

Disposal of Surplus Public Sector Property in Northern Ireland

October 2018



Land & Property Services
Seirbhísí Talún & Maoine



Department of
Finance
An Roinn
Airgeadais

www.finance-ni.gov.uk

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DEFINITIONS

ARM's LENGTH BODIES (ALBs)

An arm's length body is an organisation that delivers a public service, is not a ministerial government department, and which operates to a greater or lesser extent at a distance from Ministers. The term can include non-departmental public bodies (NDPBs), Executive Agencies and non-ministerial departments. For example the Health Trusts in Northern Ireland are ALBs of the Department of Health and the Education Authority is an ALB of the Department of Education.

ASSET MANAGEMENT PLAN (AMP)

Individual plans developed by each public sector body in respect of its landholdings, taking account of operational needs, costs of estate management, forward planning and the over-arching public sector Asset Management Strategy.

ASSET MANAGEMENT UNIT (AMU)

The Asset Management Unit (operated by the Strategic Investment Board (SIB)) is a small team of asset management professionals (surveyors, engineers, architects, planners and accountants) with private sector experience which supports departments and their ALB's in delivering the objectives of the Northern Ireland Executive's Asset Management Strategy. The AMU has no power over departments and/or ALBs and typically supports government by:

- identifying strategic opportunities;
- providing expert (technical and commercial) support and guidance;
- providing constructive challenge;
- asset management planning;
- designing governance arrangement; and
- encouraging delivery (for example embedding AMU staff into departments)

ASSET MANAGEMENT STRATEGY

An over-arching public sector strategy to rationalise the public sector estate as a whole, identify redevelopment opportunities, identify surpluses, coordinate, plan and devise the optimal re-use or sales programme in respect of land and property in a comprehensive manner.

CENTRAL ADVISORY UNIT (CAU)

A body located within the Department of Finance (DoF) Land & Property Services (LPS), which is responsible for the policy and guidelines for the disposal of surplus public sector property in Northern Ireland as well as the management and operation for the circulation of surplus lands. 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.

CENTRE OF PROCUREMENT EXPERTISE (CoPE)

A business area that provides best practice and guidance on all procurement issues. This is provided for central government by Central Procurement Directorate (CPD). Other public bodies have their own versions of this.

D1 FORM

This stands for Disposal 1 and is the form that an asset owner should complete in order to advise CAU that they have declared an asset surplus.

e-PIMS

Electronic Property Information Mapping Service is a Central Asset Register for use by NICS departments. ePIMS was developed by the Office of Government Commerce (OGC). The system is a web-based asset register with GIS functionality that contains details of some public sector owned and occupied land and property.

EXPRESSION OF INTEREST QUESTIONNAIRE (EoI)

This is a questionnaire that is issued by CAU to any party that have made an initial EoI in relation to a circulated surplus asset.

GAZUMP

Typically occurs in a strong market, it is where the vendor of a property accepts a verbal offer of the asking price from a potential purchaser "subject to contract" and then subsequently accepts a higher offer from another party before the contract is signed. It also refers to the vendor raising the asking price at the last minute just as the contract is about to be signed.

GAZUNDER

Typically occurs in a weak market. It involves the potential purchaser of a property lowering their bid at or just prior to the exchange of contracts.

THE GOVERNMENT FINANCIAL REPORTING MANUAL

The Government Financial Reporting Manual (FReM) is the technical accounting guide to the preparation of financial statements.

LAND

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

NIGOV

The main Northern Ireland Civil Service (NICS) secure computer network system supported by IT Assist.

NON-DEPARTMENTAL PUBLIC BODIES (NDPBs)

A 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.

PLANNING BRIEF

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

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 CAU. The formation of Property Centres was recommended by the 1996 NI Efficiency Scrutiny on the Management and Disposal of Government Owned Land.

PUBLIC SECTOR BODY

A public sector body is defined as Government Departments and their Executive Agencies or any other entity subject to public procurement rules.¹

STRATEGIC INVESTMENT BOARD LIMITED (SIB)

SIB was established by the Northern Ireland (NI) Executive to help the public sector deliver major value for money infrastructure programmes in Northern Ireland. SIB is a company limited by guarantee, owned and sponsored by The Executive Office.

SURPLUS LAND or SURPLUS ASSET

Surplus land or asset in this guidance context means any land or property in the ownership of the public sector bodies which is no longer required for the purpose for which it was acquired or held.

VACANT POSSESSION

This describes a property which is available for exclusive occupation and use by the present owner or, on sale or letting, by a purchaser or incoming tenant.

¹ <https://www.finance-ni.gov.uk/articles/list-public-bodies-which-ni-public-procurement-policy-applies>

EXECUTIVE SUMMARY

1. During 2017/18 Land & Property Services (LPS) undertook a review of the process for the disposal of surplus public sector property. This revised document has resulted from an increased demand for rigour and transparency in the disposal process, and to provide additional guidance to asset owners and other interested parties on new disposal routes such as Community Asset Transfer.
2. The main areas which have been updated in the disposal guidance are summarised below. Implementing these changes is intended to avoid undue delays in disposing of surplus public sector property, and to support monitoring of disposal activity.
3. This document represents the 7th edition issued by LPS CAU. The 2013 revision of the disposal guidance is superseded by this latest version which is effective from October 2018.

Subject	Summary	Chapter
Timescales to progress circulation process	Expected timescales for asset owners and those expressing an interest in acquiring/ progressing a sale	7
New IT system	An overview of the new online IT system (LPS IT system) to support the circulation process along with the recording and monitoring of disposal processes.	7
Internal and External Markets	New definitions and criteria relating to disposal routes:	
	The Internal Market	6
	The External Market	8
Community Asset Transfers	Incorporation of the Northern Ireland Executive policy on Community Asset Transfer within the Internal Market	5.3
Roles and Responsibilities	Identification of the roles and specific responsibilities, legal, financial or administrative, of any individual or body who may interact with the formal disposal process	Appendix A
Quick Reference Guide	A view of the main activities expected	Appendix B
FAQs	Incorporating updated definitions, references and flowcharts	Appendix C

1. INTRODUCTION

Purpose

- 1.1 The purpose of this guidance is to set out the policy and processes to be used when a public sector body wishes to dispose of a surplus asset in its ownership.
- 1.2 All references throughout this guide to surplus property or land equally apply to land, property, and buildings.
- 1.3 CAU within LPS is part of the DoF and is responsible for policy, advice and guidance on the disposal of surplus public sector land and property in Northern Ireland which includes the management and communication of the availability of surplus property to other public sector bodies through a trawl or circulation process.
- 1.4 CAU was established in 1996 following the Northern Ireland Efficiency Scrutiny report issued in March 1994 to address the need for specialist advice within government in relation to property management issues including the provision of a public sector wide circulation function from a centralised unit, whilst also providing policy advice relating to the disposal of surplus land.
- 1.5 This document represents the 7th edition of the guidance issued by CAU and has been compiled in collaboration with SIB AMU. Any previous revision of the disposal guidance is superseded by this latest version.
- 1.6 Additionally, CAU and District Valuers throughout the LPS network of Regional Valuation Offices continue to provide an independent valuation, appraisal and advisory service to departments and other public sector bodies, in relation to the identification, marketing and disposal of surplus property to former owners or on the open market.

Who does the policy apply to?

- 1.7 All public sector bodies are expected to adhere to this policy with regard to their approach to disposing of surplus public sector owned land.
- 1.8 For the purposes of this guidance, a public sector body is defined as Government Departments and their arm's length bodies or any other entity subject to public procurement rules <https://www.finance-ni.gov.uk/articles/list-public-bodies-which-ni-public-procurement-policy-applies>
- 1.9 Bodies not within the above list are recommended to apply this policy and guidance.
- 1.10 All bodies should be aware of how the asset was originally procured and what obligations they may have both within the public sector and with regard to any pre-emptive former owner rights before proceeding to sell any surplus asset.

Reasons to adhere to the guidance

- 1.11 All receipts from the sale of surplus assets are very important to the public sector economy in Northern Ireland as defined by the Programme for Government in the continued provision of public services.
- 1.12 It should be the objective for Property Centres² and accounting officers to ensure that surplus property once identified, is moved as expeditiously as possible through to a completion in order that receipts are generated within agreed timelines as identified by the Departmental Asset Management Plans (AMP).
- 1.13 “Asset management is a key part of financial management and thus one of the responsibilities of the Accounting Officer in a public sector organisation. Each organisation should arrange for the efficient and effective use, maintenance, acquisition and disposal of the public sector assets under their control”³
- 1.14 “Responsibility for property decisions lies with the department concerned or in the case of the Northern Ireland Civil Service General Office Estate, with Properties Division (PD)”⁴.
- 1.15 Each department therefore has a responsibility to cooperate with other departments to ensure that its property decisions secure best value for money for the Northern Ireland Consolidated Fund (NICF). Land and Property Services Agency (LPS) has a key role to facilitate this cooperation between departments, so that opportunities for savings to the NICF are identified⁵
- 1.16 It will also be the asset owner’s responsibility that value for money is achieved and that high standards of propriety are maintained. They should not normally depart from the guidance unless there is very good reason to do so.
- 1.17 Evidence of compliance with the guidance will be important in the context of internal or external audit, judicial review or an investigation by the Parliamentary Ombudsman or other similar body and, as such, public bodies are advised to ensure that all decisions around the disposal of surplus assets are documented and justifiable.
- 1.18 There are some circumstances where land or property is transferred that is not subject to this guidance, but this does not preclude the application of other Managing Public Money NI advice. <https://www.finance-ni.gov.uk/articles/managing-public-money-ni-mpmni>. This refers to transfers from a public body to another public body, where the asset will continue to be for the same use, or from a public body to a private sector body if it is operational land or property and the transfer is in order to deliver on policy objectives. Examples will be the transfer of land from the Northern Ireland Housing Executive (NIHE) to a housing association in order to provide

² See Definitions

³ Para 4.8.1 Managing Public Money Northern Ireland

⁴ Para 4.8.8 Managing Public Money Northern Ireland

⁵ Para 4.8.8 Managing Public Money Northern Ireland

housing, or the transfer of land by InvestNI to a client company in order to provide industrial development.

2. CONTEXT

- 2.1 The disposal of surplus assets is an important area of activity for public sector bodies and helps to support a range of strategic and policy objectives. This chapter highlights the important policy context together with emerging themes relating to the disposal of surplus assets.

Asset Management Strategy

- 2.2 In June 2013, the Northern Ireland Executive approved the Asset Management Strategy (AMS). This establishes two pivotal strategic objectives for the management of all Central Government assets across Northern Ireland, specifically:

2.3 Objective 1: to reduce the net cost of service delivery through the efficient use of public sector assets; and

2.4 Objective 2: to promote effective asset management processes that unlock value.

- 2.5 The disposal of surplus government owned property is an important part of the Asset Management Strategy and helps support the drive to improve estate management and create an efficient, fit-for-purpose and sustainable estate that meets future needs.

Asset Management Plans (AMPs)

- 2.6 Recommendation 4 of the Executive's AMS (Action 2) requires 'Departments to prepare annually updated Asset Management Plans with a five-year planning horizon covering all business areas'

2.7 AMPs seek to align the asset portfolio with the policy and strategic objectives of the organisation. As well as reviewing the efficiency and performance of existing operational assets, the AMPs are required to contain details of assets which are scheduled for disposal over the next few years. In addition, details should be provided of properties which are being actively reviewed to ensure they are being utilised efficiently and effectively (in accordance with the NI Executive's AMS and MPMNI) to deliver value for money.

- 2.8 The routine preparation of annual AMPs in the last 5 years has given rise to the need for public bodies to approach surplus asset disposals in a more planned and proactive manner with a greater focus on preparation and forecasting of activity on a portfolio wide basis.

Capital Receipts

- 2.9 The ability to generate capital receipts from surplus asset disposals is an important driver for departments, ALBs and the NI Executive as the capital can be reinvested back into service delivery and helps to supplement the overall capital budget requirement.
- 2.10 Effective management of the Northern Ireland Executive Budget requires accurate forecasting of capital receipts to inform both the budget and in-year monitoring processes. With the emphasis on generating capital receipts, departments are increasingly working to a planned programme of disposals for each financial year. AMU is required to report the consolidated position on all departments' disposal activity and capital receipts achievements at NICS Board level and NI Executive level.

Reuse of Surplus Assets

- 2.11 The process for disposal of public sector surplus assets includes an initial time-bound stage for circulating the availability to other public sector bodies for potential reuse. The process provides for the ability to match surplus assets with the needs of other public bodies, provided they meet certain criteria as described in Chapter 6. Reusing or repurposing surplus assets for another public body's objectives is an efficient use of public assets and in certain cases avoids the need to fund the acquisition of property on the open market that would otherwise be required to meet the same objectives.
- 2.12 The activity encompassing the circulation of surplus assets, the matching of requirements and the transfer of assets has grown in recent years and there are increasing instances of competing interests for the same asset from different public bodies. These active supply and demand dynamics effectively embody an 'internal market' within public sector.
- 2.13 A common example of the public sector internal market is the transfer of land to a Housing Association by virtue of the compulsory purchase powers the NIHE has in relation to social housing provision and where the funding comes from the Department for Communities (DfC) through a Housing Association Grant (HAG).
- 2.14 The introduction of the Community Asset Transfer (CAT) Policy 2014⁶ provides an opportunity for voluntary and community organisations to express an interest in acquiring surplus assets at the initial circulation stage of the process. In response to issues arising in recent years, a new transfer process for CAT has been established which includes a time-bound process for demonstrating sufficient evidence of an appropriate sponsor body and a robust and sustainable business plan for the proposed use of the asset.
- 2.15 DfC recently initiated the Public Land for Housing (PLfH) Project within its Housing Division. The main objective of the project is to create a digital spatial

⁶ <https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/community-asset-transfer-policy-framework.pdf>

catalogue of public sector assets that that may be suitable for re-use as housing. At this stage work has been completed in relation to DfC assets and is planned to be rolled out across more departments in the coming years. The establishment of the PLfH Project recognises the need for central government to increase the rate of release of unused land to support the development of both social and affordable housing.

Review of Surplus Asset Disposal Process

- 2.16 The context highlighted above has given rise to the need for increased rigour within the disposal process to avoid undue delays and support the ability to monitor and report progress on disposal activity. LPS has undertaken a review of the end to end process for disposal of surplus property and has identified certain aspects which would benefit from improvements. These improvements are encapsulated within this updated guidance and the main aspects include a revised internal trawl/circulation stage, revised process for transfers under CAT and a new IT system to support the overall process.

3. IDENTIFICATION OF SURPLUS PROPERTY

- 3.1 The Asset Management Strategy, approved by the NI Executive in June 2013 is the impetus for all asset owners to consider their property portfolio and to prepare AMPs to enable a proactive approach to asset management into the future.
- 3.2 Promotion of best practice asset management is the responsibility of the AMU within SIB. AMU is a small team of asset management professionals (surveyors, engineers, architects, planners and accountants) with private sector experience which supports departments and their ALB's in delivering the objectives of the NI Executive's wider Asset Management Strategy. The AMU typically supports government by:
- identifying strategic opportunities;
 - providing expert (technical and commercial) support and guidance;
 - providing constructive challenge;
 - asset management planning;
 - designing governance arrangements; and
 - encouraging delivery (for example embedding AMU staff into departments).

The remit of the AMU includes supporting departments to raise additional capital for re-investment through asset disposals, develop effective AMPs and estate strategies to make best use of their asset base and realising efficiency savings through the better management of their estates. AMU is required to report progress on asset management activity to NICS Board and also reports the consolidated position on all departments' disposal activity and capital receipts achievements to NICS Board and DoF.

In addition, AMU is also responsible for working with departments to develop individual departmental AMPs.

- 3.3 AMPs are essentially enabling the owners and occupiers of property to understand how their assets support service delivery and ensure the assets are being utilised efficiently and effectively. AMPs must be updated annually, with a five year planning horizon and are required to contain details of assets which are scheduled for disposal. In addition, details should be provided of properties that are actively in the disposal process.

Identification of Surplus Land or Property

- 3.4 Managing Public Money (Northern Ireland) establishes the requirement for public sector organisations to arrange for the efficient and effective use, maintenance, acquisition and disposal of the public sector assets under their control. Each organisation / department / ALB should have a clear and full understanding of:

- the content of their current assets base;
 - the assets needed to deliver efficient, cost effective public services; and
 - what this means for acquisitions, disposals and maintenance.
- 3.5 The objective should be to identify and release surplus property with the least possible delay, subject to the need to realise best value for the Northern Ireland Block, as demonstrated through a proportionate appraisal which has secured the necessary approvals. Land or property that is being held with a defined future purpose but which currently is being underutilised, is not deemed surplus but may be suitable for a temporary alternative use or meanwhile use thereby ensuring the asset is being worked efficiently for government. Where it is proposed to retain any unutilised land within public ownership the appropriate approvals should be secured⁷.
- 3.6 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. 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 operational business objectives. The recommended structure for preparing departmental AMPs, as set out in the AMU Guidance Note on AMPs, encourages asset owners to prepare on an annual basis a list of assets which will be actively reviewed in the year ahead.
- 3.7 Land will usually be surplus if:
- It is not currently used for delivery of the department's functions nor is it envisaged to be required in the future.
 - The department has no formally approved strategy and timetable for bringing the land back into permanent operational use.

Disposal of Surplus Land or Property

- 3.8 It is in the public interest to dispose of surplus land with the least possible delay. In almost all circumstances it should be possible to do so, although market conditions (such as those prevailing in the period 2010-2012) may predicate against this from time to time.
- 3.9 Every department will have identified those assets that can be disposed of within their AMP. In most instances, a body or department will have established annual capital receipts targets to be achieved. These are often directly linked to its capital budget with a corresponding amount base lined against its annual allocation, or an internal informal target allocated across the body or department's business areas and ALBS to assist with managing a disposal process.

⁷ See 4.10.3 of Managing Public Money (NI)

- 3.10 By releasing and disposing of assets as expeditiously as possible there is a benefit to the NI Executive as any proceeds gained can be re-distributed to support delivery of public sector services within Northern Ireland.
- 3.11 In exceptional circumstances, it may be appropriate to take longer to dispose of an asset in order to produce a better return for the public purse. These could involve, for example, the disposal of:
- very large areas of land which might flood the local market;
 - heavily contaminated sites which require remediation;
 - sites where the planning position is unusually complex or requires clarification, specialist input or a formal consent to be obtained before proceeding to sale; and
 - several properties where a higher price may be obtained by marketing them at the same time.
- 3.12 Even in these cases disposal should only be delayed after a careful appraisal of the financial implications, endorsed by professional advice from LPS, 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 in itself justify delay, instead the appraisal is to determine if a particular course of action is likely to result in a significantly improved outcome. Public bodies must be able to show that delaying disposal is cost effective and that a disposal strategy exists for the property. Managing Public Money (NI) states that disposals of surplus property must occur within 3 years subject to professional advice on the capacity of the market. Vacant residential property must be sold within 6 months of being declared surplus⁸.
- 3.13 The disposal process needs to be managed effectively throughout and carefully monitored by public bodies from the time the property is identified as surplus in its AMP or forms part of its disposal programme. This includes ensuring all due diligence is conducted in a timely fashion.
- 3.14 Asset owners should be aware of the implications of disposals for surplus property in financial reporting. 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. It is best practice to have valuations continually reviewed, usually every six months, throughout the disposal process.

⁸ Box A 4.8D Managing Public Money Northern Ireland

Financial Reporting

- 3.15 Further details on the approach to the scoring of asset disposals in both accounts and budgets is contained in the Financial Reporting Manual (FReM) and Consolidated Budgeting Guidance (CBG)⁹
- 3.16 Departments should ensure that in anticipation of a disposal, valuations are undertaken in line with relevant guidance. At the time of disposal, variances between disposal proceeds and the net book value of the asset will result in a profit or loss on disposal that will impact upon the department's resource budget.

Interest to be disposed of

- 3.17 Public bodies should endeavour to dispose of their entire interest in the surplus property, usually being the freehold title. However, there may be exceptional cases where it may be appropriate to sell a lesser interest than that held. If, for example, there is a need to control the use of surplus land to protect the value or amenity of retained land it may be more appropriate to sell a long leasehold interest. Professional advice should be taken in cases where a sale of the entire interest is considered inappropriate.

Leasing Practice

- 3.18 If a body has a legacy of particular arrangements regarding the leasing of property the matter should be reviewed to ensure its continued compliance with good management practices. Managing Public Money (NI) makes reference to the efficient use of property.
- 3.19 "It is good practice for public sector organisations to take stock of their assets from time to time and reconsider whether they are being used efficiently. If there is irreducible spare capacity there may be scope to use part of it for other government activities, or to exploit it commercially for nonstatutory business sometimes called wider markets activity. These can generate additional income for the organisation, improving its efficiency (see section 7.11)."¹⁰

Holding Costs

- 3.20 Asset owners must be aware that whilst a property is vacant and not in use by their department there will still be holding costs associated with the property. These will normally include business rates (unless an exception to vacant rates applies), utility costs and security costs. In addition, there are likely to be costs to the departmental budget of writing the asset down to fair value for the purpose of financial reporting. Expediency in achieving a completed transaction is important to minimise the holding costs and the detail of this is now a requirement of the new process.

⁹ <https://www.gov.uk/government/collections/consolidated-budgeting-guidance>

¹⁰ Chapter 4.10.3 Managing Public Money Northern Ireland

4. PRE - DISPOSAL ACTIVITY

Due Diligence - Legal

- 4.1 Prior to submitting a property or piece of land to start a disposal process it is of critical importance that the asset owner's legal title to the property has been investigated. A minimum requirement is to seek to have a preliminary title report prepared by your legal team. This should highlight the source of the title to the property and identify any restrictions or unusual elements within the title.
- 4.2 There may be a legal requirement to offer lands back to a former owner and an early identification of this will be helpful in decision making at a later stage. Where there is no legal requirement to offer lands back to a former owner, then the policy on when a property should be offered back to a former owner still requires to be considered at this early stage. The pre-emptive rights and the exceptions to this right are detailed in Appendix D.

Due Diligence – Physical

- 4.3 The asset owner should seek to ensure the legal position accords with what is occurring on the ground. Where boundaries have been encroached or there are illegal or previously unknown occupations these require to be investigated and resolved by lands officers or asset owner representatives prior to declaring a property surplus. The impact of any title or physical intrusions to the asset to the value of the property will require to be assessed and this will involve engagement with the LPS regional valuation team prior to the issuing of a D1.

Due Diligence – Financial

- 4.4 The asset owner must advise the financial reporting team that the asset is to be declared surplus as the net book value will require to be adjusted accordingly in line with the FReM¹¹. The implications of any adjustment needs to be clear to the asset owner.
- 4.5 All proposals that involve spending or saving public money, or proposed changes in the use of public resources, should be supported by evidence of suitable appraisal, approval, management and evaluation. There is no exception to this requirement and, therefore, any decision involving a change in the use or ownership of a public asset must be supported by a proportionate business case. The purpose of the business case is to document the decision making process. No commitments should be entered into until the relevant business case has been completed and received the appropriate approvals.
- 4.6 A business case is a document which contains an economic appraisal along with information on the proposed arrangement for financing, management,

¹¹<https://www.gov.uk/government/collections/government-financial-reporting-manual-frem>

marketing, procurement, monitoring and evaluation of the relevant policy, programme or project. The effort to be put into business cases should be in proportion to the scale and importance of the proposal. DoF's core guidance on the appraisal process is set out within the Northern Ireland Guide to Expenditure Appraisal and Evaluation (NIGEAE) which is available on line at ¹²

- 4.7 The approving authority for the preferred option will be determined by the relevant delegated arrangements set out between DoF and departments (including their agencies). DoF has delegated to departments authority to enter into commitments and to spend within defined limits, subject to certain restrictions. The delegated limits are set out within DAO (DFP) 06/12 ¹³ and contain specific delegations for the management of assets. The principles of approval and control described in DAO (DFP) 06/12 also extends to NDPBs, North-South bodies and other public bodies, however it is for parent departments to agree specific individual arrangements for such bodies, subject to the overall delegation arrangements established under DAO (DFP) 06/12 .

De-Risking

- 4.8 Consideration should be given to what investment might be applied to the property prior to sale to maximise the capital receipt and increase the certainty of timing. Efforts to bring more clarity to the potential re use or re development of a site will enable potential purchasers to act quicker and with more awareness of any issues. The time and effort applicable to this will depend on the type, nature, size, location and demand for the property that is surplus. Not all sites will require the same effort in terms of de-risking.

- 4.9 Examples of de-risking are:

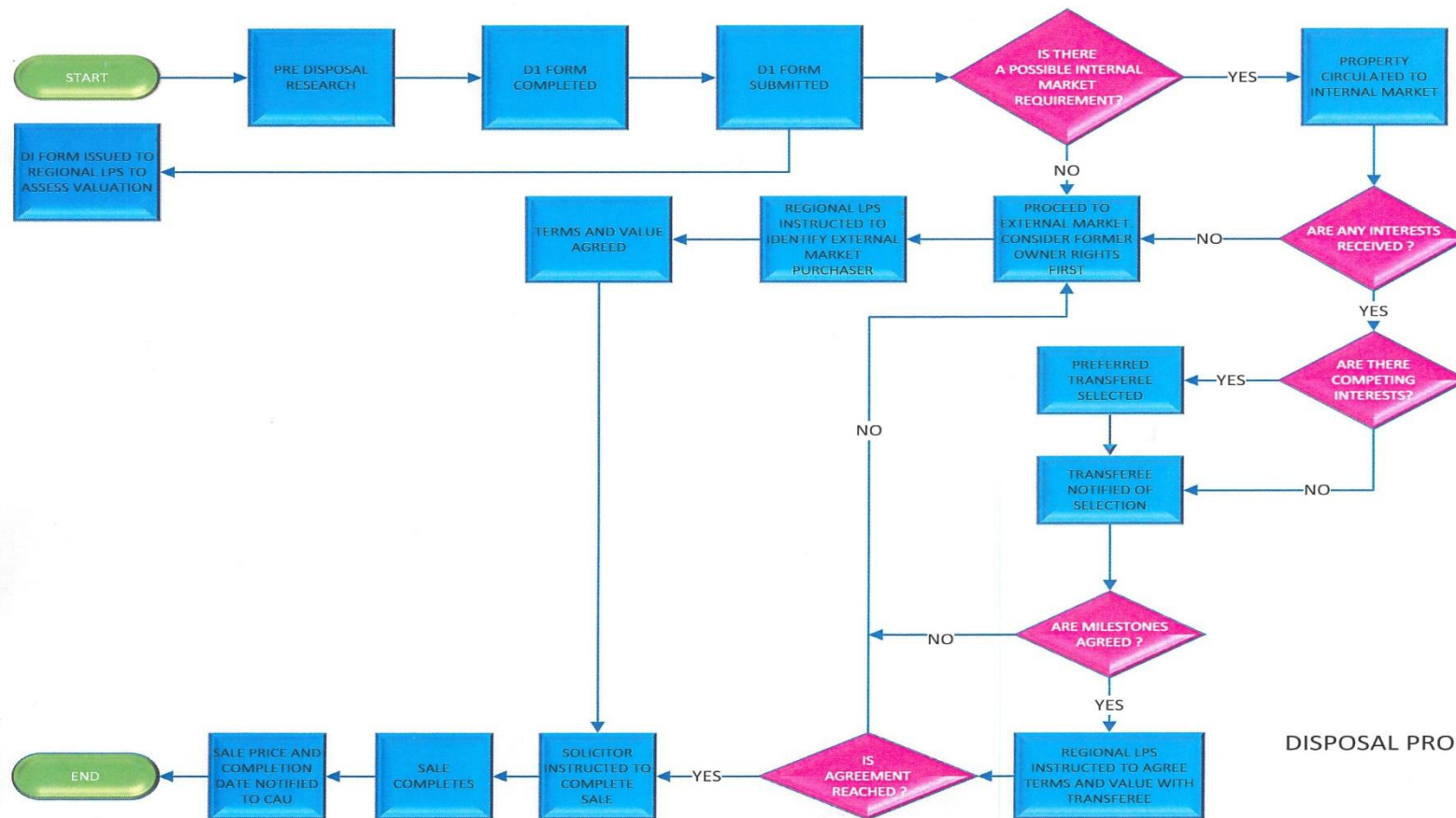
- engaging with planners, either informally or formally through the use of a pre-application discussion (PAD) process, to ascertain any changes of use or conditions that might apply to future use of a property;
- seeking outline planning for another use;
- the production of reports with regard remediation contamination or demolition; and
- the resolution of title issues.

Advice should be sought from a range of professional advisors when considering the validity and impact of any de-risking.

¹² <https://www.finance-ni.gov.uk/topics/finance/northern-ireland-guide-expenditure-appraisal-and-evaluation-nigeae>.

¹³ https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/daodfp0612_revised%20280716_0.pdf.

- 4.10 The disposing body should only undertake de-risking that is commensurate with the value of the asset. In some instances it will be more appropriate for the acquiring body to undertake their own processes and investigation of risk to ensure the site/property will be able to deliver what the purchaser requires. Professional advice should be sought.



DISPOSAL PROCESS FIGURE 1

5. INTERNAL AND EXTERNAL MARKETS.

- 5.1 There are two identifiable pathways that a surplus asset may take to achieve a completed sale. They are via the internal market or the external market.
- 5.2 The Internal Market refers to the transfer of an asset that will be re used for some other public sector type use or benefit. These are typically transfers to a body within the following groups:-
- a) A government department
 - b) A district council
 - c) A housing association seeking land for social housing
 - d) A housing association seeking land for affordable housing
 - e) A third sector body with a sponsor body from either a or b above wishing to acquire under the recognised CAT process.

Community Asset Transfer (CAT)

- 5.3 A CAT refers to the transfer of an interest in land or buildings from a public body to a community based or voluntary organisation. The practice is recognised in Great Britain (GB) as a means of delivering regeneration, community empowerment and social enterprise and is supported by policy, legislation and funding. Whilst there is no equivalent legislation in Northern Ireland the NI Executive's Community Asset Transfer policy¹⁴ was developed to support its commitment in the Programme for Government (2011-2015) to "*invest in social enterprise growth to increase sustainability in the broad community sector*".
- 5.4 This guidance provides a framework to facilitate community ownership of surplus public sector assets where it fits within the legislative authority around the disposal of land. A review of the CAT process was completed in 2018 providing clear guidance on the subject. As a result a third sector body can express an interest in purchasing a surplus property through the disposal process and the proposal can be considered by the asset owner, where applicable, along with any other internal market expressions of interest, if any.
- 5.5 The External Market is a sale of an asset to an individual entity or organisation. These are typically sales that occur:
- to a private sector former owner or adjoining owner; or
 - on the open market.

¹⁴ <https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/community-asset-transfer-policy-framework.pdf>

Asset owners must be aware of the strategic objective in the Northern Ireland Asset Management strategy which is to “*reduce the net cost of service delivery through the efficient use of public sector assets*”.

A property that is declared surplus, is not fulfilling any operational need or purpose and, therefore, requires to be moved through the disposal process as expeditiously as possible.

6. INTERNAL MARKET CRITERIA

6.1 Any organisation referenced at paragraph 5.2 wishing to acquire a surplus asset through the internal market process **must** fulfil several criteria before a transfer to it can be considered. Surplus land may only be transferred within the public sector if the prospective transferee can demonstrate the following:

- a **strong**, immediate need and/or **exceptional** reasons **in the public interest** to acquire the land;
- the allocation of **available** and **approved** funding for the purchase where applicable ; and
- that it could have exercised **compulsory powers of acquisition** in respect of the subject land **for the intended purpose**; OR
- has the confirmed **support** of a **sponsor body** with the necessary compulsory purchase powers.

Sponsor Body.

- 6.2 An internal transfer may be made to an organisation which does not have compulsory purchase powers itself, but which has a sponsor body or to a department that does hold such powers of acquisition for the intended purpose being proposed. A frequent example of a sponsor body is the role undertaken by NIHE in a transfer of land from a Central Government Department to a Housing Association by virtue of the compulsory purchase powers that NIHE holds in relation to social housing provision and where the funding comes from DfC through HAG.
- 6.3 The need to have compulsory purchase powers or to have a sponsor body who would have the necessary compulsory powers to acquire for the intended purpose and who is willing to endorse a sale on behalf of the prospective acquiring body is a necessary condition . The intention of this condition is to avoid an inefficient situation where a surplus asset goes to the open market to be sold but is then identified by a public sector or internal market body who may have to consider re-acquiring the property through the use of its compulsory purchase powers.
- 6.4 In addition to the above, as part of the assessment of whether the above criteria can apply it will be imperative for the acquiring body to provide the asset owner with sufficient comfort that any transfer can complete within the necessary timeframe as required by the asset owner that has been specified on the original D1.
- 6.5 A transfer should be able to be completed within 6 months from when the potential transferee has been identified. Subject to there being sound reasons

for doing so, extensions to this time limit are at the discretion of the asset owner.

Other Internal Market Considerations

- 6.6 Managing Public Money NI¹⁵ refers to the protocol for transfer of assets which includes land and property. Bodies transferring property to another public sector body should ensure their compliance with these protocols.

Internal Transfer Value

- 6.7 At an early stage in the process the value to be paid to an asset owner for an internal market transfer should be determined. The value must comply with Section 5 of the Stormont Regulation and Government Property Act (NI) 1933)¹⁶ which states that;
- 6.8 “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 Department of Finance and Personnel (Now Department of Finance), can reasonably be obtained:
- 6.9 Provided that a nominal price or rent, or a price or rent or terms other than the best that can reasonably be obtained, may be accepted with the consent of the Department of Finance and Personnel, by a department of Northern Ireland, in a case where-
- (i) *The land is to be sold, leased, or otherwise transferred to a local authority, or to a body or persons not trading for profit and authorised by or under any enactment to carry on a public undertaking; and*
 - (ii) *The Department of Finance and Personnel¹⁷ is satisfied that such a sale, lease or transfer will result in the development, improvement or general benefit of any land held by the Ministry in Northern Ireland”*
- 6.10 Any transfer must be at best value and will only be at less than best value if the criteria at (i) and (ii) above apply. Where the criteria do apply, any asset owner wishing to sell at less than best value must obtain their own accounting officer’s approval (and if appropriate the approval of their Minister) before DoF i.e. Supply will agree to any transfer at less than best value.
- 6.11 Variations from the principle of obtaining best price are only feasible where an asset owner has specific legislative authority to disapply the Stormont Act as this enables that body to sell to any 3rd party at less than best price.
- 6.12 Examples of the latter are within Article 90 of the Planning (Northern Ireland) Order 1991, Article 6(6) of the Nature Conservation and Amenity lands (NI)

¹⁵ Annex 4.8.10 of Managing Public Money Northern Ireland

¹⁶ <https://www.legislation.gov.uk/apni/1933/6>

¹⁷ Now the Department of Finance (DoF) acting on recommendations made by Land & Property Services

Order 1985, Article 144(3) of the Roads (Northern Ireland) Order 1993, and Article 10 of the Strategic Investment and Regeneration of Sites (Northern Ireland) Order 2003. All asset owners require to understand their own legislative powers when disposing of land. There will be limited circumstances where an asset owner will be able to accept less than best value.

- 6.13 When a property is to transfer at best price that figure should be no less than Market Value as defined by the relevant Royal Institution of Chartered Surveyors (RICS) Valuation – Global Standards 2017¹⁸ document (the Red Book) or subsequent editions and as confirmed in Managing Public Money (NI) Box 4.8 D.
- 6.14 The estimated market value for transfer purposes will be supplied by LPS (unless other arrangements are in place) who will be instructed once CAU is notified that an asset has become surplus. Estimates of value normally have a time limit of 6 months, or such other expiry date as is specified in the Valuer's report, depending on the nature and circumstances of the subject property as well as the state of the property market. After the expiration of the time limit the asset owner should request the Valuer to carry out a review of the valuation and adjust the business case associated with the transfer as necessary.
- 6.15 In addition, where other information in relation to the physical attributes or specific difficulties of a site or building has become known through the feasibility process, LPS may be asked to review the valuation again. However, not all items will necessarily affect the assessed market value.

It is expected that internal transfers should achieve a completed sale and a capital receipt transferred within 6 months from the date the prospective purchaser has been identified. Extensions to the time limit are at the discretion of the asset owner

Pre-selection Assessment by an Internal Market Body

- 6.16 As part of the disposal process prospective interested parties will be circulated of surplus properties and they will be asked to complete:
- Stage 1 - An initial Expression of Interest; and
 - Stage 2 - An Expression of Interest Questionnaire.
- 6.17 At stage 2 acquiring bodies should undertake a preliminary high level assessment of their planned development or proposal. Evidence of this study should be presented along with the Expression of Interest questionnaire and will be reviewed by the asset owner. This study is necessarily carried out at

¹⁸ <https://www.rics.org/uk/upholding-professional-standards/sector-standards/valuation/red-book/red-book-global/>

the transferee's own risk and should consider the three criteria noted below in as much detail as possible.

- 6.18 Physical suitability – this should consider, for instance, the ability to achieve planning permission for any proposed use, the extent of any remedial works required to a property to make it fit for the proposed purpose and the impact of any known technical reports e.g. asbestos, contamination or environmental issues. The study should take account of any reports or information that is easily accessible or if not easily available then prudent assumptions should be made, where applicable. It should be noted that whilst a vendor may provide some reports at an early stage it is not incumbent on the vendor to provide this detail if not already available. Any prospective purchaser must also be aware that they can place no reliance on this information in relation to their proposed use.
- 6.19 Financial viability – this should take account as far as is possible and in approximate terms, the cost of achieving the end use or development, the cost of further technical or legal due diligence, the cost of acquisition of the site and the realistic prospect of achieving the necessary capital and operational funding within the necessary timeframe.
- 6.20 Timescale feasibility- this should provide some assurance from the interested party that they can comply with the one of the following timescales. Either to complete a transfer within a 6 month period from the date that the prospective transferee is identified and notified that they are to proceed with their proposal or within a longer timeframe that is being driven by the needs of the asset owner.

Post Selection Feasibility by Internal Market Body

- 6.21 This stage will address in more detail the areas noted at 6.18-6.20 and any others that are relevant to the acquiring body with a view to feeding into a business case or plan in order to secure the necessary funding and approvals to acquire. Once selected to progress to a completed transfer, the timescales for all the necessary pre acquisition processes require to be agreed with the asset owner and relevant review periods or milestones (see 7.18) should be discussed and agreed in order to achieve a completed sale within an agreed timeframe.

Preparation of a Business case by an Internal Market Body.

- 6.22 NIGEAE¹⁹ is the primary guidance on appraisal and evaluation for NI departments.

¹⁹ <https://www.finance-ni.gov.uk/topics/finance/northern-ireland-guide-expenditure-appraisal-and-evaluation-nigeae>

- 6.23 Supplementary guidance and templates may be available for individual departments, and you should contact the finance function of your sponsor/parent department in the first instance.
- 6.24 Other organisations will have their own templates and reference guides which should also be followed when a business case is required.

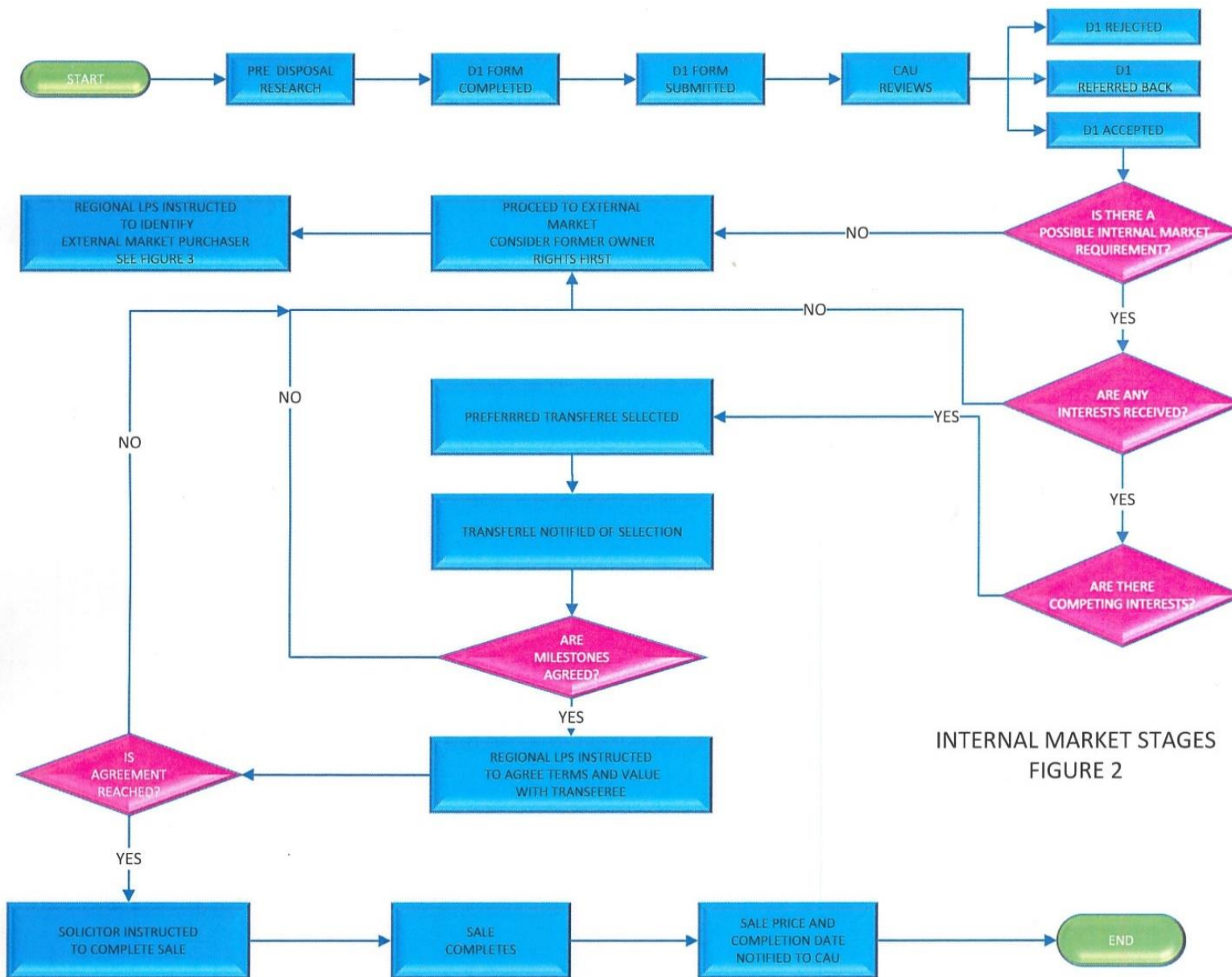
Approval of an Internal Transfer by an Internal Market Body

- 6.25 The asset owner will require approval at a senior level with such consent not to be unreasonably withheld.
- 6.26 The approving authority will be determined by the relevant delegated limits which are in place. DoF has delegated to departments authority to enter into commitments and to spend within defined limits, subject to certain restrictions.
- 6.27 The delegated limits are set out within DAO (DFP) 06/12²⁰ Further delegated limits may be in place beneath these departmental delegations, for example between a parent department and an ALB.

Content of Submissions Seeking Approval for an Internal Market Transfer

- 6.28 Any submission seeking the relevant and appropriate approval of any of the following; a senior officer, DoF Supply or other equivalent authoriser, Accounting officers and/or Ministers should contain the following information as a minimum:
- a description of the land and its size, approximate value, date, mode of and reason for the original acquisition and whether compulsory purchase powers were available to the acquiring authority for the purchase at that time;
 - a statement of the reasons for the proposed transfer and detailed reference to the present compulsory purchase powers which would have been available for the purpose for which the land is now required; and
 - Confirmation that value for money has been demonstrated in a proportionate business case, which has been completed in accordance with NIGEAE.

²⁰https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/daodfp0612_revised%20280716_0.pdf,



INTERNAL MARKET STAGES
FIGURE 2

7. INTERNAL MARKET PROCESS

Starting the Disposal Process

- 7.1 Once a business area has identified a property as surplus and has considered the pre disposal process (as noted at Chapter 4.0) the surplus asset needs to be notified to CAU. This is done by submitting a D1 form to CAU.
- 7.2 NIGOV users can access the form within the CAU on-line application. Details on how to access the live on-line system will be issued to all users before use or contact CAU to get further advice.
- 7.3 Non NIGOV users can access forms at:
- <https://www.finance-ni.gov.uk/publications/disposal-surplus-land-and-property-publications>
- 7.4 On receipt of a D1 form, CAU will acknowledge receipt and review the form. A form can be referred back where there is data missing or no map is supplied.
- 7.5 A copy of the D1 will be issued by CAU to the relevant LPS regional valuation team assuming a valuation is required. The regional valuation team will register a disposal case and will respond to the asset owner with preliminary disposal advice and an initial estimate of value.

Internal Market Circulation

- 7.6 Once a D1 form is submitted by the asset owner to CAU and assuming there is no known legal or policy requirement to offer the land back to a former owner then CAU will instigate a circulation process to all internal market bodies known to CAU or made known to CAU on the D1 form that may wish to acquire. The outcome will identify who within the internal market may wish to acquire the asset.
- 7.7 Initial Expression of Interest
- 7.8 Once eligible organisations have been notified of a surplus asset that body must respond to CAU with a positive Expression of Interest in purchasing within 15 working days.

Initial Expressions of Interest (Eoi) will only be pursued if received within the 15 working day notification period. Late interests will only be considered at the discretion of the asset owner.

- 7.9 The focused turnaround on the notification of surplus properties is intended to ensure that action to sell to the former owner or on the open market will not be unduly delayed. CAU will endeavour to ensure circulation, transfer and

disposal timescales are adhered to so as to minimise holding and security costs to public bodies and to maximise revenue from sales.

- 7.10 Once the initial circulation period has closed and where there has been no positive Expression of Interest responses then the asset owner will be advised that no interest has been received and they should proceed to re-consider any former owner pre-emptive rights, or a sale to an adjoining owner or on the open market. (see Chapters 5.0 and 8.0)

Expression of Interest Questionnaire

- 7.11 Where an initial interest has been received that party will now be required to complete the next stage of the Expression of Interest process. This will entail the carrying out of a pre selection assessment (see paragraphs 6.18-6.20), and the completion of a questionnaire. An interested party has 40 working days to gather relevant evidence and complete a questionnaire.

An Expression of Interest questionnaire must be returned within 40 working days from issue. Acceptance of questionnaires post the 40 day period will only be at the discretion of the asset owner.

Where a questionnaire is not returned it will be assumed that the interested party has withdrawn from the process.

- 7.12 The questionnaire is necessary to provide sufficient information to the asset owner upon which to make any decisions. The asset owner and CAU will use the information provided to determine whether the proposal meets the internal market criteria and to assess if a proposal is potentially capable of being progressed through to a successful conclusion.
- 7.13 All work undertaken to support an acquiring body's proposal at this time is done so at their own risk. There is no guarantee that any acquiring body putting forward an interest will be successful in their bid to acquire the property. Ultimately, it is for the asset owner to make a decision with regard to whether a proposal will be able to move to the next stage of the disposal process.

Asset Owner Review

- 7.14 All returned questionnaires will be released to the asset owner by CAU after the 40 day period has closed. The asset owner has a 20 working day review period (unless notified otherwise by an asset owner) to assess the relevant information supplied and to determine if a submitted proposal will fulfil the internal market criteria and any expectations that an asset owner may have such as anticipated timelines for a capital receipt.
- 7.15 Where competing interests are received, the asset owner will use the information provided on the questionnaires and may consult with CAU and/or other relevant departments such as Department for Communities Voluntary and Community Division, in particular, where there is a Community Asset

Transfer proposal, to decide which body (if any) can proceed with the sale process.

An asset owner is expected to decide whether a proposal may proceed to an internal market transfer within 20 working days

7.16 Regardless of the circulation process asset owners should continue with preparatory procedures in accordance with this guidance while the circulation is proceeding, up to the point where appointment of a marketing agent needs to be considered. Ultimately this will assist in expediting the disposal whether it progresses via the internal or external pathway.

7.17 All internal market applicants will be notified whether they have been successful or not with their proposal to acquire a surplus asset. A successful applicant will be asked to agree milestones in order to achieve progress through to a completed sale within the expected 6 month timescale.

Agreement of Key Milestones

7.18 It is strongly recommended, that the asset owner sets and agrees a programme of “key milestones“ with the prospective acquiring body immediately following the identification and notification of that party. This is to ensure commitment by both parties to achieve a completed sale. Should the programme not be agreed or not be adhered to by the acquiring body, the asset owner should critically review the situation and, in most cases, proceed to the next stage of the process by abandoning the internal transfer process and advancing the disposal through to the external market. Any party who is removed from an internal market transfer where there is no agreement or non-compliance with agreed milestones may, if it wishes, continue to pursue the acquisition on the open market, if the option arises.

7.19 Typical key milestones will depend upon the individual circumstances of each property but may include:

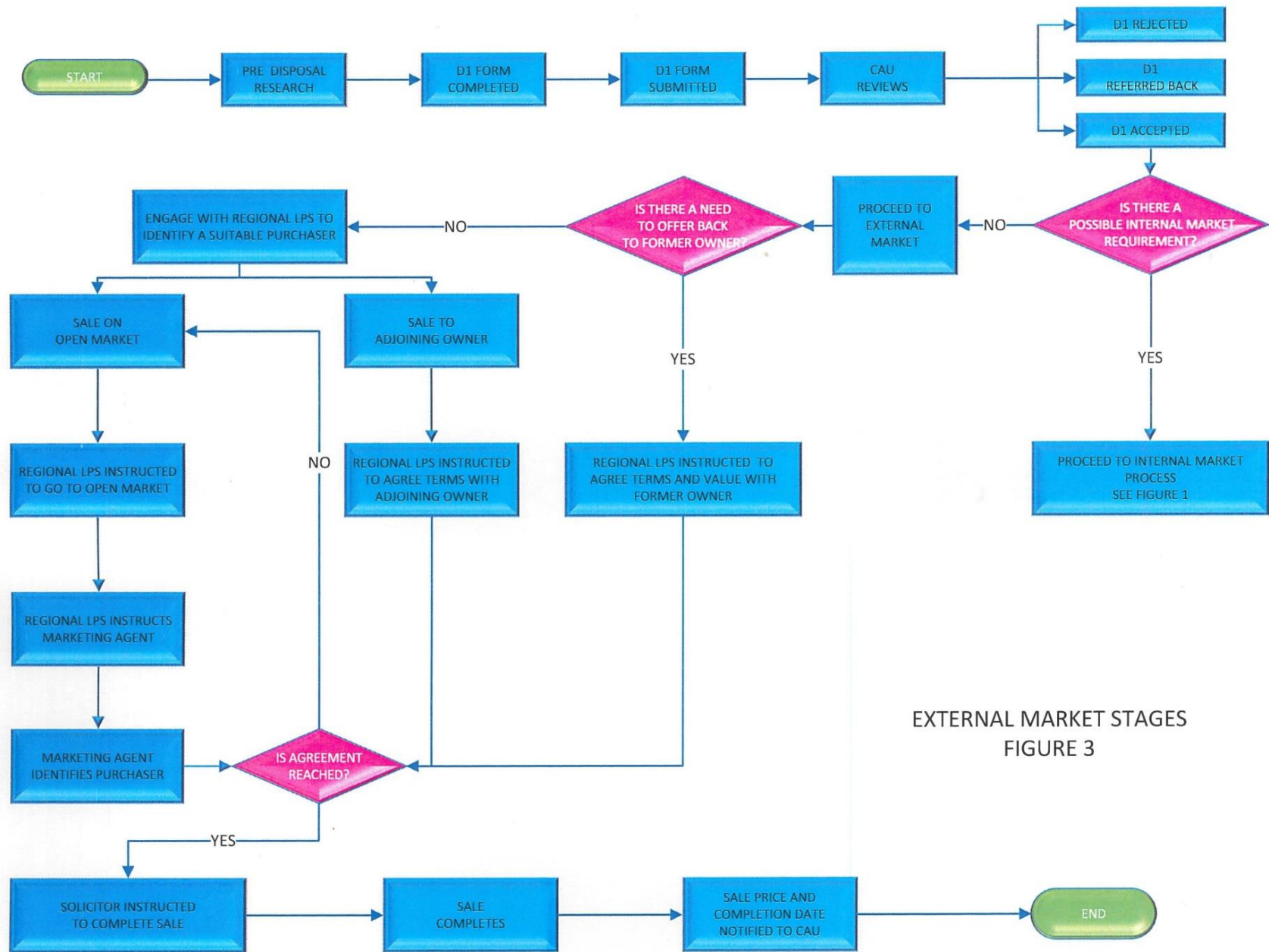
- the completion of technical due diligence;
- the completion of a full feasibility study;
- the submission and approval of a business plan or business case;
- the allocation or receipt of funding;
- an agreement on value; and
- a proposed completion date.

7.20 Agreement of milestones will require to be set for each disposal and will depend on the circumstances of the parties involved and the size and complexity of the disposal. The setting of milestones helps each party within the internal market to have clarity in the process and to work towards achieving a transfer within a reasonable timeframe.

Acquiring Body to Advise Parties of Progress

- 7.21 Any organisation engaged to acquire through an internal market process must keep the asset owner apprised of all major steps and achievement against pre-agreed key milestones in the process. Any delays or unforeseen problems encountered by the prospective acquiring body in the transfer process should be notified to the asset owner and to CAU together with a brief summary of the corrective action proposed and the timescale involved, for consideration by the asset owner and its advisors.

If agreed milestones are not met, without reasonable explanation, the asset owner can notify all parties of its intention to withdraw from the internal market transfer and pursue a receipt by offering the property to the external market.



EXTERNAL MARKET STAGES
FIGURE 3

8. EXTERNAL MARKET PROCESS

8.1 Once a D1 form has been submitted to CAU, the external market pathway will occur in any of the following ways:

- when it is decided that the asset is not to be circulated;
- when an asset has been circulated but has resulted in no expressions of interest being received; or
- when an attempt to transfer a property to the internal market has failed or the interest has been withdraw; or
- when former owner pre-emptive rights take precedence.

8.2 CAU will notify the asset owner to progress the sale to the next stage of the disposal process if any of the above criteria at 8.1 above apply.

8.3 The next stage will be to consider the external market routes which are:

- any requirement to offer the asset back to the former owner;
- to consider a sale to an adjoining owner (if clause 8.10-8.11 apply); or
- to consider going to the open market.

8.4 The asset owner will have received a market value assessment from the LPS Regional office of the surplus asset during the early stages of the disposal process. At this point the asset owner should re engage with the LPS regional office to discuss which of the above 3 options should now be pursued.

Sale to a Former Owner (see Appendix D)

8.5 Any asset owner should be aware of the legislative and policy obligations that apply within NI for asset owners. There may be “exceptions” applicable where an offer back may not be the decided outcome. An asset owner should record all decisions where an offer back does not occur.

8.6 A “threat” of the use of compulsory purchase powers means only that the body acquiring the land had the powers to make a compulsory acquisition if it had wished. There is no need for there to have been an explicit threat of an intention to proceed with a compulsory acquisition. Compulsion is assumed unless the property was being marketed either publically or privately prior to acquisition.

8.7 Asset owners need to determine, therefore, how and when the land was originally acquired from the private sector. This may have been by another public sector body and the source of the asset owner’s title requires to be fully documented and understood.

8.8 Whilst some detail is provided at Appendix D it is a complex area and although CAU can provide some initial advice, legal advice should be sought where there is any doubt.

- 8.9 It is the asset owner's role to identify who the former owner is and where they can be contacted. If an offer back situation occurs, then LPS will undertake, upon instruction by the asset owner, to carry out a formal negotiation with a former owner to establish if a sale can be agreed at market value. There are timescales to be adhered to so refer to Appendix D for further details.

Sale to an Adjoining Owner

- 8.10 There may be occasions when portions of surplus land have no marketing potential where, for instance, the cost of marketing the site may be higher than the expected purchase price. This includes small plots of publically owned land that may be of interest to adjoining home-owners to provide additional garden or on-site parking, or strips of agricultural land that will be subsumed into an adjoining site but without significantly increasing the value of the new enlarged site. LPS can provide professional advice in this regard as necessary.
- 8.11 Such a site will normally be contiguous with only one other land holding, may or may not have direct vehicle or pedestrian access and the approach to acquire it will often have been initiated by the prospective purchaser rather than the asset owner.

Sale to Adjoining Owner based on Equitable Value

- 8.12 It is permissible, where there is only one potential purchaser and the value of the land or property is low to open 'confined' negotiations with the adjacent owner in order to achieve the most advantageous financial result. In these specific circumstances the valuation will be based on the equitable value of the land. This is defined in the RICS Red Book ²¹ as: *"The estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties"* in an arm's length transaction.
- 8.13 It should always be noted that departure from open marketing should only be considered in the circumstances as outlined in this chapter and on professional advice. Where resort to equitable value is recommended the price agreed will be one which reflects the specific advantages and disadvantages of ownership to the parties involved rather than the market at large.
- 8.14 In cases where there is more than one other contiguous land holding consideration should be given to alternative disposal strategies (e.g. sealed tenders/auction) to obtain the best price.

Open Market Sales

- 8.15 By the time a property proceeds to sale on the open market having passed through the internal market circulation and former owner stages as required

²¹ <https://www.rics.org/uk/upholding-professional-standards/sector-standards/valuation/red-book/red-book-global/>

the asset owner will already have issued a D1 form to the District Valuer and received a preliminary report containing the following:

- an estimated current value, if appropriate; and
- advice on disposal.

8.16 The advice on disposal from a regional LPS office will cover a range of specific areas including, when appropriate the following:

- reviewing and taking account of Area Plan information and known Planning policies affecting the property and advising accordingly;
- where considered appropriate advising the asset owner of any actions it should undertake in regard to taking advice from a specialist planning advisor and/or making formal planning application(s), possibly including the appointment of specialist planning advisors;
- appointing an agent from the LPS Estate Agents Framework for the Disposal of Public Sector Land and Property;
- where appropriate, for instance if all of the LPS framework agents have declared a conflict of interest, the selection and appointment of an alternative selling agent will be carried out by the LPS regional office in accordance with procurement procedures and with assistance, when required from DoF Central Procurement Directorate. Generally, public sector marketing opportunities are put out to tender among a selection of suitably qualified agents, taking account of the type of property, location etc. and ensuring that the appointed agent will have the required expertise;
- devising a marketing strategy and the initial guide price in consultation with the selling agent;
- advising, in consultation with the selling agent, on the final reserve price in sales by tender or auction;
- advising on the acceptability of offers and bids received within the sale deadline;
- 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; and
- 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.

Appointment of Marketing Agents

8.17 LPS has procured a framework for the appointment of suitably qualified and experienced marketing agents. In the majority of cases LPS will recommend that asset owners will utilise this framework for open market disposals. The

benefits are that the appointment can be made quickly by drawing down from a pre-approved panel which has been procured competitively. This should provide a quick cost-effective and professional service for all asset owners. In the unusual event that all agents within the framework have declared conflicts of interest LPS will manage the selection and appointment of an agent in accordance with DoF Central Procurement Directorate procedures.

- 8.18 Checks on the professional indemnity insurance carried by the agents and their appropriate experience for the commission being offered will have been part of the pre-qualification process under the LPS appointment framework, or otherwise in the individually tendered basis, with the appointed agent signing up to contemporary standard conditions of 2018. On the advice of LPS it may be considered more cost effective in some, usually minor, cases for the asset owner to appoint LPS to market and sell the property without an Agent.

Procedure for in-house marketing and selling

- 8.19 In some cases, it may be appropriate for LPS to undertake the marketing on behalf of the client. The normal method of disposal should be to place an advertisement in the appropriate section (Property Sales) of the local newspaper(s) together with an appropriate property web site (s) giving brief details of the property together with a contact name and telephone number. The LPS contact should be available to take enquires on the working day following that in which the advertisement appears.
- 8.20 Each offer must be recorded on a record sheet and include:
- name, address, telephone number of the bidder;
 - the date and time of the offer;
 - the amount of the offer; and
 - any conditions attaching to the offer.
- 8.21 If competitive bidding cannot be brought to a swift conclusion, consideration should be given to bringing the bidders together for a closed auction or taking best and final written offers.
- 8.22 The highest bidder should be informed in writing that their bid has been accepted, subject to contract.

9. SALE METHODS AND MARKETING

- 9.1 Professional advice should always be obtained on the appropriate sale methods having regard to the particular transaction and this will have been provided by LPS and by the agent appointed through this process. The sale method will take account of the nature of the property and will form part of an overall marketing strategy.
- 9.2 No matter what method of sale is used in the disposal process - private treaty, tender (sealed bids) or auction, it is essential that asset owners and their professional advisors are open and transparent in all their dealings including fully documenting all advice provided including decisions taken and reasons why a particular sale method has been chosen, including any variations to it during the marketing campaign. All relevant correspondence must be retained for future reference in accordance with departments' file disposal policies.
- 9.3 Any appointed agents used to market properties are required to provide declarations of any conflicts of interest. Any such conflicts noted will be discussed and managed via the appointed LPS Valuer.
- 9.4 Where a disposal is complex the appointment of professional advisors should be based upon clear evidence they have experience of similar complex transactions per commentary on the Ards Abattoir NIAO Public Interests report 2010.

Typical sale methods are described as follows:

Sale by Private Treaty

- 9.5 This is the most common sales process adopted for disposal of surplus assets. Following the market downturn from 2008-2010 the widely adopted approach to private treaty sales has been to require prospective purchasers to submit unconditional bids. This means that purchasers need to provide appropriate evidence of proof of funds in advance of making an offer and they must also have undertaken their technical and legal due diligence and confirm to the agent that they have no outstanding queries with the legal or technical documents before making an offer.
- 9.6 The benefits of this approach compared to conditional offers are that it ensures that the asset owner is only dealing with bona fide purchasers and increases the certainty of the timing of the transaction. The implication for asset owners is the need to have a full title pack prepared for an asset prior to commencement of marketing.
- 9.7 Asset owners should carefully ensure that they are neither legally nor morally committed to proceed with the sale until a formal contract is in place, in case it becomes necessary or desirable to break off negotiations at an advanced stage.
- 9.8 If a deadline for receipt of offers has been set this should not necessarily 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 real risks of the new bidder withdrawing and of the original bidders’ withdrawing their offers because of the delay caused. Where necessary sufficient time should be allowed for enquiries into the late bidder’s financial credentials (see paragraph 9.30).

- 9.9 When closing a private treaty sale where a number of parties have expressed interest it may be appropriate to invite “best and final offers” to resolve matters. This can be very effective, although the procedure carries certain risks, and care is required. An asset owner should, take 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”.
- 9.10 When bidding has reached a point where the agent 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 their offer will be accepted if he returns a signed contract within 20 working days from the date the contract is sent out by the vendor’s Solicitor.

Sale by Public Auction

- 9.11 Sale by public auction provides strong evidence that the disposal was made in a transparently fair manner and that the best price was obtained. In a sale by auction the auctioneer is authorised to act as an agent for the asset owner, but asset owners should ensure that an appropriately senior officer and a legal advisor are present to confirm the auctioneer’s instructions at the point of sale.
- 9.12 The solicitor dealing with the contract and title details should be advised to make these documents available for inspection by interested parties well in advance of the auction date.
- 9.13 The conditions of sale should be prominently displayed at the auction.
- 9.14 Sale should be to the top bidder who has reached or exceeded any reserve price set prior to auction, unless there are reasons to doubt their financial credibility.
- 9.15 The District Valuer or their representative should also normally be in attendance to ensure that the top bid represents best price.
- 9.16 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.
- 9.17 The reserve should normally be set as near to the time of the auction as possible, and not more than seven days in advance.

- 9.18 If 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 or conducting negotiations with that bidder.

Sale by Tender

- 9.19 In a sale by tender, sealed bids are invited by a certain date and all are opened at the same time in a controlled environment. It should be made clear at the outset that the highest bid will not necessarily be accepted, e.g. where there are reasons to doubt the financial status of the top bidder. It may prove helpful to require bidders to provide proof of funds in a specified manner to accompany their sealed bids.
- 9.20 Asset owners 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 is only likely to be chosen as the most suitable method of sale in particular market circumstances. For example - where it is known a potential purchaser has a particular interest in acquiring a property for whatever reason.
- 9.21 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 asset owners should seek advice from their agents on which procedure to adopt.
- 9.22 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. The final reserve should normally be set as near to the tender deadline as possible and not more than seven days in advance.
- 9.23 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.
- 9.24 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. The highest bid made would normally be accepted provided that the professional advisers consider it reasonable, even if only a single bid is received.
- 9.25 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 re-advertisement of the sale. Alternatively, where 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.

- 9.26 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.

Conditional offers

- 9.27 In private treaty or tender sales, and where land is being sold for development purposes, offers may be received, or sometimes even be invited under the marketing campaign, where all or part of the receipts will depend on the outcome of the purchaser's scheme. Conditional offers of this sort will usually involve some form of deferred completion.
- 9.28 In such cases it is essential to consider the way changes in the market prior to completion may affect the receipts and to weigh this and any other inherent risks against other offers or ways of disposing of the property. The contract should provide express time limits for actions which are the intending purchaser's responsibility, for example applying for planning permission. It should also have provisions which prevent indefinite or lengthy delays in completion.
- 9.29 The use of staged payment of the consideration monies may be helpful in offsetting these risks, but other possible approaches may also be feasible. As any contract term could adversely affect the price, it is important that asset owners obtain proper professional advice as to the most appropriate methods having regard to the particular transactions.

Checking a purchaser's financial credentials

- 9.30 In sales by tender and private treaty, subject to the requisite consents, the credit-worthiness 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 of bidders, it is recommended that asset owners ensure that they obtain the advice in writing, including the nature of the evidence on which the recommendation is based.
- 9.31 In an auction sale, acceptance of a bid results in a binding contract with the purchaser having to pay a 10% per cent deposit immediately. Therefore, it may not be practical or feasible to check on bidders' credit-worthiness, unless in respect of larger disposals (say greater than £2m value) where efforts to do so may still be advisable.

Advertising

- 9.32 It is essential to ensure that cross community coverage is achieved, when advertising, even if this means placing the advertisement or notice in more than one newspaper circulated in the area.
- 9.33 When an agent is acting he should advise on the advertising media to be used but if there is any element of doubt, asset owners and their advisors should satisfy themselves that adequate equality of coverage has been achieved.
- 9.34 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.

Avoidance of corrupt practices

- 9.35 Asset owners 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.
- 9.36 Sale by Tender is perhaps the method most exposed to potential irregularity and particular attention is required in the procedures to deal with the receipt and opening of tenders.
- 9.37 When appointing 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.

10. MARKET VALUE

- 10.1 The requirement to take professional advice in the disposal of assets is contained in Managing Public Money NI Appendix 4.8.12 of Managing Public Money NI states that: “Public sector organisations should take professional advice when disposing of land and assets...”, and “Further guidance can be obtained from LPS CAU”

Definition of Market Value

- 10.2 Market value is defined in the RICS Valuation - Global Standards 2017 (The Red Book) or subsequent editions as:
- 10.3 *“The estimated amount for which an asset or liability should exchange on the valuation date, between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgably, prudently and without compulsion.”*
- 10.4 Market Value is measured as the most probable price reasonably obtainable in the market at the valuation date in keeping with the Market Value definition. The presumptions are 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 at the valuation date. 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 valuation date, 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.

Definition of best value

- 10.5 Additionally, and by definition, the concept of best value obtainable will include, where applicable, any special value attributable to the bid of a particularly willing buyer, for whom a certain asset has special value because of advantages arising from its ownership that would not be available to general buyers in the market e.g. due to “marriage” value. It will also include “synergistic value” which is defined by the RICS Red Book as *“An additional element of value created by the combination of two or more interests where the combined value is more than the sum of the separate values”* (may also be known as marriage value).

Sales in a depressed market

- 10.6 A price which is depressed because of current market circumstances and the general economic situation or, because a particular property does not prove attractive to bidders, is still the market price. It is the asset owner’s responsibility to ensure that the property is promptly and properly marketed

and that professional advice is taken throughout on its value which will reflect the economic circumstances and market uncertainty as well as the location, nature, condition and planning circumstances of the property.

Postponement of sales in a volatile market

- 10.7 The possibility that prices may rise at some time in the future does not in itself justify delay. However, delay can still be justifiable if a public body has 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 is likely to be granted), or where the sale should be co-ordinated with other public sector disposals.
- 10.8 Where there are reasons that could justify a delay in sale, these reasons need to be identified, evaluated and quantified to explain the decision to delay by way of an appraisal whose findings are endorsed by the District Valuer.
- 10.9 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. This is particularly risky at the local level and where several different public bodies have surplus property in the same area. It is advisable therefore where major disposals are contemplated to liaise with the CAU which will have been informed of all public sector surplus land disposals in Northern Ireland and can advise on any need for staggering a series of sales.

Requirement to review estimates of value

- 10.10 Valuations will typically have a time limit of 6 months, or such other expiry date as is specified in the Valuer's report, depending on the nature and circumstances of the subject property. After the expiration of the time limit the asset owner should request the Valuer to carry out a review of the valuation, although the timing should also have regard to the current stage and status of the sale process.

11. SITES WITH DEVELOPMENT POTENTIAL

- 11.1 It should be apparent from research undertaken by public bodies when preparing and reviewing their AMPs whether or not land when it is declared surplus has development potential. The District Valuer's review of the initial D1 form will also identify whether the existence of development potential needs to be explored.

Seeking Planning Advice

- 11.2 Asset owners are advised to obtain explicit advice, at an early stage, from the local Planning Service within the District Council area to establish whether there is likely to be potential for development, the nature of such development and/ or whether there are particularly sensitive planning issues. This information is critical to the advice offered by LPS valuation on the conduct of the sale. In order to obtain the best price when disposing of 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.
- 11.3 The disposing public body, or LPS valuation on its behalf, will wish to liaise with the local Planning Authority in a timely manner, particularly where large and/ or sensitive sites are involved.
- 11.4 Close liaison with the Planning Authority is essential for public bodies with large land holdings which are considering longer term disposals so that their AMPs and 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. As noted in page 2 - definitions and elsewhere above a key role of the AMU is to assist public bodies to identify opportunities to generate value and record appropriate actions in their AMPs.
- 11.5 In addition, in order to achieve best outcomes or where advised following consultation with AMU or LPS, particularly where significant site disposals suitable for redevelopment are envisaged, the use of specialist planning consultants may prove beneficial from an early stage in the process. Where considered necessary the assistance of specialist advisors can be procured via AMU's consultancy framework or through their own Centre of Procurement Expertise (CoPE)²².

²²Further information on procurement can be sought from: <https://www.finance-ni.gov.uk/topics/procurement>

Obtaining planning consent

- 11.6 General economic and property market conditions, as well as specific case circumstances, vary substantially from time to time and these factors will govern whether or not there is advantage to be gained by securing an outline or detailed planning consent prior to marketing. The appropriate advice will be judged in accordance with these variables and, in simplistic terms, will depend on whether there is a highly confident and active market, or a state of low ebb and little activity in the market. The over-riding objective is to achieve the best price obtainable within a reasonable timescale, but the latter will vary depending on market conditions prevailing at the time of disposal. LPS and AMU advice should be sought as to the optimal way forward.
- 11.7 On the downside, applications for outline or detailed planning permissions will inevitably lead to delay and upfront costs, for example in providing environmental and traffic impact assessments, archaeological surveys, dealing with listed building and tree preservation issues and any other considerations required by planning authorities. Also, a risk remains that the eventual determination or conditions attached by planners could make the property less attractive to the market than had been anticipated.
- 11.8 On the other hand, there may simply be no realistic alternative but to go to the market with the benefit of a planning consent already secured, with the gains in value achievable easily outweighing any downside at particular times in the economic and market cycle.
- 11.9 Where the relevant advice leads to proceeding without applying for planning permission, or where certain other risks are evident, there are alternative means which may be used to protect the public interest from any risk that best value is not secured. These are detailed in Chapter 12 and may, on occasion, also be applicable even where development land is being sold with the benefit of a valuable planning consent.
- 11.10 In summary, 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 from AMU and LPS and recorded in the AMP and disposal programming process so that the optimum course of action can be chosen. It would be expected that this process would begin as a result of the asset owner's AMP and well in advance of its formal declaration as surplus.

12. SHARING IN FUTURE INCREASES IN VALUE

- 12.1 The presumption is always that a surplus property on the market should always obtain best value for the property on sale, at the point of sale and in full. Any departure from that central principle should be generally viewed as the exception and not the rule.
- 12.2 However, it also needs to be recognised that situations can potentially arise where a public sector vendor may be at real or perceived risk of not obtaining best value for the property asset. This might be where there are circumstances that could have been anticipated prior to sale, but which were not, due to a lack of due process.
- 12.3 This section is about the importance of making best efforts through appropriate professional advice to identify the type and scale of any such risks to the public sector as could reasonably have been predicted in advance of a sale. Then, where advised and considered necessary as a result of analysis, taking practicable steps to offset and minimise such risks. The analysis required will range from the minimal where the sale is straightforward through to more detailed commentary where the property type and associated marketing strategy is more complicated.
- 12.4 Finally it is important that the considerations made, advice taken and decisions reached should be fully documented for audit purposes.
- 12.5 When land with development potential is sold the purchaser normally accepts all the risks associated with its ownership and development and in return receives all the rewards. These may be by way of profit from its re-sale or development, or by way of gain from an upward price movement due either to inflation or improving market conditions.

General requirement to consider sharing in post-disposal gains

- 12.6 When a public sector body sells land it should consider means by which it might participate in future profits or increases in the value of that land after disposal. This may include contractual provisions for instruments such as ground rents, geared ground rents, shared development gain or other mechanisms. However, it should be noted, a prospective purchaser will generally see such attempts as reducing the rewards of ownership and in order to maintain a satisfactory return for the risks it is assuming it will reduce the price it would otherwise have paid for the land.
- 12.7 Requiring purchasers to participate in such arrangements needs therefore to be considered carefully as it could result in a disposal price that could not be endorsed as best value. There are, however, circumstances where it is appropriate e.g. where there are, or are likely to be, protracted delays in resolving uncertainties about the planning permission in respect of a property which is considered to have development potential; where there is doubt as to the use which would generate the best price; or where the value of the land is contingent on other factors which cannot be predicted with certainty at the time of sale.

12.8 The failure of asset owners to secure a share of uplifts in the development value of surplus land has in the past attracted audit and PAC criticism. Particularly in a buoyant market there is always a risk that property may be purchased and sold again within a short time period for a profit. In order to safeguard a share of such windfall and speculative gains and to ensure maximum value is received following disposal it is recommended that some means of participating in future profit or gain is considered in every case of land with development potential. 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, asset owners should follow these guidelines and obtain appropriate legal and valuation advice on a case by case basis.

Internal Market transfers and former owners

12.9 Where land is being sold to a former owner or is being transferred within the internal market it is less likely that participation in future increases in value will be appropriate. If it is thought that exceptional circumstances warrant consideration then the asset owner should consult with CAU in the first instance.

Retention of records

12.10 A record of the advice received and consideration given to sharing in future increases in value should be retained in every case. Commonly adopted mechanisms are outlined in the following paragraphs.

12.11 Examples of sharing in post disposal gains:

The use of restrictive covenants

12.11.1 The selling of land subject to a restriction on the permitted use, secured by way of a covenant contained in the title transferred. 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 asset owner would therefore share in the full development value of the land so released. However, restrictive covenants can be time-bound²³ difficult to secure legally and to enforce later on. They are also open to criticism for potentially limiting the value obtainable for the asset in the first place, thus falling short of the sale at best value principle.

The retention of ransom strips

12.11.2 The selling of land subject to a restriction on access (sometimes referred to as a “ransom strip”) provides a physical rather than legal key to participation in any future enhanced value of surplus land and is therefore more secure in the long term. The asset owner 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 at a later date in

²³ Property (Northern Ireland) Order 1978, SI 1978/459(N14)

order to achieve their aims. Clear justification is vital in order to demonstrate that best sale value has not in fact been impaired by the use of this method.

Options to purchase

- 12.11.3 There may be circumstances where it is in the asset owner'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, possibly less the amount already paid for the option, assessed at the relevant time.
- 12.11.4 It might also be advantageous where the surplus land would have enhanced value if combined with other land in the ownership of a third party and the developer requires commitment from all parties before a sale can be concluded.
- 12.11.5 Ensuring both parties benefit from the sale of an Option to Purchase can be difficult because purchasers will normally seek to fix the future, optional, purchase price at present values, and this may ultimately disadvantage the vendor, especially in a rising market, and may lead to a negative perception of the sale in terms of achieving best value.

Building Agreements

- 12.11.6 Disposal by entering a Building Agreement following the preparation of a developer's brief is sometimes suitable 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. However, this method generally applies only to bodies exercising statutory powers to promote or enable particular forms of development for specific reasons and is unlikely to be appropriate in other circumstances. It may also be necessary to check any relevant procurement regulations with your CoPE.

Claw-back

- 12.11.7 Claw-back applies to the situation where a specific sum of money has been given subject to conditions and the conditions are not met so triggering repayment of part or all of the original sum e.g. return of grant on the sale of a grant-aided building. The amount that has to be repaid is the claw-back. It may also apply to the refund of a discount given on sale e.g. the resale of a dwelling purchased by a sitting tenant at a discount may give rise to claw-back of a portion of the discount if the resale occurs within a specified time period. It has limited application in the sale of other

surplus property but should be considered where, for example, grant is offered or a discount given as a condition of sale in order to preserve a historic building or to ensure that a particular development occurs.

Overage

- 12.11.8 Overage clauses in a contract provide for additional sums to be paid to the vendor, over and above the original purchase price, if and when certain trigger events occur. Normally it is the vendor who specifies the period of time during which any such overage payment will apply. The District Valuer can offer advice in relation to what overage period may be appropriate in any given circumstances.

Overage application in Building Agreements

- 12.11.9 Overage routinely arises where a purchaser of land is contracted as part of the sale, to carry out an agreed development, and the value of the completed development exceeds the value anticipated at the time of sale. The difference is the overage, the split of which should be prior agreed in proportions that incentivise the purchaser to seek to maximise the value and enable them to recover the costs of doing so. An overage clause should therefore be routinely incorporated in a sale involving a Building Agreement. Where grant has also been offered as part of a Building Agreement the contract may incorporate both clawback and overage terms.

Overage application in income sharing

- 12.11.10 Overage clauses may also provide for income sharing where land is resold by the purchaser, usually after some improvement, for a sum that is greater than that expected at the time of the contract. This can frequently arise because the market can find it difficult to gauge 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 following improvement can lead to an unforeseen increase in the value of such property after it has been sold.
- 12.11.11 The excess income to be shared may be measured by reference to the original purchase price inflated by an agreed index. The income shares should permit an appropriate return on any expenditure incurred and should not act as a disincentive to undertake improvements.
- 12.11.12 Income sharing may also be appropriate where land is developed by the purchaser more profitably than was expected at the time of sale. In this case overage may be triggered when e.g. house sales exceed a pre-determined value. The overage clauses in the contract for sale should specify the trigger event for income sharing e.g. sale, transfer to a related company or increase in gross development value, and specify how the additional income is to be calculated and shared.

Overage application where Planning is enhanced

12.11.13 The most common application of overage however is to enable vendor participation in value increases arising from new planning consents or rezonings that were not reflected in the market assumptions at the date of sale. The overage clause should specify the trigger event e.g. the obtaining of outline or detailed planning permission, consent to a specific density of development etc. In all such cases asset owners should seek valuation and planning advice before deciding on the form of overage arrangement. Advice should also be sought, where appropriate, if a requirement should be placed on the purchaser to make a planning application by a specified date so that liability for overage payments may not be escaped by merely delaying development plans once the potential for enhancing value becomes more certain.

12.11.14 The options outlined above are not exhaustive and other methods or provisions may be devised as deemed appropriate in the particular circumstances of a case. LPS is able to give an assessment of the likely effect of the above schemes on the sale price and which is most appropriate in the circumstances of the particular disposal.

Indications that overage is required

12.11.15 The following table comprises a guide²⁴, in the form of 12 yes/no questions, to the main thought processes generally involved in determining whether the protection of overage and/or claw-back terms should be incorporated in a sale. It is not intended to be a definitive set of issues to be considered and appropriate professional advice should be taken before arriving at a conclusion. Individual case circumstances and the market conditions prevailing at any particular time will of course vary substantially and these factors will strongly influence the responses to each question at different points in the property market cycle.

1.	Is the surplus property to be sold to a single purchaser, or a limited set of potential purchasers (see note 3 below), by negotiation of the sale price (in other words, off the market)? (e.g. PPP/PFI schemes where there is land transferring to the supplier that is not required for the operational purpose beyond the short term, as in the DE pathfinders case)	Yes or No
2.	Is the existing, or a proposed use with a current planning consent, less than the highest and best use and value of the property?	Yes or No
3.	Does the property have (re)development potential?	Yes or No
4.	Is it zoned for an alternative use in a current or draft area plan?	Yes or No

²⁴ <https://www.finance-ni.gov.uk/publications/disposal-surplus-land-and-property-publications>

5.	Could an alteration to the existing or consented use increase the property value significantly? (e.g. by increasing the density of use)	Yes or No
6.	Could amalgamation with other property interests, such as adjoining lands, enhance the property value significantly?	Yes or No
7.	Is there any evidence of market values in the sector consistently increasing at above RPI in recent months and years, or of an upward trend ahead of RPI being projected by market specialists and advisors in the short term?	Yes or No
8.	Is there any evidence of significant short-term speculative purchases and re-sales at arm's length in the market sector in recent months or years?	Yes or No
9.	Is there any evidence of an acceptance on the part of purchasers in recent months or years of the inclusion of overage/ claw-back conditions in similar transactions?	Yes or No
10.	Would the proposal be simple to implement? (e.g. an "off the shelf" solution)	Yes or No
11.	Can the proposal be incorporated without undue delay in completion of the sale?	Yes or No
12.	Is it considered that the proposal would have straightforward trigger mechanisms and be capable of simple and effective monitoring and enforcement if triggered?	Yes or No

Notes

1. All of the above questions should be considered. The more of them answered “yes” the more likely it is that some form of suitably crafted overage or claw-back terms should be considered in the sale contract.
2. A majority of “yes” responses points to a highly active and growing market, highly sensitive also to planning inputs. Together these form the conditions in which excess profits may arise on the part of the purchaser. While it does not necessarily mean that overage provisions should automatically follow, it highlights cases where asset owners must carefully consider the risks involved and how and if these risks could be offset.
3. The questions are clearly not equal in weight. For example, answering “yes” to Q1 is a very strong indicator on its own that appropriate overage/ claw-back provisions should be incorporated in the sale agreement. Similarly if the answer to Q2 is an unequivocal “no” then the likelihood is that overage/ claw-back protection will not be required.
4. It should be observed that the answers to Qs 10-12 inclusive are almost invariably “no” since overage/claw-back is inevitably a complex subject area, or else it would be ineffectual.
5. If the majority of the other questions are also answered “no” then the indication is that the market is weak. In these circumstances potential purchasers are likely either to be deterred altogether by an insistence upon such provisions, or to reduce their bids significantly. Where excess profits may subsequently be made then it can be deemed that the risk-taker was entitled to the returns in these circumstances. It might be helpful to grade as high, medium or low, the risk that bidders would be deterred by onerous clauses. From the purchaser’s point of view material considerations would be the impact on profit margins, cost over-runs, finance charges, marketing difficulties, voids, vacant rates, etc.
6. To reiterate the opening comment in this chapter, in general, the presumption is that best sale price is achieved in the first place with an unencumbered sale contract. The inclusion of overage/claw-back, while of high importance where it is appropriate, is likely to be the exception. It is only where major risks to the public sector are identified in the consideration process that these must be addressed and the resultant professional advices and decisions properly documented.

13. SURPLUS HISTORIC ASSETS

- 13.1 The basic principles as stated for an internal or external market sale noted above still apply when disposing of historic assets. While the remainder of these guidelines also apply, 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:
1. the provisions of the statutory development plan for the area;
 2. government policies for historic assets and designated areas;
 3. the fact that these policies are likely to restrict the opportunities for realisation of development value;
 4. the clear recognition that the most appropriate long term use for an historic asset may not be the use which generates the optimum financial return; and
 5. the asset's current state of repair, and the likely costs of future maintenance and repair.
- 13.2 All surplus historic buildings should be disposed of in as timely a manner as possible; this may point to a particular method of disposal. Often the time to dispose of an asset is considerably longer and more costly than anticipated. Alternative short term uses may help to reduce security and maintenance costs where disposal could take some time. This is subject to advice being sought from LPS Valuation in relation to any proposed alternative short term solution and its compatibility with achieving a sale.
- 13.3 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.
- 13.4 Historic buildings are defined as:
1. listed buildings;
 2. scheduled ancient monuments;
 3. unlisted buildings, which make a positive contribution to the character or appearance of a designated conservation area; and
 4. locally listed assets (for buildings these are referred to under the Strategic Planning Policy Statement 2015 as "Historic Buildings of Local Importance") 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.
- 13.5 The status of assets should be clarified before formal disposal procedures are put in place and advised to CAU.

- 13.6 If a historic asset 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 asset to a new use compared with alternative means of accommodating that use, the prospects for disposal and the likely receipts.
- 13.7 In appraising these options maintenance and running costs need careful assessment it should not automatically be assumed that historic assets are necessarily more expensive to run than modern buildings, although they often will be.
- 13.8 In assessing the financial prospects for disposal account should be taken of the cost of maintaining the asset prior to disposal and 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.
- 13.9 All appraisals should look at the overall costs of retention/disposal. In the case of a substantial asset, or where assets are grouped, the economic appraisal should also include an assessment of any wider costs and benefits. In some cases it may be permissible and appropriate to consider a sale to a specialised body or group who have an understanding and commitment to utilise heritage properties.
- 13.10 These guidelines stipulate a general target for disposal of six months from when a purchaser is identified. This may not always be achievable in complex cases involving historic assets but, as a general rule, it is particularly important to set disposal procedures in train as soon as possible after historic assets 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 assets and wherever possible it is better to keep them in full or at least partial use up to the point of disposal. Where assets are unavoidably vacant during disposal it is essential that they are inspected and maintenance regimes strictly adhered to. Particular care should be given to ensuring adequate ventilation in unused buildings to avoid rot and that sites are secured to deter vandalism. Inadequate maintenance will make the disposal more difficult.
- 13.11 Additional guidance called The Disposal of Heritage Assets 2010 Guidance note for government departments and non-departmental public bodies has been produced by Historic England with the joint endorsement of the Department of Digital, Culture, Media and Sport (DCMS) and the Office of Government Commerce (OGC)²⁵.
The Northern Ireland Protocol for the care of the Government Historic estate is similar to the one referenced in this document²⁶

²⁵ <https://historicengland.org.uk/images-books/publications/disposal-heritage-assets/>

²⁶ <https://www.communities-ni.gov.uk/articles/heritage-government-care>

14. SURPLUS TENANTED PROPERTY

- 14.1 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.

Residential tenanted property

- 14.2 Ideally surplus property should be offered for sale with vacant possession as this usually attracts the best price. 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. Where a property that was acquired by agreement or via a valid Blight Notice served under the Planning Blight (Compensation) (NI) Order 1981²⁷ has a sitting tenant in residence at the time of disposal the freehold may be offered to the sitting tenant.
- 14.3 A sitting tenant in the context of this section means a tenant who has indefinite or long-term security of tenure in the majority of instances this will be where a tenant has a “Protected Tenancy” as defined under the Private Tenancies (NI) Order 2006²⁸.
- 14.4 A person is not considered to be a sitting tenant if they hold an unprotected lease or licence only.
- 14.5 It is recognised that some tenants who fall within paragraph 14.4 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, or the property was acquired by agreement or under blight legislation the disposing department may wish to consider any reasonable offer from such a tenant of not less than two years, to purchase the freehold.

Commercial tenanted property

- 14.6 Under the Business Tenancies (NI) Order 1996²⁹, qualifying tenants have rights to continue in occupation or to receive compensation in order to provide vacant possession. It may also be the case that a sitting tenant may in fact be in a position to out-bid the rest of the market in any event. Professional advice of a legal and valuation nature should be sought to ensure best practice is being adhered to in every circumstance.
- 14.7 The District Valuer may advise an approach to the sitting tenant who, as a special purchaser, may be prepared to pay more than the market value. Where successfully negotiated the asset owner should seek the District Valuer’s written confirmation that the price finally agreed is the best obtainable and exceeds the market value otherwise achievable in respect of the tenanted

²⁷<https://www.legislation.gov.uk/nisi/1981/608/contents>

²⁸ <https://www.legislation.gov.uk/nisi/2006/1459/contents>

²⁹ <https://www.legislation.gov.uk/nisi/1996/725/contents>

property. In the interests of equity this process would precede any offer to the former owner, if applicable.

15. RECORDING AND REPORTING OF DISPOSALS

- 15.1 Asset owners are required to maintain a central record or file of all transactions covered by this guidance including recording all relevant information on e-PIMS where possible.
- 15.2 In all cases the record should note the case history and in particular the outcome where the offer back to a former owner was made, or one or more of the exceptions to offer back were applicable (See Appendix D).
- 15.3 Once a sale or transfer has been completed asset owners must advise CAU confirming the consideration paid and date received. This is for all surplus property no matter which route was chosen.
- 15.4 The guidance in this document supports the policies of other public sector service delivery in Northern Ireland and the ability to generate receipts. Therefore, monitoring of performance will be required to ensure these policies are delivering success.

APPENDIX A – ROLES AND RESPONSIBILITIES

<p>The Asset Owner</p>	<p>The asset owner is the public sector body legally entitled to dispose of a surplus property asset. The asset owner will decide when a property is nearing its operational life and will identify through an asset management plan process when the property will be declared surplus. It will be the role of the asset owner to achieve a sale as expeditiously as possible.</p> <p>It will be the responsibility of the asset owner to have full knowledge of the title of the property, its boundaries and any physical or legal encumbrances which may adversely impact on a disposal e.g. illegal occupation or encroachment of boundaries. Any building reports e.g. asbestos, contamination or noted defects must be documented and be made available. Early advice relating to the proposed removal of any physical or legal encumbrances will help remove hindrances to disposal as early as possible</p> <p>The asset owner will submit a D1 form to CAU to start a disposal process.</p> <p>The asset owner will remain the driver of the disposal and will make decisions relating to the evaluation of any competing interests, the validity of a project and the ability to meet timescales required for a capital receipt, if required. Where necessary advice should be sought from other relevant government departments, CAU or DSO or other legal advisor as required.</p> <p>The asset owner will set milestones to ensure momentum of a sale continues with a view to having a sale completed as expeditiously as possible ideally for an internal transfer that could occur within 6 months from when the purchaser is decided upon and notified (unless other timescales are agreed).</p> <p>Where agreed milestones are not achieved the asset owner will critically review progress and decide whether to remove the property from the internal market and start an external market process</p> <p>Where, at the start of the internal market process, there were competing interests and a preferred transferee was chosen, there is no obligation for an asset owner to revert to any of the original competing bodies should the preferred transferee withdraw or not provide a sustainable business case to acquire. The asset owner is obligated to achieve a capital</p>
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	<p>receipt for the surplus asset in as timely a manner as possible.</p> <p>Where a decision is made by the asset owner to withdraw from an internal market transfer the asset owner must inform the interested party and CAU in writing with a justification for the withdrawal.</p> <p>Where there is a sale to a former owner asset owner will instigate the process of the offer back including identifying and obtaining the whereabouts of a former owner.</p>
<p>The Interested Party</p>	<p>The interested party, can be any body that is referenced at para 5.2 in the guidance, will express a preliminary interest to CAU in purchasing a surplus asset. An interested party will be required to complete and submit an Expression of Interest questionnaire within stipulated timelines. Late submissions will only be accepted at the asset owner’s discretion. It is for the interested party to provide enough evidence that they can fulfil the criteria as noted in Chapter 6.0, follow the process noted in Chapter 7.0 of the guidance and pursue to acquire a property as expeditiously as possible.</p> <p>The interested party is required to abide by timescales set within the guidance or as agreed with the asset owner. The interested party and/or third sector support must engage with the asset owner and CAU and prove at every milestone set that genuine progress towards a completed sale is made.</p>
<p>The Sponsor Body</p>	<p>The sponsor body will be a Department or local government Council who has the necessary and relevant compulsory purchase powers for the provision of a particular public sector service. For example provision of roads, health or education etc.</p> <p>A sponsor body is not required where there is a proposed transfer of an asset from one Department to another or from a Department to a Council if that acquiring body holds the relevant compulsory purchase powers for the proposed use. For example, an asset can be transferred from a Health Trust to Department for Infrastructure Roads (DfI Roads) for the purpose of building a road as DfI Roads holds the relevant compulsory purchase powers to build roads.</p> <p>A sponsor body is required where an internal market transfer is being proposed to a party who does not hold any compulsory purchase powers of their own.</p>

	The sponsor body will be required to provide evidence of the relevant compulsory purchase powers and proof of its support for the proposal in hand.
Central Advisory Unit	CAU can provide advice on disposal policy to any of the stakeholders at any point in time. Once a property has started the disposal process CAU will facilitate the process and support all internal parties to gain a positive outcome. In addition, where required, CAU will use D1 form to instigate a valuation to be supplied by the LPS regional office. CAU will monitor progress against target deadlines and agreed milestones to enable a disposal process to be completed
LPS Regional Offices	LPS will provide valuation and disposal advice to the asset owner, as applicable. Valuations will be updated as required once instructed, normally this should be every 6 months. A regional office will act as an honest broker in an internal market transfer process if required, appoint an agent for an open market sale or undertake negotiations on behalf of an asset owner with an adjoining owner or a former owner as instructed.
SIB/AMU	AMU will provide advice on asset management matters generally and work collaboratively during disposals with LPS, obtaining independent professional services relating to disposals and disposal strategies. AMU will collate/reconcile end of year accounting information with the surplus property information that CAU will hold in any live system or register.
Department for Communities, Policy and Innovation Team, Voluntary and Community Division	<p>This DfC team may assist the asset owner where there is an internal market transfer proposed involving a CAT.</p> <p>The team will provide advice and guidance to asset owners from both a CAT policy perspective and the wider third sector context (community development, social enterprise and regional infrastructure support) Specific input at the EoI stage may include:</p> <ol style="list-style-type: none"> 1. Knowledge of Third sector organisations. 2. Knowledge of DfC specific and wider funding environment. 3. Good practice for other CAT considerations. 4. Any specific policy considerations. 5. Oversight of DTNI contract and their focussed role in the CAT process, including their management of timelines within the Expression of Interest stage, their

	<p>communication with stakeholders including asset owner</p> <p>6. Working with SIB on the provision and application of independent expertise to third sector organisations to assist in the preparation of viable, sustainable business plans to support asset transfer</p> <p>For further information on Community Asset Transfer, please refer to CAT revised process paper:</p> <p>https://www.communities-ni.gov.uk/publications/community-asset-transfer-guidance-asset-owners</p>
3rd Sector Support	<p>Third sector bodies who wish to acquire through an internal market process are able to express an interest either directly to CAU or through a body called DTNI. This body is grant funded by DfC to provide expertise and experience to support the third sector to avail of CAT opportunities. They can</p> <ol style="list-style-type: none"> 1. Provide information and support/signposting to organisations interested in CAT. 2. Carry out early stage assessment of capacity and capability of the organisation and to support completion of EoI stage. 3. Facilitate organisations participation in the D1 process, adhering to set timescales. 4. Support organisations to secure an appropriate sponsor body. <p>In some instances there may be a specific role for DTNI to support/advise the third sector organisation in the business planning stage but this is to be agreed with DfC before engaging in this work.</p>

APPENDIX B – QUICK REFERENCE GUIDE

Internal Market

Chapter	For Asset Owners
2 & 3	Consider property portfolio and identify what property is no longer of operational need. A Departmental AMP should be an aid to this process
4	Pre disposal activity - seek preliminary title report from legal team. Consider physical, legal and financial aspects of the property including that of any legal/policy obligation to offer the property back to a former owner, when disposal continues.
7	<p>Submit D1 to start disposal process. Set timescale within which a receipt is expected.</p> <p>https://www.finance-ni.gov.uk/publications/disposal-surplus-land-and-property-publications</p> <p>CAU will instruct LPS regional office to provide a valuation unless otherwise advised by asset owner.</p> <p>CAU decides whether to circulate the property.</p> <p>If not circulated then the asset owner should consider whether there is a requirement to offer back the property to the former owner. If not offering back the reason for not offering back should be recorded i.e. which exception is being applied.</p> <p>If the property is circulated (which is applying exception 2) all noted CAU contacts, that may have an interest, will be notified.</p> <p>15 working days for organisations to express an initial interest.</p> <p>Questionnaires are issued by CAU.</p> <p>40 working days for interested parties to complete a questionnaire and provide relevant evidence to support proposal.</p> <p>Completed questionnaires issued to the asset owner by CAU.</p> <p>20 working days for the asset owner to decide whether to progress a transfer to an internal market party.</p> <p>Asset owner to advise all parties, in writing, of decision made and rationale.</p> <p>Where internal transfer is to progress agree, record and review milestones with internal market purchaser. Plan to complete transaction within 6 months.</p>

	<p>Advise CAU of agreed milestones.</p> <p>Once preferred purchaser has provided sufficient assurance and evidence that a transaction will occur asset owner to advise legal team to agree completion date and finalise legal conveyance.</p> <p>If internal market transfer does not lead to a completed sale at any point the offer back to former owner should be re-considered before moving to sell the asset in the external market.</p>
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Chapter	For Potential Interested Parties
7	<p>Circulation notification received.</p> <p>15 working days to identify a need and express initial interest for asset through CAU.</p> <p>CAU send EoI Questionnaires to interested parties with valuation - 40 working days to respond to CAU</p> <p>Complete EoI Questionnaire and provide evidence.</p> <p>Bodies without compulsory purchase powers will require to seek a Sponsor body. (Section 6.2)</p> <p>If a CAT is proposed then a business plan will be required.</p> <p>Other internal market transferees will require to secure funding (usually) through a business case and seek approvals to acquire</p> <p>Agree, record and review milestones. Plan to complete transaction within 6 months.</p> <p>Instruct legal team to agree completion date and finalise legal conveyance.</p>

External Market

Chapter	For Asset Owners
8	<p>The external market pathway will occur if the asset is not circulated, it has been circulated with no internal market received or an attempt to transfer an asset has been withdrawn, or the only potential purchaser is an adjoining owner.</p> <p>CAU will advise the asset owner to progress the sale to the next stage of the disposal process.</p> <p>The next stage will be to consider any requirement to offer back to the former owner and if an exception is still applicable then to move to consider a sale to an adjoining owner(if applicable) or sale on the open market.</p> <p>The asset owner should engage with the LPS regional office to discuss any valuation issues which will apply to any of the exceptions to be applied.</p>

APPENDIX C – FREQUENTLY ASKED QUESTIONS

<u>As Asset Owners</u>	<u>Refer to</u>
<i>What is my role in the disposal process as an asset owner?</i>	
The role and responsibility of an asset owner is detailed throughout the guidance. For a summary see Appendix A.	Appendix A
<i>Who is required to apply this policy?</i>	
Government Departments and their ALBs. In addition, all public sector bodies who are subject to public procurement rules.	Paragraph 1.7
<i>What should I do before I declare an asset as surplus?</i>	
You should ensure you know as much as possible about your asset from data that you already have access to. For example legal title, physical attributes and financial liability of retaining the property	Chapter 4
<i>How do I start the disposal circulation process?</i>	
You need to submit a D1 form to Central Advisory Unit. NIGOV users can do this by accessing the LPS IT system. Other users will require to fill in a writable form accessible through the LPS website.	Paragraph 7.1
<i>When is a property considered to be surplus?</i>	
A surplus property is one that no longer has any operational use for your purposes or for any business area within the same Department	Paragraph 3
<i>If I have land or property that is currently not utilised or is partially not utilised do I need to declare it as surplus?</i>	
If you are holding a property or part of a property that you have identified for a future use then the asset is not surplus and does not require to be notified through the D1 disposal process.	
<i>When is a property considered to be of meanwhile use?</i>	
When there is a clearly defined future use but in the short term utilisation of the asset is sub-optimal. In such cases an asset owner can work across government to ensure the asset is available for use as a temporary or meanwhile basis, thereby ensuring the asset is working for government. Issues arising from meanwhile use are not addressed through this guidance.	
<i>I hold a property on a long term leasehold e.g. 999 years but wish to create a lease for a lesser term of 25 years is this part of a disposal process?</i>	

No. When a property is surplus you are advised to always sell off the entire title interest that you own. If you wish to create a lesser leasehold interest then you are retaining some control and envisage the property reverting to yourself in the future. If this is what you require you should contact LPS for further advice on the creation of a sub-lease.	
<i>If I hold a property on a 25 or 50 year lease but I no longer have a use for it can I use the disposal process to relieve me of the lease?</i>	
No. The disposal process is only used to transfer ownership for longer term leasehold property usually greater than 100 years. For further advice on this please refer to LPS.	
<i>My asset is surplus but have been approached by another public sector body – do I have to circulate?</i>	
Yes. You still need to submit a D1 form. It will be important that you note that there is already another body interested to acquire. Ensure you provide specific contact details of the interested party and they will be included in the circulation process.	Chapter 7
<i>Why do I need to circulate when I know of another public sector interest?</i>	
The purpose of the circulation process is to ensure that all public sector bodies are given the opportunity to acquire. The body who has approached you may not fulfil the criteria to acquire or there may be other bodies who have a greater need.	
<i>My asset is surplus and an adjoining owner has expressed an interest to acquire the entire property – do I need to circulate this?</i>	
Yes. Using the circulation process is the recognised way to identify the final purchaser of a property. A former owner or another public sector body may have a greater need than the adjoining owner so circulation should always occur. You should advise an adjoining owner that there is a process to be followed before any sale to them will be considered, but that you will note their interest including contact details when submitting details of the surplus property.	Chapter 7
<i>My asset is surplus and an adjoining owner has expressed an interest to acquire a portion of the property or wishes to amend their adjoining boundary with my property. Can I continue to sell this portion to the adjoining owner?</i>	
No. whatever stage your disposal is at you should advise CAU of this interest and if possible provide details of what the adjoining owner is requesting. A sale of this portion may be considered but only if it does not affect the sale of the remainder of the property. You should advise an adjoining owner that there is a process to be followed before any	Chapter 7

sale to them will be considered, but that you will note their interest including contact details when submitting details of the surplus property.	
<i>Do I have to offer my surplus asset back to the former owner?</i>	
There are specific criteria with regard when an asset requires to be offered back to a former owner or their successors and requires to be considered throughout the disposal process.	Appendix D
<i>Do I have to get planning permission for future development on my asset before I declare it as surplus?</i>	
In some cases, particularly with larger holdings and for property that is in a high value location it may be prudent to consider seeking planning permission. However, it is best to seek advice from LPS in order to establish whether it will be relevant for your property.	Chapter 4 Chapter 11
<i>Can I put a restrictive covenant on to the use of the property or retain a ransom strip when it is being sold?</i>	
If the property is surplus and you no longer have any beneficial use for the asset you should not require to put a restriction onto any future use. You should consider why you may require such a covenant or ransom strip and seek LPS advice.	Chapter 12
<i>Do I need to use claw back to ensure I gain from any future development of the asset?</i>	
There are specific circumstances where claw back may be considered. Please refer to the relevant section in the guidance.	Chapter 12
<i>Do I do anything different for a heritage type asset or scheduled monument?</i>	
The overriding principle of best value is less important and should be more focussed on achieving a good sustainable outcome for the future use of the property.	
As an Internal Market Purchaser	
<i>Who can be offered surplus property through the disposal System?</i>	
Any group or body who is noted in this guidance as part of the internal market. The internal market refers to the following groups or bodies. <ol style="list-style-type: none"> 1. A government department. 2. A district council 3. A housing association seeking land for social or affordable housing purposes 	Chapter 5

4. A third sector body with support from 1 or 2 above.	
<i>How do I find out about property that is surplus for me to acquire?</i>	
Any internal market interested party who is a NIGOV user will be notified of properties that are surplus via the LPS IT system. Other interested parties will be notified by e-mail or through a body representing the third sector.	Chapter 7
<i>How do I ensure that I am notified of surplus properties?</i>	
You will only be notified if you are known to CAU as a potential purchaser. Whilst CAU endeavour to hold a comprehensive list of contacts, purchaser's needs are always changing so often our list requires to be updated. If you are unsure you should contact CAU to confirm that your details are held and are still relevant.	
<i>How do I express an interest to acquire a property?</i>	
NIGOV users can respond to the notification issued via the LPS IT system. Other users will require to advise CAU by e-mail of their interest. You will have 15 working days from date of the notification to express this preliminary interest	Chapter 7
<i>What happens once I express an interest in an asset?</i>	
Once a preliminary interest is recorded by CAU you will be sent a questionnaire to complete. This requires to be submitted within 40 days of its receipt. If this questionnaire is not completed and returned within that timeframe your EoI may not be pursued.	Chapter 7
<i>What if I did not receive the EoI Questionnaire?</i>	
CAU will hold a record when notifications were issued. If you have expressed a preliminary EoI and you do not receive a questionnaire please contact CAU.	
<i>What is the process where there are competing interests submitted?</i>	
Where there are competing interests all documentation you have supplied along with the questionnaire will be passed the asset owner. The asset owner along with any other parties they wish to consult with such as CAU or DfC Voluntary and Community Division will decide on whether the submissions meet the necessary criteria to be considered for an internal market transfer but will also consider which party may have the greater ability to meet the key milestones and complete a sale by the specified receipt date of the asset owner.	Chapter 7
<i>If I am the only interested public sector body will I inevitably be able to continue with the purchase?</i>	

Not necessarily. It will depend on whether your proposal convinces the asset owner and their advisers that you can meet the necessary criteria and deliver on the key milestones to complete a sale in a suitable period of time.	
<i>What do I need to do to provide a convincing proposal?</i>	
You need to provide enough evidence of your genuine need for and ability to complete a sale on the property. If you require a sponsor body you need to make contact with them and secure their endorsement of your proposal and of any subsequent business plan. Also carry out a high level assessment with regard the property, evidence of this should be presented to the asset owner along with proof of the sponsor body's endorsement of the proposal.	Chapter 6 Chapter 7
<i>How will I be notified that I am successful to continue with the purchase?</i>	
All internal market applicants will be notified whether they have been successful or not with their proposal to acquire the surplus asset, normally by e-mail.	Chapter 7
<i>What happens if I am unsuccessful?</i>	
You will be notified by the Asset Owner	Chapter 7
<i>If I was unsuccessful but the original bidder withdraws from the process will I be notified at this later stage?</i>	
Not usually. The asset owner is tasked with achieving a receipt within a reasonable period of time. Therefore, it is not usually possible to go back to the other interested parties at the time of original circulation. Occasionally, if there has been a significant period of time lapse since the original circulation the property might be re-circulated as interested parties needs may have changed in the meantime.	
<i>Do I have any other chance of acquiring the property?</i>	
In some cases, having gone through all processes the property may go to the open market. If so such properties will be advertised through an agent and you are able to make a bid on the property on the open market.	Chapter 8
<i>What happens if I am successful in my proposal to acquire?</i>	
You should agree milestones with the asset owner relating to whatever technical, legal or financial due diligence you require to undertake in order to complete a sale.	Chapter 7

As a non-public sector interested party.	
<i>Who is a non-public sector interested party?</i>	
This will be a former owner, an adjoining owner or someone willing to buy on the open market.	Chapter 5 Chapter 8 Appendix D
<i>As a former owner or a successor of a former owner do I have the right to have my land or property offered back to me?</i>	
There are some circumstances where a former owner or their successors do have a right to have their property offered back to them. Refer to the relevant chapters in the guidance. You may also seek your own legal advice in this regard.	Appendix D
<i>My former property is now owned by a public sector body and I want it back what do I do?</i>	
You need to establish who now owns the property and contact them making your wish known. As noted in the guidance there instances which dictate that the property should be offered back. Where applicable the property may be offered back. If it is not a requirement to offer back and the property is offered to the open market you are able to bid on the open market if you want.	
<i>I am an adjoining owner of land/property that is owned by a public sector body which is surplus can I acquire what I need?</i>	
Once a property is declared surplus a public sector body requires to adhere to certain rules with regard its disposal. It will depend on the circumstances of the property itself and what your requirement may be, as to whether a sale to you can occur. Make the current owner know of your requirement so they can consider it as part of any disposal process.	
<i>How do I find out who owns a property I have an interest in?</i>	
The best way is to contact Land Registry who may be able for a fee to locate ownership details on land or properties that have been registered with them. Unregistered land is more difficult and may require further searches within the Registry of Deeds. https://www.nidirect.gov.uk/articles/searching-the-land-registry Otherwise sometimes talking to neighbouring owners may establish who owns a piece of land. Alternatively you can contact a solicitor who may be able to advise you further.	

APPENDIX D – FORMER OWNERS

D1 When surplus land is to be disposed of, the former owner will in many cases have a legitimate expectation that they will be offered the chance to acquire the land by private treaty before it is offered to other potential purchasers. An offer back can occur if the asset meets the criteria set within the Land Clauses Consolidation Act 1845 (LCCA) (see link under References) or as a result of the application of the Crichel Down rules as applied in Northern Ireland. However, it should be noted that if any of the exceptions apply within the rules then an offer back may not happen. It is good practice, therefore, for asset owners to take reasonable, practical steps to keep the former owner informed of the disposal process concerning their former property. This is always subject to reasonable enquiries as to the former owner's whereabouts, or those of any identifiable and qualifying successor(s).

The Land Clauses Consolidation Act 1845

D2 By virtue of Section 128 of the LCCA a former owner has a statutory right to have land offered back in certain specific circumstances. Where applicable, this statutory right takes precedence over the other rights of former owners as detailed in these Guidelines. Initially CAU advice will normally be required to ascertain if the LCCA provisions are applicable in each case and, where there is uncertainty, legal advice should be taken.

D3 As a very general guide, the LCCA provisions would not be expected to apply to land that was not compulsorily acquired, or is within a town's development limits (at the time of disposal), has been built upon, has been developed for a different purpose since being acquired, or was not severed from a larger holding originally. The provisions are, therefore, most likely to be applicable to farmland. However, each case should be carefully assessed on its own particular merits and legal advice taken in doubtful circumstances.

The Crichel Down Rules

D4 These rules which set policy in GB were last reviewed and published within a larger review of compulsory purchase processes in GB in 2015. These rules can be found within a document entitled "*Guidance on Compulsory purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under threat of, compulsion*". The rules themselves are not applicable to Northern Ireland but the principles are applied and adapted within the Northern Ireland context.

D5 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.

D6 There are several other exceptions that can apply as detailed below.

D7 Any land offered back would be at its current market value. Each party would be responsible for its own agent and legal fees in respect of the transaction.

D8 Any queries arising should be addressed to CAU.

Exceptions to the requirement to offer back to the former owner

D9 There is no requirement to offer surplus land back to the former owner if any of the following circumstances apply:

1. 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, except where the LCCA provisions apply;
2. there is authorisation for a transfer to another internal market body as described in Chapter 6.0, or where a property is subject to PPP/PFI scheme (subject to any conditions noted in Appendix E), to transfer the surplus land within the public sector;
3. the surplus land consists of small or otherwise inconsequential areas of land which would be of no satisfactory or reasonably beneficial use to the former owner either alone or in conjunction with other land already in their possession;
4. sale of the surplus land would be prejudicial to the disposal of other significant areas held by that body or any relevant public body;
5. 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;
6. it would be inconsistent with the purpose of the original acquisition, e.g. 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 for it to be considered an exception. In other words, land that is not surplus in respect of the regenerative or similar purposes for which it

was acquired and where the disposal is in pursuance of those purposes;

7. a disposal is in respect of:

either:

a site for development or redevelopment which comprises two or more previous land holdings;

or

a site which consists partly of land which has been materially changed in character and part which is not;

and

there is a risk that a fragmented sale of such a site would realise substantially less than the market value of the site as a whole. However, in these scenarios a former owner who has remained in continuous occupation of the whole of their former property (by virtue of tenancy or licence) and/or is part of a consortium of former owners that has indicated a desire to purchase collectively, may still be given a right of first refusal of that property or part of the property as the case may be, provided that the principle of achieving the best overall value is not prejudiced;

8. where the market value of the land is so uncertain that a competitive sale is advised by the Department's professionally qualified Valuer in preference to any other potential solution, such as overage/clawback provisions, in order to safeguard the public purse and where this approach is expressly agreed by the responsible Minister;
9. the land was acquired by agreement and without any threat of compulsion, i.e. there was no Vesting Order proposed or scheduled affecting the property at the time of acquisition;
10. the property was acquired pursuant to a valid Blight Notice served under the Planning Blight (Compensation) (NI) Order, 1981. A Blight Notice successfully served under the above is specifically deemed not to constitute a compulsory acquisition, even if it results in the purchase of a property in advance of vesting; or
11. where the former owner or their successor has disposed of lands from which the surplus land was severed and the asset owner 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. For example, where a strip of roadside land would comprise a key access or command a ransom value if returned to the former

owner instead of the present owner and where the key/ransom value would not have been inherent at the time of acquisition.

Former owner whose address is known

- D10 In all appropriate cases the asset owner will write to the former owner by recorded delivery post offering to sell to them their former interest in the land and asking them to indicate in not later than 40 working days whether or not they are interested in purchasing. The letter will indicate that sale to them will be at a price to be determined by the District Valuer as representing current market value. If they fail to respond or indicates that they do not wish to purchase, the land will be otherwise disposed of.
- D11 The asset owner 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.
- D12 The advertisement should invite them to contact that body within 20 working days 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 20 working days period or if any other party contacted is unable to confirm the former owner's whereabouts by the end of that period the land should be otherwise disposed of.
- D13 Advertising to find the former owner should be such that it adequately covers the whole community.

Negotiations with former owner

- D14 Negotiations on the price at which a sale to the former owner will take place will be conducted by the District Valuer.
- D15 If the former owner enters into negotiations under either Land Clauses legislation or Northern Ireland Disposal Guidelines the former owner is given 30 working days 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 so that they can continue to bid to acquire it if he wishes.
- D16 If, for sound reasons, an extension of the stipulated time limits is warranted additional periods may be allowed at the asset owner's discretion. The overall objective should, however, be to complete transactions in as orderly and as expeditious a manner as possible.

Interests qualifying for offer back to former owners

- D17 Land will normally be offered back to the former freeholder, or the primary occupier if same held the property under long lease subject to a nominal or small ground rent payable to the 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 full freehold interest to the former leaseholder, particularly if the freeholder is not interested in buying back the land. If neither the former freeholder nor the leaseholder is identifiable or interested in buying back the land then the freehold freed from any lease can be disposed of.

A long lease may be defined as a demise of the exclusive possession of property for a term of not less than 900 years.

Successors in title qualifying for former owners' rights

- D18 If at the time of disposal of surplus land the former owner of a property holding is deceased and where the land was vested in its entirety, was not contiguous to another holding retained by them and where considerable time has elapsed, then the strong presumption will be that their pre-emptive rights do not pass to any of their successors. This is because of the practical difficulties involved in tracing any successors' whereabouts and the fact that the entire holding was acquired. That is unless the LCCA provisions apply, in which case all reasonable efforts will be made to trace successors.
- D19 In circumstances where the former owner of a property holding, which was vested in part only or is contiguous to other holdings retained by them, is either deceased and has bequeathed their remaining interests to a natural successor in title or, for example, has transferred the remainder of their holdings to a natural successor, probably a family member, the successor in title will be offered the same pre-emptive rights as the former owner themselves would have had, unless the successor cannot be traced after reasonable enquiries.
- D20 For the avoidance of doubt, a qualifying successor in title does not include any third party or family member who has subsequently purchased from a former owner at arm's length the balance of any holdings retained by them.
- D21 If the successor to adjoining land has acquired it by means of transfer within a Family Trust, including a transfer for monetary consideration, their former owner rights may not be disqualified. Again the applicability of the LCCA must be taken into account.

APPENDIX E – LANDS INCLUDED FOR DISPOSAL IN PPP/PFI SCHEMES

- E1** Property identified for disposal as part of a contract with a developer under a PPP/PFI project and which will be used in its entirety in connection with the project is not considered to be surplus and this guidance does not generally apply to such property.
- E2** However, the PAC report of Oct 2007 into the DE Pathfinders PFI project affirmed the NIAO's view that land transferring to a PFI operator which will, as a consequence of the project, become surplus in whole or in part and be released for alternative, non-public sector development, should first be circulated under the CAU surplus land circulation process to determine if there is another qualifying public sector use for such property.
- E3** This would involve completion of a D1 form as described at Chapter 7.0 as soon as possible once the surplus land has been identified, but with an accompanying note indicating the Department's intention to transfer the land to a PFI operator in the absence of any qualifying public sector interest which proves acceptable to the disposing Department. The necessity and timing of this process would need to be considered in each individual case.
- E4** Note that if ownership of the property will revert to the public sector on termination of the PPP/PFI project then this requirement to circulate would not apply.
- E5** 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.

Moreover, the current guidance in at A4.8.13 Managing Public Money NI states that: *"Sometimes PFI projects involve disposals. Each case should be evaluated as part of the PFI project, with due attention to the need to secure good value for money."*

APPENDIX F – NIGEAE and GREEN BOOK

This refers to the Northern Ireland Guide to Expenditure Appraisal and Evaluation (NIGEAE) and the latest HM Treasury “Green Book” . .

The Green Book sets out HM Treasury’s general principles regarding public sector economic appraisal and evaluation. The NIGEAE is a DoF guide. The purpose of the DoF guide is to provide technical and procedural guidance which is more specific to the needs of the Northern Ireland public sector, as a supplement to the HM Treasury Green Book itself.

The DoF NIGEAE should, therefore, be the first port of call for relevant NI bodies, since it is tailored more specifically to their requirements.

The Green Book still provides much detailed guidance that is not duplicated within the NIGEAE and NIGEAE should be read in conjunction with it.

REFERENCES

Chapter Number (First occurrence in document)	Reference	Link
1	Public Procurement Rules	https://www.finance-ni.gov.uk/articles/list-public-bodies-which-ni-public-procurement-policy-applies .
1	Programme for Government	https://www.northernireland.gov.uk/programme-government
1	Departmental Asset Management Plans. A companion document written to support the recommendations contained in Managing Public Money (NI) guidance	Please contact SIB for a pdf copy Tel: +44 (0)28 9025 0900 Email: contact@sibni.org
1	Managing Public Money NI – MPMNI:	https://www.finance-ni.gov.uk/articles/managing-public-money-ni-mpmni
2	Asset Management Strategy	https://sibni.org/what-we-do/responsibilities/asset-management-unit/
2	NI Executive's Community Asset Transfer policy	https://www.communities-ni.gov.uk/sites/default/files/publications/dsd/community-asset-transfer-policy-framework.pdf
3	Financial Reporting Manual	https://www.gov.uk/government/collections/government-financial-reporting-manual-frem

3	Consolidated Budgeting Guidance	https://www.gov.uk/government/collections/consolidated-budgeting-guidance
4	Business cases/Economic Appraisal Guidance	https://www.finance-ni.gov.uk/topics/finance/northern-ireland-guide-expenditure-appraisal-and-evaluation-nigeae
4	DAO (DFP) 06/12	https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/daodfp0612_revised%20280716_0.pdf,
4	Northern Ireland Guide to Expenditure Appraisal and Evaluation:	https://www.finance-ni.gov.uk/topics/finance/northern-ireland-guide-expenditure-appraisal-and-evaluation-nigeae
6	Stormont Regulation and Government Property Act(NI) 1933	https://www.legislation.gov.uk/apni/1933/6
8	External Market – Assets on the Open Market	https://www.finance-ni.gov.uk/publications/disposal-surplus-land-and-property-publications
13	Disposal of Heritage Assets Guidance Note	https://historicengland.org.uk/images-books/publications/disposal-heritage-assets/
13	The Northern Ireland Protocol for the Care of the Government Estate	https://www.communities-ni.gov.uk/publications/protocol-care-government-historic-estates
14	Planning Blight (Compensation) (NI) Order 1981	https://www.legislation.gov.uk/nisi/1981/608/contents
14	Private Tenancies (NI) Order 2006	https://www.legislation.gov.uk/nisi/2006/1459/contents
14	Business Tenancies (NI) Order 1996	https://www.legislation.gov.uk/nisi/1996/725/contents

Appendix A	Community Asset Transfer Revised Process Paper	https://www.communities-ni.gov.uk/publications/community-asset-transfer-guidance-asset-owners
Appendix D	Land Clauses Consolidation Act 1845:	https://www.legislation.gov.uk/ukpga/Vict/8-9/18/contents
Appendix D	The Crichel Down Rules	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/472726/151027_Updated_guidance_for_publication_FINAL2.pdf
Appendix F	The Green Book	https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf

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Published on behalf of Central Advisory Unit of Land and Property Services.



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