ruled out of consideration because a lower offer has been accepted “subject to contract”. In such circumstances if a higher offer is received following the initial acceptance on a “subject to contract” basis, professional advice should be taken. In doing so the public body will need to weigh its duty to the taxpayer in regard to obtaining the best possible price for the property against the risk of the original bidders withdrawing their offers because of the delay or accusations of bad faith. Where necessary sufficient time should be allowed for enquiries into the late offeror’s financial credentials (see para 30).
- IV. Where, in the case of a private treaty sale, a number of parties have expressed interest it may be appropriate to invite “best and final offers” to resolve matters. This procedure carries certain risks, and it should only be used on the advice of the professional agents handling the sale. Where it is used, all the interested parties should be invited either to submit their best (subject to contract) offers within a stated period or to take part in a “closed auction”
- V. When closing private treaty sales the following procedures are advised:
 - a. When bidding has reached a point where the agents considers it unlikely to go further and the agent has received the approval of the District Valuer and the vendor to sell at the price, the top bidder should be informed that his offer will be accepted if he returns a signed contract with a deposit within 2 weeks.
 - b. If the returned contract is conditional to the point of being unacceptable the bidder should be given 24 hours to sign an acceptable contract. Otherwise the under bidder should be given the opportunity to purchase. He would be under the same constraints with regards to the terms of the contract.

29.0 SALE BY AUCTION

29.1 Sale by auction provides strong evidence that the disposal was made in a fair way and that the best price was obtained. In a sale by auction the auctioneer is authorised to accept a deposit, sign a contract and generally act on behalf of the disposing body.

The solicitor dealing with the contract and title details should be advised of inspection.

The conditions of sale should be prominently displayed at the auction.

Sale should be to the top bidder unless there are reasons to doubt his financial credibility.

The District Valuer or his representative should be in attendance to ensure that the top bid represents best price.

The following guidance applies to sale by auction:

- I. It is normally advisable to set a reserve price. The District Valuer will consider with the auctioneer the level at which it should be set.
- II. The reserve should normally be set as near to the time of the auction as possible, and not more than seven days in advance.
- III. Property should normally be sold for the highest bid which equals any reserve price.
- IV. Where the reserve price is not reached and the highest bid is only marginally lower than the reserve, the District Valuer in consultation with the auctioneer will advise on whether it would nevertheless be worthwhile accepting that bid.

30.0 SALE BY TENDER

- 30.1 In sale by tender, bids are invited by a certain date. It should be made clear at the outset that the best bid will not necessarily be accepted eg, where the bidder is known to be a “man of straw.”

The following guidance applies to sale by tender:

- I. Tenders may be binding where the acceptance of an offer creates a contract, or non binding where the final terms will be settled after an offer has been accepted. Both procedures have advantages and disadvantages, and disposing bodies should seek advice from their agents on which procedure to adopt.
- II. As with auctions it is normally advisable to set a reserve price with the level being fixed following consultations with the District Valuer and the selling agent. The agent should subsequently consider whether the initial valuation needs to be revised in the light of changed market circumstances prior to a final reserve being set.
- III. The final reserve should normally be set as near to the tender deadline as possible and not more than seven days in advance.
- IV. In a sale by tender it is unacceptable for a bid to be made on the basis that a certain sum over and above the highest tender will be paid or that the bidder will top the highest bid.
- V. Property should normally be sold for the highest bid which at least equals any reserve price; the under bidders should not be invited to improve their bids.
- VI. If none of the bids clear the reserve all the tenderers may be told this and be given an opportunity to revise their offers by a specified date as an alternative to a readvertisement of the sale.
- VII. Alternatively, where the reserve price is not reached and the highest bid is only marginally lower than the reserve, the District Valuer in consultation with the agent will advise on whether it would nevertheless be worthwhile accepting that bid.
- VIII. A fixed date and time must be set for receipt of tenders with no revisions to tenders normally allowed. Late bids should be returned unopened. If this is not done confidence in the tender procedures may be undermined and prospective purchasers may be reluctant to submit bids in other disposal cases.

31.0 DISPOSAL OF SURPLUS TENANTED PROPERTY

31.1 The disposal of surplus tenanted property whether residential or commercial is a complex matter and professional advice should be sought at the earliest possible stage.

31.2 Residential Tenanted Property

Where a property that was compulsorily acquired, has a sitting tenant in residence at the time of disposal, the freehold should be offered to the sitting tenant rather than the former owner.

31.2.1 Sitting tenant in the context of 31.2 is described as a tenant who has indefinite or long-term security of tenure. That is where a tenant has a tenancy that is or analogous to a restricted or regulated tenancy under the Rent Order (NI) 1978.

31.2.2 A person is not considered to be a sitting tenant if they hold a license only or a tenancy known as a protected shorthold tenancy under Housing Order (NI) 1983 or hold any uncontrolled tenancy.

It is recognised that some tenants who fall within para 31.2.2 may have occupied the property over a number of years and may well have carried out improvements to the property. Where the former owner or successor does not wish to purchase the property, or cannot be traced, the disposing Department may wish to consider sympathetically any offer from such a tenant, of not less than two years, to purchase the freehold.

31.3 Commercial Tenanted Property

Normally surplus property should be offered for sale with vacant possession as this usually attracts the best price. This may not always be possible due to the introduction of the Business Tenancies (NI) Order 1996 where in certain circumstances the tenant is given some rights to continue occupation or to receive compensation in order to provide vacant possession. Professional advice of a legal and property nature should be sought to ensure best practice is being adhered to in every circumstance.

Where a sale to the former owner is unsuccessful or inappropriate, a selling agent, in consultation with the District Valuer (or the District Valuer only, where there is no selling agent) may advise an approach to the sitting tenant who, for particular reasons, may be prepared to **pay more than the open market value (as a tenanted property)**. The disposing body should consider whether this should be followed up. It will be desirable for the professional adviser to state in writing that the price finally agreed exceeds the open market value of the tenanted property

32.0 FINANCIAL CREDENTIALS

- 32.1 In sales by tender and private treaty the creditworthiness of the bidder should be examined before acceptance of an offer. However, the effort devoted to this examination should always be proportionate to the value of the property. Various credit rating agencies are available to advise in this regard. Where agents are used to establish the credit worthiness and development track record bidders, it is recommended that disposing bodies ensure that they obtain the advice in writing, including the nature of the evidence on which the recommendation is based.

In an auction sale disposing bodies should note that, as bids accepted result in a binding contract and the purchaser has to pay a 10 per cent deposit immediately, it is not normal to check on bidders' creditworthiness except for very large disposals (greater than £2m value). Even in these cases it will only be feasible to carry out such checks where the identity of bidders is known in advance.

33.0 ADVERTISING

- 33.1 It is most important to ensure that cross community coverage is achieved, even if this means placing the advertisement or notice in more than one newspaper circulated in the area.
- 33.2 When an agent is acting he/she should advise on the papers to be used but if there is any element of doubt, both sides of the political/religious 'divide' should be covered.
- 33.3 Marketing strategy, draft advertisements and estimated costs should be submitted for approval and information. Any marketing material, should it be advertisements in newspapers or periodicals, brochures, for sale signs or notices, should be proportionate to the nature and circumstances of the subject property. The costs and effort should be commensurate with the expected return.

34.0 CORRUPT PRACTICES

- 34.1 Disposing bodies must be scrupulously fair in their land disposal dealings. It should be recognised that the sale of surplus land may offer opportunities for corruption and bodies should ensure that both they and their selling agents have appropriate procedures in place to minimise these risks.
- 34.2 Sale by Tender is the most open to irregularity and particular attention is required in the procedures dealing with the receipt and opening of tenders.
- 34.3 In the appointment of agents it is essential that public bodies receive written assurance that no conflict of interest exists. In the conduct of a sale agents should record in writing all bids received for subsequent examination if necessary.

Further details in this regard are contained in the Valuation and Lands Agency's "Standard Conditions for the Appointment of Agents" – see Annex A

ANNEXE A

DEPARTMENT OF FINANCE AND PERSONNEL

VALUATION AND LANDS AGENCY

STANDARDS CONDITIONS APPLYING TO THE APPOINTMENT OF AGENTS TO DISPOSE OF PROPERTY ON BEHALF OF THE PUBLIC SECTOR BODIES

1. The Agents appointed shall have no other interest which will in any way conflict with their responsibilities to the disposing body.
2. The Agents appointed shall have and maintain professional indemnity insurance at least in accordance with RICS guidelines:-
 - I. £100,000 for each and every claim where the gross income of the firm in the preceding year did not exceed £50,000; or
 - II. £250,000 for each and every claim where the gross income of the firm in the preceding year exceeded £50,000 but did not exceed £100,000; or
 - III. £500,000 for each claim where the gross income of the firm in the preceding year exceeded £100,000.

The policy and the receipt for the last premium will be produced for examination if required by the Valuation and Lands Agency (VLA).

3. The Agents appointed shall not commit the vendor to any action without prior written consent.
4. Subject to reasonable notice the Agents appointed will attend any meetings with VLA representatives, legal advisers etc, at which their presence is required.
5. Legal advice will be provided by the disposing body's solicitor and requests for such advice by the appointed Agents are to be directed through VLA.
6. As it is essential for the sale to be carried out in a demonstrably impartial manner the appointed Agents will not disclose any details of the property until the commencement of the advertising campaign. Any enquirers prior to that date are to be advised that sale particulars will be sent to them as soon as the advertising campaign begins.

7. Particulars of Sales, press advertisements, press releases or other public announcements concerning the subject property both before and after the sale are to be subject to VLA prior written approval and in particular treaty or tender.
8. Any Agent's boards must be securely affixed to the property and must conform to Planning Regulations.
9. Agents appointed shall keep VLA advised of progress during the period leading up to the sale or until a sale has been agreed in the case of a private treaty sale.
10. All information concerning this commission is in confidence between VLA and the appointed agents and must not be disclosed to any third party.
11. The fees and expenses of the Appointed Agents will be payable on the completion of the sale of the property. In the event of a sale not being completed due to the actions of the disposing body a fee based on "quantum meruit" (not exceeding the tendered fee in total) together with approved expenses incurred up to the date of termination will be payable.
12. The sales publicity programme and its cost must be agreed with VLA in advance; any expenditure over the agreed limit may be disallowed.
13. The benefit of any discounts received by appointed agents in respect of advertising, printing etc., must be passed on to the disposing body and the appointed Agents will be required to certify that the charges to be met by the body for disbursements are net, with receipted accounts being produced in support.
14. VLA, acting on behalf of the disposing body, reserves the right to terminate the commission at any time by notice in writing stating the reason and upon receipt of such a notice the commission shall be terminated forthwith. If terminated by VLA on the grounds of unsatisfactory performance or breach of any of the conditions set out herein no fee or expenses shall be payable by the disposing body.
15. The appointment made shall be personal to the appointed Agents who shall not be permitted to delegate their authority or to instruct sub-agents.
16. The appointed agents must abide by the terms of the Estate Agents Act 1979 and the Property Misdescriptions Act 1991

ANNEXE B

DEFINITIONS

PUBLIC SECTOR BODIES

These include:

- I. Northern Ireland Government Departments and their Executive Agencies.
- II. Non Departmental Public Bodies (NDPBs)
- III. Education & Library Boards

Health & Personal Social Services Trusts were excluded from the report by the NI Efficiency Scrutiny on the Management and Disposal of Government owned land. Nevertheless, the requirements to apply good practice to the management and disposal of land should be implicit in Trusts' framework documents and in accordance with the HSS Executive Land Transaction Handbook.

The above is not a definitive list of those bodies that can be involved. Please refer to paragraph 6.0 for information on who can become a transferee and in what circumstances.

NON-DEPARTMENTAL PUBLIC BODIES (NDPB'S)

An NDPB is a body which has a role in the process of national government, but is not a government department nor part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers.

SURPLUS LAND

Land or Buildings in this context means land in the ownership of the public sector bodies which is no longer required for the purpose for which it was acquired or is held.

LAND

Defined in Section 45 of the Interpretation Act (NI)1954 and includes houses, buildings other structures and land covered by water.

PROPERTY CENTRE

A centre dedicated to the effective management of all land and buildings held by that public body. It will seek to adopt the features of best practice and ensure compliance with policy guidelines issued by the Central Advisory Unit. The formation of property centres was recommended by the NI Efficiency Scrutiny on the Management and Disposal of Government Owned Land.

CENTRAL ADVISORY UNIT

A body located within the Valuation and Lands Agency whose role is to adopt a more proactive approach to estate management with the main aim of improving estate management practice and the performance of all operational property assets in the public sector. The unit was set up on the recommendation of the NI Efficiency Scrutiny and in January 1996 it assumed the land disposal policy role formerly held by DOE Lands Service.

VACANT POSSESSION

An empty property which can be exclusively occupied and used by the owner or, on sale or letting, by the new owner or tenant.

PLANNING BRIEF

This a brief prepared by the Planning Authority and the Disposing Body. It will set out the development possibilities based on the policies in the local development plan and it should be subject to public consultation.

ANNEXE C

“The Green Book” and The Northern Ireland Practical Guide to the Green Book

The Green Book sets out HM Treasury's general principles regarding public sector economic appraisal and evaluation. In Northern Ireland, DFP produced a guide to the most recent version of the Green Book in 2003. The purpose of this guide is to provide technical and procedural guidance, which is more specific to the needs of the Northern Ireland sector, than the Green Book itself.

This guide, rather than the Green Book, should be the first port of call for relevant NI bodies, since it is tailored more specifically to their requirements. The Green Book itself still provides much detailed guidance that is not duplicated within the NI Guide and it remains an authoritative source of guidance, the NI Guide should be read in conjunction with it.

NOTE

Words and modes of expression implying the masculine include the feminine and words implying the singular include the plural and the versa where the comment requires.