

Cydweithio i gael y gorau o'r ystad gyhoeddus
Working together to make the best use of the public estate

Estate Co-location & Land Transfer Protocol

A best practice guide for the disposal, transfer, shared use and co-occupation of land and property assets between publicly funded bodies in Wales

July 2020



Ystadau Cymru Co-operation Workbox

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Ystadau Cymru Protocol – Incorporating a best practice guide for the Disposal, Transfer & Sharing of Land & Property Assets between Public Sector Bodies in Wales

1. Executive Summary

This guide sets out advice by Ystadau Cymru for a best practice solution regarding property asset co-ordination and the transfer, disposal or sharing of land/property between public bodies in Wales.

One of the key deliverables is the development of the existing best practice guidance used by the Welsh public sector. Working together to make the best use of the public estate resources has assisted in reducing costs.

“Taking Wales Forward” is our five year strategic plan for the Welsh Government, setting out what ministers want to deliver over this term (2016-21). It is a bold, strategic and ambitious programme that focuses on delivering real improvements in the every-day lives of people in Wales.

Prosperity for All: the national strategy takes those commitments, places them in a long-term context, and sets out how they will be delivered by bringing together the efforts of the whole Welsh public sector.
gov.wales/programme-government

The Welsh Government is committed to delivering more and better jobs for Wales, through a stronger, fairer economy. This will be assisted through improvements to our public services and eliminate inconsistent delivery. By working together for Wales, we will secure opportunity for all, and build a united, connected and sustainable country.

Ystadau Cymru has separate advice available providing a Collaborative Toolkit and guidance on Community Asset Transfer.

gov.wales/ystadau-cymru

Land and Property Transfer – Key Principles:

- the protocol is based on a shared drive to work together for the avoidance of conflict, ensuring the subject asset continues to deliver benefits within the public sector;
- it is recommended best practice that an acquiring organisation ensures they have the power to hold property assets prior to engaging;
- the organisations should jointly appoint a single independent valuation report, to settle the price to be paid;
- value assets at market value in accordance with Royal Institution of Chartered Surveyors (RICS) standards;
- transfers/disposals can include restrictions which may be reflected in a lower market value. Regard should be had to any legal implications including “State aid” rules;
- all public bodies must ensure that every action taken is within its powers or it may be challenged as unlawful;
- each transfer must be judged on its own merits, involving a business case and covering all legal and financial perspectives;
- internal transfers should not normally involve claw-back (rights to share disposal proceeds) or overage (rights to share future profits on disposal). But it may be appropriate in certain circumstances to include a claw-back provision in transfers between public bodies outside the same accounting umbrella; and
- almost all transfers and disposals can result in accounting and/or budgeting adjustments.

The intention of the Land Transfer Protocol is that it is used for the transfer of land/property to meet an operational requirement and not a speculative purpose. It is also on the basis that there is an approved business case in place for the acquisition with the confirmed availability of funding.

Co-location Agreements – Key Principles:

- Organisations should make vacant or surplus space available for occupation by other public sector bodies. This principle applies where it does not create unreasonable security, cost implications for the ‘owning’ organisation or where it may be considered an incompatible use with the current occupier. For leasehold property, it applies where it is permitted under the terms of any occupational lease;
- When sharing occupation of space for a short term period (i.e. less than 6 months), on a non-exclusive basis, organisations can use the Standard Licence Agreement if appropriate for their circumstances. If you have any doubts as to whether exclusive possession of the premises is being granted to the Licensee take appropriate legal advice;
- Occupation of an area, either on a long term basis or where the occupier has exclusive use of the space would typically be via a contracted out lease agreement. If required by the parties, an independent valuation may be commissioned to determine the rental value;
- The standard heads of terms should be used where applicable to minimise solicitor’s fees and improve transaction time; and
- Legal advice will be required to ensure that any agreement is suitable for the circumstances.

“It is good practice for public sector organisations to take stock of their assets from time to time and consider afresh whether they are being used efficiently and deliver value for public funds. 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 non-statutory business.”

(Managing Welsh Public Money 4.10.2)

gov.wales/sites/default/files/publications/2018-10/managing-welsh-public-money.pdf

2. Introduction

2.1 Purpose

This guide sets out co-location advice together with a best practice solution for the transfer or disposal of a legal estate or interest in land or property between bodies in Wales. It may also offer practical advice for the wider third or voluntary sectors including Registered Social Landlords (Housing Associations).

One of the key deliverables of Ystadau Cymru has been the development and delivery of a best practice guide for use by the Welsh public sector to assist in reducing cost and time associated with the transfer and disposal of the public estate between public bodies in Wales.

In addition there is opportunity for shared occupancy and this version of the guidance includes advice regarding shared occupancy of assets by public sector bodies.

There has been significant progress in identifying and capturing public sector assets onto a single electronic Property Information & Mapping Service database (e-PIMS), but the challenge moving forward is how the public sector in Wales can become more efficient in making better use of existing assets to assist in delivering policy and service delivery objectives.

This document does not replace specific existing protocols operated by individual bodies. However, it provides an “overarching” guide which in principle should be incorporated within those individual arrangements. It also provides a background to the relevant statutes and guidelines issued to different bodies so that these are available in one location for ease of reference and to avoid disputes about the legal powers of each organisation. The existing protocols should be reviewed to establish whether they are in need of updating or indeed whether they need to continue if the overarching Land Transfer Protocol meets the requirement.

This guide does not seek to provide a comprehensive legal background or a complete statement of the law or policy. Appropriate legal (and other) advice should be sought in individual cases.

2.2 Background – Role of Ystadau Cymru

Ystadau Cymru is taking forward a programme of work aimed at delivering on the agenda of collaborative asset management by identifying, supporting and encouraging innovation in the management of the public estate.

The publication of a Collaborative Toolkit gov.wales/property-collaboration-toolkit presents opportunities for improved service delivery and the realisation of significant efficiencies for public sector organisations.

The public estate in Wales (excluding central Government assets) is valued at around £12 billion*¹. There has been ad hoc growth over many years and varying levels of corporate interest in its potential to drive efficiencies or deliver better services. The efficiencies that can be derived from proactive, strategic estate management are fully recognised and the role of the estate in the delivery of high quality public services unquestioned.

To achieve effective strategic management of land and buildings across the public sector means working together, sharing information, challenging ways in which we deliver services and encouraging effective asset use. Ystadau Cymru continues to help drive the removal of barriers and facilitate a more collaborative approach in the use of the public estate. Long-term this will enable the public sector to develop innovative solutions in an open and collaborative environment.

This guidance supports that agenda and will lead to the continued effective use of property, supporting strategic aims and assisting in the delivery of the Programme for Government.

¹ WAO Web site. The figure is understood to be an asset/accounting estimate of value and does not represent market value.

2.3 NAW Finance Committee Inquiry into ‘Asset Management in the Public Sector (August 2013)

The Committee had two main concerns: how effective was the Welsh Government at managing its own assets; and how effective was it in the guidance and support it gives to the wider public sector. The Committee concluded that there needed to be a step-change when it comes to asset management.

The Welsh Government accepted or accepted ‘in principle’ all the recommendations.

A link to the inquiry page is attached, from where the report can be accessed:
www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=4996

This refreshed Estates Co-location and Land Transfer Protocol encourages public sector organisations to be open about their asset management strategies to aid effective and efficient use of the assets. Ystadau Cymru will continue to promote and support the use of e-PIMS as a strategic tool.

This aligns fully with the Asset Management principles set out in ‘Managing Welsh Public Money’ which states:

“Each public sector organisation is expected to develop and operate an asset management strategy underpinned by a reliable and up to date asset register. The strategy should be reviewed annually.”

2.4 The Well-being of Future Generations (Wales) Act 2015

At its heart, the public service is there to help make the lives of all better, and particularly those who are most disadvantaged and/or vulnerable people in our society, better now and in the future; to give them opportunities that they might not otherwise have been afforded; and in doing so improving the prospects and opportunities for all. We can all recognise that to be most effective in delivering against this aspiration we must work together towards shared goals if we are to maximise the positive impact we have.

Many, if not all public bodies looking to transfer assets will be subject to the Well-being of Future Generations (Wales) Act 2015 (“the Act”), and it is expected that those public bodies will use the Act to involve and work with communities to look at the longer term aspects of the community asset, to work in a collaborative and integrated way, as well as opportunities to contribute to the well-being goals. Whilst the Act only applies to specific public bodies and not third sector organisations directly, many community organisations have embraced the vision and principle within the Act to improve their local well-being.

The Well-being of Future Generations (Wales) Act 2015 is one of the key levers to help public bodies come together, to work collaboratively and to deliver improvements for the well-being of people and communities across Wales.

The Act came into force on the 1st April 2016; it aims to improve the social, economic, environmental and cultural well-being of Wales. Public bodies listed in the Act will be implementing the Act by thinking more about the long-term, involving people and communities and collaborating with partners from all sectors to prevent problems and take a more integrated approach.

The Well-being of Future Generations (Wales) Act 2015



By engaging with other public bodies, third sector, RSL's etc. regarding the future of assets, public authorities can benefit from a perspective that they may not otherwise have been able to develop in isolation.

An integrated approach that accounts for the widest possible alternatives for service delivery, engaging organisations for the benefit of the communities they serve, could help secure innovative solutions that safeguard against problems both now and for future generations.

Collaboration is one of the 5 ways of working that underpin the sustainable development principles. Acting in collaboration with other organisations on land and property matters can help the body meet its well-being objectives.

2.5 Application

The purpose of this guide is to establish an overriding protocol for the transfer of surplus/vacant land and property between publicly funded bodies. It also seeks to identify best practice and assist with the preparation of protocols designed to encourage collaboration and manage the efficient transfer or disposal of all landed assets/interests (including leases, easements or release from covenants or restrictions) between public bodies.

It does not deal with the internal mechanics for identifying property need or availability. This guide does not seek to offer specific property management advice with regard to the process leading to a decision to dispose or acquire. However, organisations should establish (at a very early stage) the existence of any restrictions or governance issues that may impact on their ability to work collaboratively (**See Section 4.12**).

This specific protocol is concerned predominantly with the transfer/co-location of surplus and vacant assets. However, it is acknowledged that there will be limited instances where the assessment of value of operational property subject to compulsory purchase procedures could include other heads of claim.

References to delegated authorities and value limits are correct at time of printing. However, organisations should cross check the particular requirements at the time of the transfer/disposal.

Ystadau Cymru has issued guidance through the Collaboration Toolkit highlighting good practice. Each public body has a responsibility to ensure value is achieved through procurement and disposal activities. Collaboration within the sector helps to ensure that these decisions secure the best value for money outcome for the Welsh public.

Value for money gains will arise through cross-organisational estate rationalisation activity, where savings arise from the more efficient use and reuse of publicly funded property assets.

3. Sharing information – Estates Co-ordination and Collaboration

3.1 e-PIMS

Sharing information is underpinned by the e-PIMS database. This holds a basic record of public sector land and property information, both in data form and mapped. It allows all users to identify opportunities for co-ordination through such means as the hosting of available or vacant space for reuse. e-PIMS is the main tool for helping to better inform decision makers regarding relocation, co-locating and rationalising property across the Welsh Public Sector.

Organisations are responsible for ensuring the quality of their data in e-PIMS. Welsh Government Land Division (Estates) Team are available to assist users together with the e-PIMS service desk (see section 3.6).

3.2 Disposals/Vacancies

As soon as organisations become aware that space may become vacant, it should be flagged on e-PIMS; even if it will not become available immediately. The property should be logged exclusively on e-PIMS for a period of at least 40 days before being more widely marketed. This is crucial as it affords time for public sector organisations with a current requirement, to investigate whether the property could meet their needs.

An asset marked as available (to let or for sale) on e-PIMS will, after 40 days also be shown on the publically accessible web site “Space Cymru”, unless it has been mark as exempt.

<https://gov.wales/finding-public-sector-property-available-let-or-buy>

After the ‘exclusive’ 40 day period public bodies will be able to advertise surplus/vacant sites and properties on the open market. Whilst this will not automatically preclude a transfer via the Land Transfer Protocol after the 40 day period, it will be for the respective bodies to agree whether that is an appropriate course of action. The transferring body may expect the recovery of legitimate abortive costs, if appropriate in the circumstances.

In addition, bodies should seek to identify interests held by other public sector organisations which may enhance any proposed disposal, either in terms of the receipt or in terms of the benefits to the local community.

3.3 Acquisitions

Organisations must ensure they have appropriate land/property holding powers and have a robust business case in place for an acquisition together with a reasonable expectation that funds will be available within an appropriate and reasonable timeframe to complete the acquisition.

Where an organisation has identified a requirement for a new acquisition, they should interrogate the e-PIMS database for any opportunities for the re-use of surplus space. The requirement should also be logged on the ‘Demands’ section of the database.

Where there is an apparent match of a requirement with surplus space that will offer value for money, the parties should work together to appraise the costs and benefits of this option to the Welsh public purse in accordance with the Land Transfer Protocol.

Organisations may also be able to benefit from jointly acquiring premises where different organisations have compatible requirements.

3.4 Lease Expiries/Breaks

Organisations should remain aware of any trigger events such as lease expiries or lease breaks and actively investigate the potential to co-locate or transfer available space within the public sector community. Clearly business need is a priority but should suitable alternative surplus accommodation be available that should be considered prior to going to the wider market.

3.5 Open about data

To fully exploit the potential of co-ordination it is important that all organisations:

- keep e-PIMS records up to date;
- share information locally;
- log new requirements as soon as potential need is identified;
- log intentions to vacate as soon as potential surplus space is identified; and
- review their events well in advance of key trigger dates.

The Welsh public sector is a major occupier of private sector property in Wales. This is a significant advantage to enable organisations to pool information on property transactions including acquisitions, rent reviews, lease renewals and disposals.

Organisations should not enter into confidentiality agreements with landlords on the level of rent or incentives offered on acquiring a leasehold interest. As the public sector is generally a tenant rather than a landlord, it is not in the interest of the wider public purse to enter into confidentiality agreements, which could prevent sharing market knowledge.

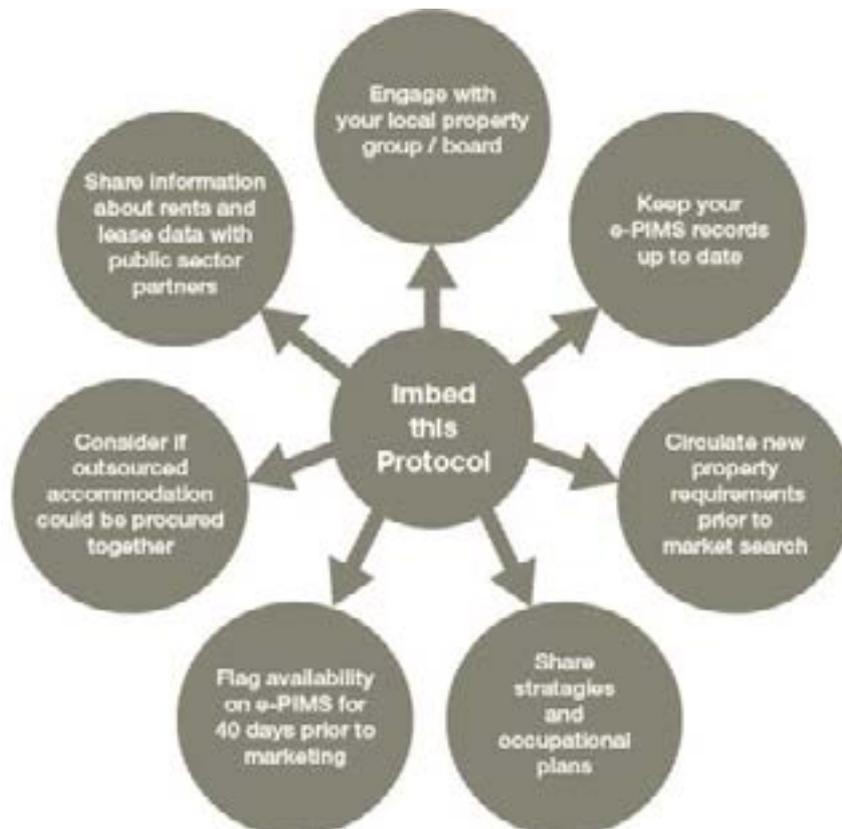
The Vacant Space Register is emailed to all registered property centres monthly by Welsh Government Land Division (Estates). In addition all e-PIMS registered users can conduct their own searches. This provides information on all surplus accommodation in Wales which has been registered on e-PIMS.

3.6 Role of Welsh Government Land Division (Estates)

Together with the e-PIMS service desk WG Land Division (Estates) team can provide practical advice and support to Wales Public Sector Property Database users by contacting ystadaucymru@gov.wales

The following organogram in 3.7 provides a visual overview of the recommended process in action.

3.7 Co-ordination Organogram



4. Land Transfer Protocol

4.1 Recognised best practice

Managing Welsh Public Money and specialist guides such as those from Cabinet Office and HM Treasury all require that disposal, by any means, is properly handled and accounted for. All disposals should be managed carefully with a clear audit trail. It is good practice to have in place a property strategy together with a business case for specific disposals. The process should set out a reasoned approach and time frame, identifying clear goals and objectives, supported by the measurable benefits.

Where a public body no longer has use for a property, it should consider how to dispose of the asset in a way that gives best available overall value for money. While the disposal should look to achieve value for money for the taxpayer, there should be a clear methodology that would stand up to public scrutiny.

Accounting practice requires that property formally declared surplus be disposed of as expeditiously as possible. Delay in disposal results in costs associated with securing the unused asset and ties up capital in a resource that does not contribute to business objectives. From a property perspective however it will not always be the most prudent option to dispose of an asset immediately. For example consideration must be given to the longer term in respect of planning use and associated value. Whilst a delay in disposal may incur costs in the short term, the longer term benefits may far outweigh them. Likewise potential site amalgamations and potential marriage value opportunities should also be explored.

This guide focuses on transfers/disposals between public sector bodies in Wales and recommends that the two organisations involved in any transfer/disposal should jointly commission a single valuation to determine the transfer sum. This guide recommends the use of the District Valuer (DV), or with the agreement of the parties, an alternative 'Independent Surveyor' (See Section 4.13). The Independent Surveyor should be appropriately commissioned following best procurement advice (which could include national frameworks). The costs of the valuation should generally be shared jointly by the parties to reflect the joint savings involved.

Ystadau Cymru has highlighted the usefulness of an all Wales Public Sector Property Database (for detail see e-PIMS Annex 2). With property data being shared and importantly any surplus assets highlighted at an early stage, opportunities for collaboration should follow. In the first instance where assets are declared surplus or are in the process of being declared surplus, public organisations/bodies within Wales should make full use of the e-PIMS lite facility. The initial purpose of "lite" is to encourage the co-ordination of asset use. This can take several forms beginning with flagging up empty/surplus accommodation for disposal, intensification of existing space (within property) encouraging collaboration and new schemes.

A further important area for consideration is the examination of any joint disposal opportunities with other public sector bodies. It is recommended that the disposing organisation makes early stage enquires to establish if there are any adjacencies with other public assets. Any likely opportunities for collaboration should be explored to see if partnering could bring benefits to both.

An asset should be made available for transfer, within the public sector prior to general marketing/release. The recommendation is that the asset should be flagged on e-PIMS for 40 (calendar) days prior to offering it to the open market. e-PIMS has an in-built reminder process notifying the asset holder when the 40 days have expired. Another option is that the assets availability can be flagged well in advance of it actually becoming vacant. This prevents delaying fuller marketing should the public sector not raise an interest in taking the asset.

4.2 Interests covered by this Guide

The transfer/disposal section of this guide centres on exchanges of freehold interests in land and buildings. However, any land interest including leases or the release of covenants and restrictions etc. can be dealt within a spirit of collaboration. The principle of adopting a single Independent Valuation Report for both parties will remain valid.

4.3 Preliminary considerations

Where land or property was originally purchased via a Compulsory Purchase Order (CPO) process (or where the use of such powers were, or could have been, available) and there has been no material change since acquisition, the disposing body may need to have regard to the “Crichel Down (CD) Rules”. In essence CD gives former owners a first opportunity to repurchase the land and consideration should be given as to the applicability or otherwise. Importantly if the asset is to be retained within the wider public sector and put to a use compatible with public sector use it may not be surplus within the terms considered by the CD rules.

Any existing contractual agreement to offer the land to the previous owner (pre-emption clause), entered into at original purchase, may impact on the disposal.

Local authorities should be aware of the specific requirements regarding playing fields contained within “The Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 2015”.

Occasionally an asset may also be subject to a restriction or overage/claw-back provision. The key message here is that it is always important to establish title and your rights to dispose prior to offering the asset for transfer/disposal.

4.4 Transfer or Disposal

A change in the holding of assets, (including land interests), between bodies within the public sector boundary (within Wales or UK) might be deemed a transfer and would depend on the legal status of the bodies involved. There would be a need for an accounting adjustment between the two bodies to cover the transaction and there would also be additional accounting required if any losses, profits or impairments arise from the transfer. The budgetary implications would depend on the bodies involved and how they are scored by HM Treasury. Because of the numerous permutations of bodies, each potential transfer must be judged on its own merits, involving a business case and covering all legal and financial perspectives.

When, an asset is made available to a body outside the public sector, the transaction is classified as a disposal and not a transfer (such as a sale to a Registered Social Landlord).

4.5 Independent Valuation Report

Where a valuation is required to support the exchange, the principle message of this guide is collaboration (see also 4.11 below). To that end the parties are expected to commission an Independent Valuation Report from a registered Valuer who will be acting on behalf of both parties. This is in place to avoid disputes and not a dispute resolution process. Both parties agree to jointly use the services of an Independent Valuer and work together to support the Valuer formulate an opinion of value in a structured way. It is not seen as a negotiation but an opportunity to arrive at an appropriate and independent exchange price.

4.6 Transfer/Disposal Value

The principal basis of valuation at disposal/transfer, of a land or property interest will be market value. Reference should be made to the current Royal Institution of Chartered Surveyors Valuation (RICS) published Professional Standards (often known as the Red Book).

It is recognised, that the (RICS) definition specifically excludes value to a special purchaser. It may be appropriate that the Market Value Valuation Report would reference if special value may apply but transfer/sale is expected to take place within the broader market value definition.

In disposing of surplus assets, the appropriate Accounting Officer must take professional valuations into account if selling/disposing of assets and ensure that decisions reflect the general principles of securing value for money and acting with propriety and regularity.

There is no absolute bar on disposals below full market value. Public sector bodies can dispose of assets below market value subject to demonstrating that best overall “value for money” (see section 4.7 below) has been achieved. In addition, even where the law allows, public bodies would need to give careful consideration to the accounting and financial implications (including any grant issues) when transferring assets between sectors when not obtaining market value. In particular, bodies should consider the potential impact on the income and expenditure account when ‘derecognising’ an asset for transfer and the funding implications thereof. This is particularly important for entities that compile their accounts on the basis of the Government Financial Reporting Manual (FRoM) e.g. Welsh Government, National Health Service Wales, Welsh Government Sponsored Bodies etc.

In limited cases book transfers of operational land will take place within the Welsh Government. Where the asset is to be held for the same purpose, there will usually be no implications regarding tests of market value because the corporate owner of the asset remains the same. In such circumstances the assumption remains that the transfer occurs at Market Value. Should a book value (Fair Value) form the basis of the transfer, it must be up to date (no older than 9 months). In the case of part transfers or where land is held for a different purpose a new value will always be required. The value may be reviewed by an internal Valuer where appropriate.

The UK Government’s Cabinet Office (original advice was from the Office of Government Commerce) recommends that unrestricted market value transfers would not normally include a requirement for any claw back provision etc. from one public sector body to another; although it may be appropriate to include such arrangements on properties which are transferred at a restricted or reduced value.

The disposing body must consider its intentions regarding the election (or otherwise) to include VAT. The decision will impact on the valuation so the decision should be made prior to offering the asset and that declaration must be made clear to any potential acquiring body.

4.7 Value for money

Government accounting practice acknowledges that, subject to achieving value for money overall, maximising the financial proceeds may not be the sole determinant of value for money. Other factors such as the securing non-financial benefits, the chances of a successful outcome and the impact of the disposal on others, may lead to a disposal at less than market value. In such cases the costs and benefits of the disposal must be clearly identified and documented and where appropriate controls put in place according to the level of risk identified.

If the disposal involves the sale of an asset from Welsh Government to an outside body at less than market value then the difference between the proposed disposal proceeds and the market value would be classified as a gift. As such the value of the gift constitutes a loss to the Welsh Government which has to be recognised in the Welsh Government’s resource account and under the rules that govern the relationship between the Treasury and the Welsh Government (and also its sponsored bodies and the NHS Sector) this loss has to be properly charged to the resource account.

Any disposal at less than market value could potentially trigger state aid rules which are discussed further in **Annex 1**. Further, where the disposal to an outside body includes obligations imposed on the use of the land, the public procurement rules may apply. Both State aid and public procurement therefore need to be fully considered in any disposal and appropriate advice sought before proceeding.

Local authorities, in particular, have legal obligations centred on a need to witness that proceeds align with the definition of “best consideration”. The overriding advice is that organisations must obtain advice at an early stage.

4.8 Community Asset Transfer (CAT)

Community Asset Transfer involves transferring the ownership of (or other rights to) land or buildings from a statutory body to another locally based statutory body or community organisation. This may involve a redundant site or building or equally may include the transfer of a service delivered from the asset.

Transfers within this category may often be at less than market value (or £0). This reflects the business model required to continue (or create) the community benefit to be delivered from the asset.

Welsh Government has published guidance on CAT which can be accessed through the link below.
gov.wales/ystadau-cymru

4.9 The Transfer

It will be appropriate to seek specific legal advice and undertake appropriate due diligence on the formalising of transfers or disposals depending on the circumstance of each case.

Transfer of ownership and title between organisations under the umbrella of “Welsh Ministers’ ownership” amounts to an in house change in occupier and should therefore not require the rigour and formality of an exchange of contract and title registration.

Exchanges between public bodies (as opposed to transfers within the umbrella of ‘Welsh Ministers’) may require a more formal legal exchange. Individual arrangements and protocols will need to address the specifics as they arise.

Transfers between the Welsh Government and another body, such as a Welsh Government Sponsored Body, may benefit from a special relief in relation to Land Transaction Tax (see section 66 of the Finance Act 2003).

The application (or otherwise) of VAT to the transaction may differ depending on the nature of the holding/transaction.

4.10 Audit trail

It is important that a comprehensive documentary report is retained on the process (including valuation matters) to ensure that any subsequent audit or governance scrutiny exercise can come to a clear view on the regularity and propriety of “procedures and transactions” and the assessment of overall “value for money”.

4.11 Working together

Section 4.14 provides a simple high level guide, following a single asset collaborative journey towards disposal.

Annex 2 outlines the operation of the Wales Public Sector Property Database on e-PIMS.

A relationship of trust between the parties concerned needs to be established as soon as possible to help facilitate the process. The key message is that organisations should **work collaboratively** and seek to maximise benefits to both organisations. The process should **not be adversarial** and should avoid a situation where both bodies engage in protracted negotiations.

There are no obvious barriers to public sector bodies obtaining a single, independent, valuation, providing that this is not in conflict with Standing Orders (or the ability to suspend said SO's).

Where an organisation has identified an available asset as one it wishes to acquire, it is prudent that they establish access to the necessary funds prior to expressing an interest. If the valuation process identifies a potential short fall, that must be notified to the disposing body without delay.

The earlier the engagement, the more likely there will be a positive outcome for all parties and the public purse. This can be achieved through the operation of the local and regional property boards/forums supported by YC.

4.12 Powers to Dispose

The first issue to consider on any disposal is whether the public body has appropriate powers to dispose of the land. While this is the starting point, it does not necessarily follow that simply because a public body has power to dispose of land that it may do so in every case. Public bodies need to consider a whole range of factors, set out below, such as valuation, state aid, public procurement and the Crichel Down rules to name just some of these factors.

However, so far as powers are concerned, public bodies have wide ranging powers of disposal of property.

Welsh Government

Section 60 of the Government of Wales Act 2006 enables the Welsh Ministers to do anything which they consider to be appropriate to achieve one or more of the promotion or improvement of the economic; social and environmental well-being in Wales. Similar well-being powers are available to local authorities.

Section 71 of the Government of Wales Act empowers the Welsh Government to do anything (including the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the exercise of any of its functions.

There is a power, for Welsh Government land acquired and managed by the former Forestry Commission for Wales and now Natural Resources Wales, under the Forestry Act 1967 to be disposed of by the Welsh Government under section 39 of that Act.

Under the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, the functions, property, rights and liabilities of the Welsh Development Agency transferred to the Welsh Assembly Government on 1 April 2006. The Welsh Government now has the power to acquire and dispose of land for development purposes under section 1(7) (h) of the Welsh Development Agency Act 1975. The power to dispose is limited by section 21B which provides that land may not be disposed of for less than the best price that can be reasonably obtained unless it is either (i) disposed of for use as a public open space after works have been carried out on it (see section 16(7) or (ii) the Welsh Ministers consider it appropriate to do so. This means that while the Welsh Ministers have powers to dispose of land at less than a reasonable price, they must consider the reasons for doing so and must be able to articulate their reasons for doing so.

The Welsh Government guidance 'Managing Welsh Public Money' (MWPM) includes advice regarding asset transfers between Public Sector Organisations (A4.14.10). Organisations may transfer assets among themselves without placing the property on the open market, usually at market prices and in appropriate circumstances. They should follow the general guidelines contained at box A4.14C. (extract below):

- Value assets at market prices using Royal Institution Chartered Surveyors' published standards;
- The original and prospective owners should work collaboratively to agree a price. It is good practice to commission a single independent valuation to settle the price to be paid;
- The organisations should take legal advice, especially where sponsored organisations are involved as these may have specific legal requirements;
- The terms of transfer should not normally involve either claw back (rights to share disposal proceeds) or overage (rights to share future profits on disposal); and
- Fuller guidance is contained in the estates co-ordination and land transfer protocol.

'The Welsh Ministers have broad powers to direct the business of the Assembly Government. In general, they may do anything that is authorised under the Government of Wales Act 2006; any subsequent Legislative Competence Orders (LCOs) and any other enabling legislation'.

gov.wales/sites/default/files/publications/2018-10/managing-welsh-public-money.pdf

Natural Resources Wales

Article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 provides that NRW may enter into agreements and acquire or dispose of property and carry out such engineering or building operations as it considers appropriate, providing that they are incidental or conducive to the discharge of its functions. In addition an arrangement under section 83 of the Government of Wales Act 2006 permits NRW to exercise, in the circumstances prescribed by the arrangement, the acquisition and disposal functions of the Welsh Ministers in relation to forestry land as provided for in section 39 of the Forestry Act 1967.

Local Government Bodies, including Police, Fire and Rescue and National Park Authorities

Local government bodies have a general duty to obtain best price when disposing of assets. Section 123(2) of the Local Government Act 1972 requires local government bodies to obtain the consent of the Secretary of State (now the Welsh Ministers) prior to disposing of an asset for a consideration that is less than the best that can reasonably be obtained. There has been recent case law reaffirming definitions, it is recommended early advice is sought where required.

However, the Local Government Act 1972: General Disposal Consent (Wales) 2003 ("the General Disposal Consent"), which came into effect on 31 December 2003, removed the requirement for Local Government Bodies, including Police, Fire and Rescue and National Park Authorities, to seek specific consent for any disposal at an undervalue where the local government body considers that the disposal is in the interests of the economic, social or environmental well being of the whole or any part of its area, or any or all persons resident or present in its area and the undervalue is £2,000,000 or less.

The covering circular requires local government bodies to advise their auditors within 28 days of a decision to dispose of land, where reliance is placed on the consent. The General Disposal Consent does not constitute any consent that may be required under another enactment, such as section 233 of the Town and Country Planning Act 1990 (disposal of land held for planning purposes).

Where a local authority uses s123 of the LGA 1972 to dispose of land which is (or includes) open space, section 123(2A) requires that it must first advertise this proposal for two (consecutive) weeks in a local newspaper and consider any objections to that disposal.

The Housing Act 1985 Section 32 gives local authorities power to dispose of land held by it for the purpose of Part II of the Housing Act 1985 (provision of housing accommodation). With some exceptions the consent of the Welsh Ministers is required.

The Playing Fields (Community Involvement in Disposal Decisions) (Wales) Regulations 2015 sets out specific requirements for local authorities considering disposal of this class of asset. The regulations set out statutory guidance to which local authorities must have regard when exercising functions under the Regulations. Link <https://gov.wales/playing-field-disposal-guidance>

Particular consideration is required for land that had been acquired for use as Allotments. Section 8 of the Allotments Act 1925 stipulates the need for Ministerial clearance prior to disposal.

NHS Estate in Wales

Paragraph 13(3) of Schedule 2 to the National Health Service (Wales) Act 2006 gives Local Health Boards (LHBs) the power to donate and receive assets, and transfer them at below market value for health purposes, with the prior consent of the Welsh Ministers (this is not confined to transfers within the NHS.) Paragraph 14 of Schedule 3 of the 2006 Act gives the same powers to NHS Trusts, but does not require them to obtain the consent of the Welsh Ministers. In both instances the relevant actions must be 'necessary or expedient for the purposes of or in connection with (their) functions'. This best practice guide subsumes WHC (2007) 088.

Charities

The Charity Commission publishes various booklets giving advice on specific topics that are available on its website (www.charitycommission.gov.uk/detailed-guidance/land-and-property/). Booklets CC33, Acquiring Land. and CC28, Sales, leases, transfers or mortgages, together with their operational guidance, are particularly useful.

Although there is no *basis of value* specified in the guidance, the presumption is that it will be *market value* or *market rent*.

There may be circumstances where a charity is in a special position – for instance, where it has the benefit of certain tax exemptions or is a *special purchaser* – and therefore may be able to justify paying more than market value. Such circumstances, which are assessments of *worth*, are not to be reflected in the valuation but should be referred to in the general advice as to what the trustees should offer to pay or bid at auction.

Where a charity wishes to dispose of an interest in land exceeding a term of seven years, a report must be obtained from a 'qualified surveyor' (section 119 of the Charities Act 2011).

For these purposes, a 'qualified surveyor' is a member of RICS. The member must also be reasonably believed by the trustees of the charity to have ability in, and experience of, the valuation of land of the particular kind and in the particular area in question.

Charity trustees can dispose of land & buildings at less than best value only in very limited circumstances such as when it is being disposed to another charity with the same objects.

Otherwise, trustees must obtain Charity Commission approval to do this. This approval will only generally be given in situations where the disposal is being made to a public body which intends to use the land & buildings for a purpose compatible with the objects of the charity.

Trustees have a duty to always act in the best interests of the charity. Consequently, trustees are legally required to ensure disposal of charity land & buildings is in the charity's interests & that they obtain the best price reasonable in the circumstances. In order to do this, trustees must, when disposing of land & buildings:

1. Obtain & consider a written report from a qualified surveyor – effectively obtain a survey and valuation – this report must comply with the Charities (Qualified Surveyors' Reports) Regulations 1992;
2. Advertise the disposal following the surveyor's advice, and
3. Be satisfied that the proposed terms of the disposal are the best that can reasonably be achieved.

If trustees are unable to comply with 1 to 3 above they must obtain an Order from the Charity Commission – this is effectively the Charity Commission’s authority and approval for the disposal. It provides assurance that the Trustees have carried out the transaction openly and transparently and that it is in the best interests of the charity.

Trustees must always get an Order from the Charity Commission when they dispose of land & buildings to a connected person (section 36(1) of the Charities Act 1993). This is the case even if they can comply with 1 to 3 above.

An Order will have to be obtained where a disposal is at undervalue, for instance a disposal of property to another public body intending to use the property for a purpose that is compatible with the objects of the charity.

www.gov.uk/government/publications/sales-leases-transfers-or-mortgages-what-trustees-need-to-know-about-disposing-of-charity-land-cc28

www.gov.uk/government/publications/acquiring-land-cc33/acquiring-land

Central Government

According to the Central Government/HM Treasury guidance ‘Managing Public Money’: Asset Transfers between public sector organisations may take place without placing the asset on the open market, provided they do so at market prices and in appropriate circumstances. Managing welsh public money adopts similar principles.

The full version of Managing Public Money can be found on the following link:
www.gov.uk/government/publications/managing-public-money

Probation

All real estate is owned by the National Offender Management Service and not by individual trusts. The costs of the estate are recharged (although not in full) to the trusts. Acquisition and disposals are all handled by NOMS and subject to usual Government rules.

Guidance Documents

Relevant guidance documents are contained within the Ystadau Cymru web page.
gov.wales/ystadau-cymru

4.13 Valuation Procedures

It is the recommendation of Ystadau Cymru that in a transfer between public bodies in Wales, the valuation is prepared by an RICS registered Valuer independent of the parties. The usual route would be to appoint the District Valuer (DVS) but by agreement of both parties, it could be commissioned from another qualified independent supplier with no previous connection to the asset. It is recommended that the National Procurement Service framework be utilised to appoint an alternative to DVS if such is required and agreed.

The report must be by way of the “Independent Valuation Report” (IVR) procedure. Land Division (Estates) have liaised with DVS to agree these procedures.

Key Points on Valuer instruction from the parties:

- The two organisations involved in the disposal/transfer should jointly commission the IVR;
- The instruction must be in writing (e-mail acceptable) and provide sufficient information to enable identification of the property interest along with tenure details and confirming that the request is for a joint “Independent Valuation Report” for the purposes of a “transfer (or disposal) between public bodies”;
- The instruction must include full details of the parties and in particular main contact points for each;

- It is important that the parties have agreed most heads of terms and in particular as many material facts as possible before instructing the Valuer. If there are plans of the holding and documents supporting the tenure (i.e. lease papers) they should also be supplied along with any condition reports or site investigation details;
- To avoid a protracted IVR process, an instruction check list is included within this guidance-section 4.16;
- It is necessary and recommended best practice that the two parties to the transfer/disposal agree the heads of terms for the proposal prior to instructing the Valuer. This will ensure the Valuer has all the relevant information (which could impact on value) and avoid the necessity to review a valuation later in the process. This also avoids delay and additional costs associated with fundamental misunderstanding of the transfer detail; and
- The inclusion of restrictions (both external and voluntary) will impact on valuation and must be highlighted.

This is not a dispute resolution process. A relationship of trust between the parties is anticipated to help facilitate the process. The key message is that organisations should work collaboratively and seek to maximise benefits to both organisations.

Instructions to DVS services should be sent to their office at Cardiff although may be dealt with by staff at a location closer to the subject site:

- The independent valuation supplier will confirm the instruction, identifying a case reference and setting out the terms of the instruction giving the name of the appointed Valuer, contact details, an estimated cost for the work and a provisional time scale for delivery;
- The Valuer may request information to clarify any issues that might impact on value;
- The Valuer will also declare any past involvement with the property and is duty bound to declare any vested interest;
- It will be the Valuers responsibility to act fairly and impartially between the parties to the transaction;
- Each body should be kept informed of progress and also be given an opportunity (if they wish) to provide written evidence to assist with the valuation process;
- If the Valuer advises that it may be prudent to request further investigation of a site or property (e.g. mineral stability report, building surveyor's advice) that need should be brought to the attention of both parties so a joint decision can be made on its appropriateness; and
- Draft reports will be issued to both parties for observations prior to the final report but the decision on value is for the Valuer.

There will be occasions where one or both of the parties have no comment to make pre or post draft report. However, it would be appropriate to respond to the Valuers invitation if only to confirm nil comment.

It may be appropriate to shorten the usual procedure in cases where the asset is of no or minimal value (e.g. sterilised public space). In such circumstances the Valuer will seek approval from the parties to do so.

Time Table

The chart at 4.15 includes an indicative best case time scale. It will be dependent on an open and collaborative process with both parties acting reasonably. It is envisaged that most transactions should complete within a 4 month time period. However, there will be cases where the complexities necessitate a different time line and that should be agreed at the earliest opportunity between the parties.

It is important that all parties are content they have had an appropriate opportunity to engage in the process. That would include agreeing instructions with, and providing all pertinent information to the Valuer. It must also be recognised that a revised timeframe may not be agreed and either party will have the right to withdraw from the proposed transfer.

It must be appreciated that any request to extend the timeframe for completion after the valuation report has been issued may have value implications, particularly if the market has altered in the interim period. Delay in completion should not disadvantage the parties. The original agreed valuation would remain the baseline figure, but in a fluctuating market and if completion is likely to extend beyond a 6 month period, it would be reasonable (or necessary) for a second valuation to be obtained, at joint expense, which would form the new transaction price.

Valuation Date

The Valuation date will be the date of the Independent Valuer Report (IVR). It is envisaged that the transfer will be concluded within a reasonable period. However, the report will have a limited validity period usually a maximum of 6 months. After expiry, a report will require re-validation by the Valuer or a revised valuation supplied (depending on market conditions). Please refer to timetable above.

Valuation Report (IVR) content

In order to comply with all of the requirements regarding professional standards, Registered Valuers should have access to standard report formats. These must be reviewed in line with periodic advice from the professional bodies. However, individual bespoke protocols may need to accommodate specific issues depending on the nature of the disposal/transfer.

Usually only one opinion of value (the Market Value) need be reported. However, there may be situations where additional values are required. For example, the RICS UK Valuation Standards regarding valuation of local authority assets specifies valuation reporting requirements for a disposal at below market value (UK VPGA 17 at time of writing). The Valuer is to specify the difference between Market Value and Market Value subject to voluntary restrictions. This is so that the client is aware there is a difference and can make a judgement regarding the financial and state aid impact of the restriction. The report will therefore (where applicable) show the two values, restricted and unrestricted. The parties will need to agree whether two valuations are required on initial instruction.

It is recommended that in preparing specific protocols and desk instructions the content of “standard” reports is set out and agreed between the users.

Using the District Valuer

There are 4 areas where the public sector has special requirements or where general considerations take on extra significance:

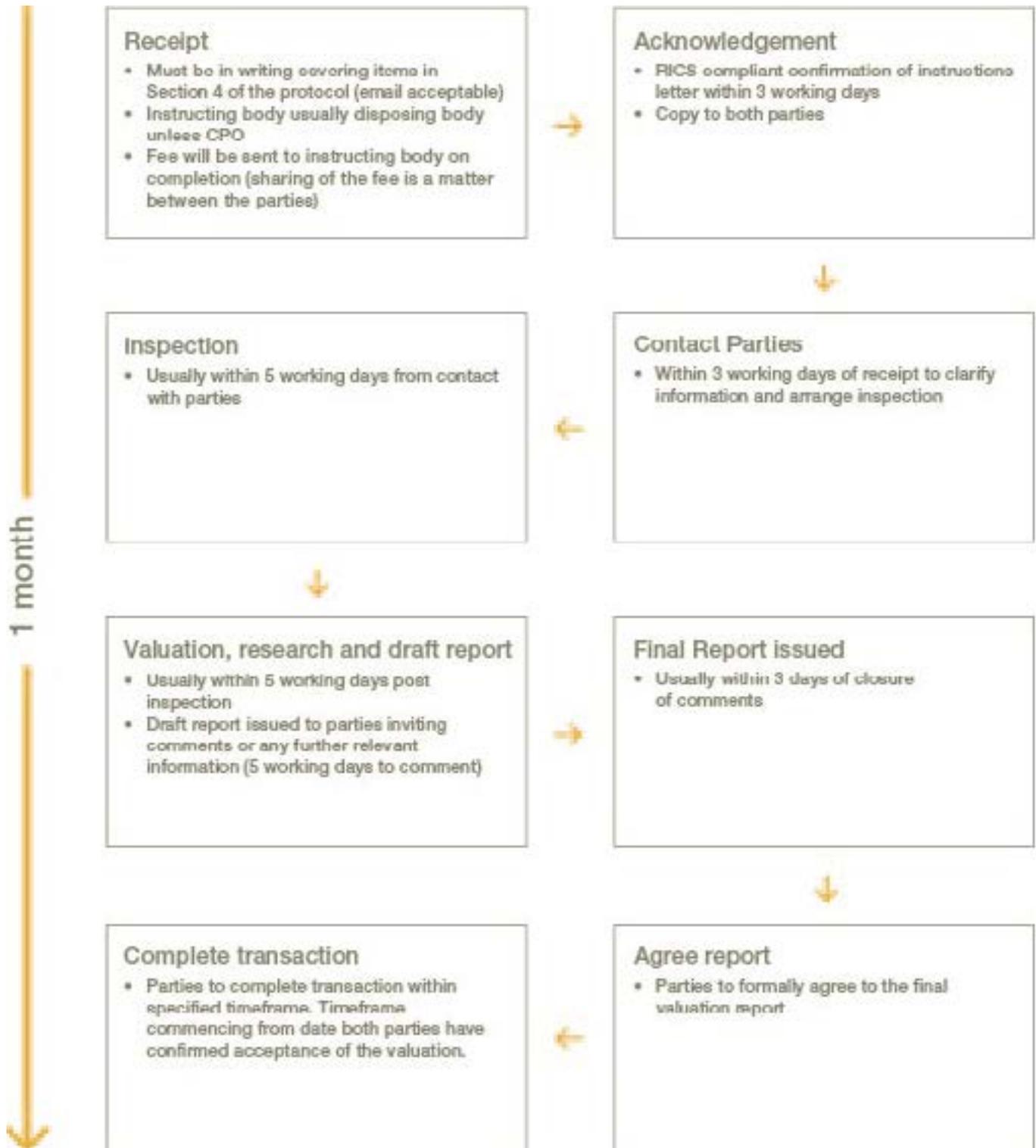
- **Confidentiality**– Being within the public sector DVS is fully compliant with requirements of the Freedom of Information Act 2000 and aware of where it applies;
- **Independence & Impartiality**– customers of DVS and professional bodies attach considerable importance to the advice being seen to be fair and impartial while still under the public sector umbrella;
- **Consistency**– the approach to valuations and the interpretation of legislation requires consistency regardless of location and organisation. An agreed process is in place with DVS for the benefit of the parties involved in the transaction;
- **Public Accountability**– Ministers, Councillors and officials are accountable to the public for the valuations carried out on their behalf and they benefit from the use of a public sector valuation service who meets the requirements of public scrutiny.

www.gov.uk/government/organisations/district-valuer-services-dvs/about#enquiries

4.14 Disposal/Transfer Collaborative process chart



4.15 Process Timeline



Should the transaction not complete within the timeframe specified above the disposing body is free to dispose of the property interest in question on the open market, unless an alternative completion date is agreed between the parties.

4.16 Valuation Instruction Checklists

Check List for Instruction to DV/Supplier for IVR

1. Full address of property.
2. Copy of Ordnance Survey (OS) extract plan indicating location and extent of property.
3. Confirmation that this is a request for an "Independent Valuation Report" (IVR) for a transfer/disposal between public bodies (with some background to the transaction).
4. Name and contact details of the proposed parties to the transaction.
5. Description of property (e.g. land, house, flat, factory etc.).
6. Area of site or area of building (if not known Valuer may be able to provide both parties with any survey data gathered as part of the valuation process).
7. Tenure as held; Freehold, Leasehold (if Leasehold details of terms and or copy of lease).
8. For disposals, confirmation of transaction tenure (e.g. may envisage granting a lease over property held as Freehold).
9. Supply information on any inferior interests (e.g. easements, rights of way, existing tenancies etc).
10. Provide means of access (contact details if appropriate) for inspection.
11. If any condition or investigation reports exist supply copies to Valuer.
12. For buildings provide copies of available statutory information such as Energy Performance Certificate (EPC), Display Energy Certificate (DEC) and if available any Asbestos information etc.
13. Provide details of any planning consents available on completion. (Include any known restrictions or proposed section 106 planning agreements).
14. Supply the Valuer with any information relating to known restrictions such as CADW listings, conservation area status, and tree preservation orders etc.
15. Give details of any proposed voluntary restriction to use (not appropriate for internal transfers).
16. Provide information regarding any service connections if known (gas, electricity, mains drainage & water).
17. Indicate if the transaction will be subject to VAT.
18. Provide date when property will be available for transfer/disposal.
19. Provide copy of the instructing letter to the other organisation.

5. Co-location/Shared Occupation

5.1 Introduction

Property assets are held by most public sector organisations, and consume a large part of their annual budget. Where changing requirements result in property assets becoming underused or surplus to requirements, it is vital to ensure that action is taken to limit the loss. Closer co-operation within the public sector can lead to shared use of the assets providing benefits to both the owner and the occupier.

This section sets out the general arrangements for shared occupations by public sector organisations.

5.2 General Principles

In support of the Collaborative Toolkit, the intention is to create a framework which should normally be adopted by public sector bodies, when sharing occupation or using the property assets of another. However, each organisation and each property is different, and the terms and conditions may need to be amended by agreement between the parties.

This guide is simply intended to offer a set of standard terms for occupation to be used in public sector specific scenarios and where an alternative agreement has not been reached. All parties are strongly advised to take legal advice on the suitability of any document for their particular requirements.

5.3 Using this Guide

Two scenarios have been considered:

1. Occupation of a part of premises on a short term basis, where the occupier does not have exclusive use of the space, for example sharing an open plan area.

This can be documented by way of a Licence Agreement. A standard agreement for use in this scenario, together with a summary of the terms is attached, this can be found in **Section 5.9**.

2. Occupation of an area, either on a long term basis or where the occupier has exclusive use of the space.

This should be documented by way of a lease which can be excluded from the provisions of Sections 24-28 of the Landlord and Tenant Act 1954, if security of tenure is not to be granted. A set of Heads of Terms which can be adopted can be found in **Section 5.9**.

In both scenarios it is assumed that the organisation holds the freehold interest in the property. Where an organisation occupies a property under a lease, the terms of that lease will need to be reflected in any sub agreement and consideration given as to whether sharing of occupation is absolutely prohibited by the lease or if landlord's consent is required. Leasehold properties have therefore not been considered and parties should seek legal advice.

5.4. The Licence Agreement

The standard Licence Agreement in **Section 5.9** has been drafted for use in sharing occupation of office buildings. It contains the following terms:

1. Costs

The occupier will contribute towards the costs of the building. Whilst the agreement is not specific about how the Licence Fee is calculated it is suggested that there should be two elements to the fee:

- Cost of occupation which, unless otherwise agreed, will be based on the market rental value of the building; and
- A proportion of the estimated running costs of the building, car park and any other common areas. This will be based on the proportion of the net internal area occupied.

2. Obligations of the parties

The building owner is responsible for:

- Repair, maintenance, decoration and cleaning of the building;
- Payment of all costs and charges relating to the building;
- Plant and machinery; and
- Any other shared services, e.g. reception or security.

The occupier is responsible for:

- Keeping their premises clean and tidy;
- Removing all fixtures and fittings and making good any damage at the end of the term;
- To follow the owners protocols relating to security, health and safety and any other rules and regulations relating to the building; and
- Indemnifying the owner against all actions, losses damages or costs arising from their use of the premises.

There is a more detailed summary of the document in **Section 5.9**.

It should be noted that it is intended that parties reach their own agreement on terms, taking into account the size and nature of the occupation. For example if the size of the occupation is very small or for a very short term, the parties may agree that an “all in” figure is more appropriate.

It is also advisable that the term of the occupation is kept to 6 months as this avoids the occupier claiming that they have a tenancy in place which is protected by the Landlord and Tenant Act 1954.

A note explaining the Licence Agreement is in **Section 5.9**.

5.5 Lease Agreement

The variations of the terms which could be used in a lease agreement are too great to enable the use of a standard document. The obligations of the parties will very much depend on the building to be let, and the area occupied.

However, if some of the terms of occupation are standardised, the time spent on negotiation and the speed of the transaction could be greatly improved. Therefore in **Section 5.9** is a set of Heads of Terms which can be used by the parties, where no other agreement has been reached. It is to be noted that the 'Heads of Terms' do not comprise a legal document, but rather form the basis for a legal agreement.

5.6 Consents

Prior to entering into any agreement for use or occupation by another party, the owner must ensure that they have the right to grant such an agreement and that all required consents have been acquired.

5.7 Rules and Regulations

The owner of the building should produce rules and regulations governing occupation and use of the property. This will include topics such as health and safety, security, and the management and operation of the building.

The rules and regulations can be updated from time to time to reflect changing circumstances but must be reasonable and consistent with the terms of any occupational agreement. Such changes should be notified to any interested party.

5.8 House Committee

It is recommended that formal liaison should be set up by establishing a house committee, with representation from each of the occupiers. The committee should meet at least once a year.

Its purpose is to provide a basis for joint planning and to discuss and agree the appropriateness, standard and cost of the services that are being provided. It will also provide the means to ensure that the owner of the property asset does not act purely in its own self interest.

The committee will consider and agree matters such as health and safety, service charges, rules and regulations, estate strategy and changing needs.

The flow chart at the end of **Section 5.9** can be used as an indication of what type of agreement may be appropriate.

5.9 Licence Agreements

This Agreement is drafted on the basis of allowing occupation of part of premises on a short term licence. The user of this Agreement should read and satisfy themselves as to the applicability of the terms and conditions contained herein and where necessary to obtain legal advice.

DATED

[LICENSOR'S NAME]

- and -

[LICENSEE'S NAME]

LICENCE TO OCCUPY ON A SHORT TERM BASIS

Relating to

[]

THIS AGREEMENT is made on

BETWEEN:

(1) [] of [] (“the Licensor”); and

(2) [] of [] (“the Licensee”)

1. DEFINITIONS

In this Agreement:

- 1.1 ‘Building’ means all that land and building known as []
- 1.2 ‘Common Parts’ means all those parts of the Building comprising the balconies entrances, halls, foyer, lifts, landings, passageways, conference rooms, meeting rooms, corridors stairs, toilets, showers, kitchen, staffroom, welfare room, facilities and amenities and other common areas within or exclusively serving the Building which are capable of use in common with other occupiers as are used by the Licensee’s employees and visitors TOGETHER WITH the external parts of the Building comprising the courtyard and general footpaths and roadways.
- 1.3 ‘Car Park’ means the general parking area situate within the grounds of the Building.
- 1.4 ‘Licence Period’ means the period from and including [] to and including [] or such earlier date should this Licence be determined in accordance with clause 4 OR commencing from the date hereof until determined under clause 4 of this Agreement
- 1.5 ‘Licence Fee’ means the sum of [] for the use of the Premises and the Services provided by the Licensor
- 1.6 ‘Premises’ means such part of the Building as will be designated by the Licensor for occupation by the Licensee.
- 1.7 ‘Permitted Use’ means [office] use only of the Premises during the Licence Period SUBJECT TO observance of the Licensee’s Obligations contained in Clause 3.
- 1.8 ‘Services’ means the list of services contained in the First Schedule as provided by the Licensor
- 1.9 [‘VAT’ means value added tax chargeable under the Value Added Tax Act 1994 or any similar replacement or additional tax]

2. LICENCE

- 2.1 The Licensor grants the following rights (‘the Rights’) to the Licensee and its employees visitors and contractors during the Licence Period (in common with the Licensor and its employees visitors contractors and all other persons authorised by the Licensor) SUBJECT TO observance of the obligations and conditions contained in Clause 3:
 - 2.1.1 to occupy the Premises for the Permitted Use for the Licence Period; [and]
 - 2.1.2 to use such parts of the Common Parts as are necessary for the purpose of access to and egress from the Premises as shall from time to time be designated by the Licensor for such purpose; [and]
 - 2.1.3 [the right for employees of the Licensee to park private motor vehicles within the Car Park SUBJECT TO availability of space]

- 2.2 The Licensee acknowledges that:
- 2.2.1 the Licensee shall occupy the Premises as a Licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this Agreement;
 - 2.2.2 the Licensor retains control, possession and management of the Premises and the Licensee has no right to exclude the Licensor from the Premises;
 - 2.2.3 the licence to occupy granted by this Licence is personal to the Licensee and is not assignable and the Rights may only be exercised by the Licensee and its employees; and
 - 2.2.4 without prejudice to the Rights the Licensor shall be entitled at any time on giving not less than 28 days notice to require the Licensee to transfer to alternative or comparable space elsewhere within the Building and the Licensee shall comply with such requirement.

3. LICENSEE'S OBLIGATIONS

The Licensee Agrees with the Licensor as follows:

- 3.1 To pay the Licence Fee without any deduction [in full on the signing of this Licence] OR [in advance on the first day of each month and proportionately for any period of less than a month the first such payment being for the period from and including the commencement of this Licence to the end of the month following such date to be made on the commencement of this Licence] together with such VAT as may be payable on the Licence Fee.
- 3.2 not to use the Premises for any purpose other than the Permitted Use
- 3.3 to keep the Premises clean tidy and clear of rubbish
- 3.4 not to obstruct the Common Parts make them dirty or untidy or leave any rubbish on them
- 3.5 not to apply for any planning permission in respect of the Premises or the Building
- 3.6 to follow the Licensor's established protocols (as amended from time to time) relating to Security of the Premises and the Building Health & Safety Policies General Office Procedures and any other requirements rules and regulations of the Licensor in respect of or relating to the Premises or the Building and its occupation
- 3.7 not to make or allow to be made any alteration to the layout of any part of the Premises or any other room used within the Building without the Licensor's prior written consent
- 3.8 to keep the Licensor fully indemnified against all actions proceedings expenses loss damage costs claims and demands arising directly out of the Licensee's use of the Premises or any act omission or negligence of the Licensee its employees or any persons thereon expressly or impliedly with the Licensee's authority or any of the matters to which the Premises are or may be subject
- 3.9 not to impede in any way the Licensor's right of possession and overall control of the Premises or the Building
- 3.10 not to assign or sub-licence the whole or any part of the Rights which are personal to the Licensee
- 3.11 not to do anything on the Premises which is likely to cause a nuisance or annoyance to the Licensor or any other persons working within the Building
- 3.12 to leave the Premises in a clean and tidy condition and to remove the Licensee's furniture equipment and goods from the Premises making good any damage caused at the end of the Licence Period to comply with the provisions of all Acts of Parliament including such modifications, extensions or re-enactments of it for the time being in force, as well as all instruments, bye-laws, orders, and regulations for the time being made, issued or given under or deriving validity from it.

4. LICENSORS OBLIGATIONS

The Licensor Agrees, subject to the Licensee having paid its Licence Fee, to be responsible for the following during the Licence Period:

- 4.1 To keep the Building insured in its full reinstatement value against loss or damage by such risks perils or contingencies as the Licensor may deem expedient together with related professional fees **OR** To effect its own insurance and assume the risk of loss or damage for the Building caused by [fire, explosion, storm, flood, tempest, lightning, civil commotion, impact of aircraft or articles dropped therefrom]
- 4.2 To provide the Services

5 TERMINATION

- 5.1 The licence to occupy granted by this agreement shall terminate either on:

5.1.1 20[]

5.1.2 Immediately on the Licensor giving notice to the Licensee at any time of breach of any of the Licensee's obligations contained in clause 3

5.1.3 Upon the expiry of not less than [one] months written notice given by either party to the other

If this agreement is terminated pursuant to Clause 5 the Licensee shall on the date of termination remove the Licensee's property and equipment from the Premises and the Building together with any other possessions and promptly vacate the Premises

- 5.3 Termination is without prejudice to the rights of either party in connection with any antecedent breach of or other obligation subsisting under this agreement

6 AGREEMENTS AND DECLARATIONS

- 6.1 The Licensor shall not be liable for any damage to or the loss of property or for any losses or other liability whatsoever which shall or may occur to or be sustained by the Licensee its servants or agents or others in the exercise or purported exercise of the Permitted Use except where caused by the negligence of the Licensor
- 6.2 The parties to this Agreement declare that the Contracts (Rights of Third Parties) Act 1999 shall not apply and nothing in this Agreement is intended to confer any benefit on any person who is not a party to it
- 6.3 Any notice required to be given or served in connection with this Agreement shall be deemed properly given or served if it is served by hand at the Premises or sent by registered or recorded delivery to the Premises and marked for the attention of '[]' in respect of the Licensor and for the attention of '[]' in respect of the Licensee
- 6.4 In the event that either the Licensor or the Licensee considers there to be a dispute with the other party arising out of this Agreement then it shall as soon as reasonably practicable notify the other party in writing clearly setting out the nature and extent of the dispute. Both the Licensor and the Licensee shall use all reasonable endeavours to negotiate in good faith and settle any dispute as soon as practicable. Such negotiations shall take place in the first instance at an operational level within each of the parties concerned. In the event that any dispute is not resolved at that level the matter shall be escalated by each party to an appropriate senior level within its respective organisation for further such negotiations. If following escalation such dispute has not been settled then the dispute shall be referred to an expert, who shall be appointed on the application of either party or in default of agreement by the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall be final

7 INTERPRETATION

In this Agreement unless the context otherwise requires:

- 7.1 words importing any gender include every gender
- 7.2 words importing the singular number include the plural number and vice versa; words importing persons include firms companies and corporations and vice versa
- 7.3 references to numbered clauses are references to the relevant clause in this Agreement
- 7.4 the headings to the clauses of this Agreement shall not affect its interpretation
- 7.5 any obligation on any party not to do or omit to do anything includes an obligation not to allow that thing to be done or omitted to be done

AS WITNESS the hands of the parties hereto the day and year first before written

Notes on Licence Agreements

Whilst there is no restriction on the period for which a Licence can be granted it is usually for 6 months or less. The right to use the premises/workspace under the Licence is granted in common with the Licensor so as to avoid granting the Licensee exclusive possession of the premises/workspace and thus creating a lease that is protected under the Landlord and Tenant Act 1954.

The sample Licence Agreement provided contains a number of square brackets which indicate various options or matters which require consideration on a case by case basis.

In each case consideration will need to be given to the individual circumstances and in particular to:

- the Licensee's use of the premises/workspace needs to be agreed and if necessary comply with planning permission;
- whether there are any common parts of the premises which will be used by the Licensee;
- whether the Licensee will have the right to use a car park and if so whether the number of car parking spaces will be limited;
- when the Licensee will be allowed access to the premises and whether or not this will include weekends and public holidays;
- any obligations with which the licensee is required to comply during the Licence period; and
- any protocols and policies with which the Licensee is required to comply, copies of which should be provided to the Licensee prior to entering into the Licence.

Anyone proposing to use the following sample Licence Agreement is strongly advised to take legal advice on the suitability of the Licence Agreement for their particular requirements. The Welsh Government does not accept any responsibility or liability to users or any third parties in relation to the use of the material or its contents and does not accept any responsibility for any loss or damage which may arise from reliance on information published in the Licence Agreement or any actions taken or not taken as a result.

Summary of Terms of the Licence to occupy on a short term basis

Clause 2 – Licence

This Licence grants a specific right for a Licensee to share occupation of part of a premise for a period to be inserted in clause 1.4. It does not give the Licensee an exclusive right to use that particular space.

It also provides for the right to use the car park (if there is one) for the parking of private motor vehicles only.

It clarifies that no relationship of landlord and tenant is created, that the licensor is to retain control and possession of the space and that the Licence is personal to the Licensee.

The Licence also reserves the right for the Licensor to move the Licensee to another part of the premises upon no less than 2 months notice.

Clause 3 – Licensee's obligations

Clause 3.1 requires a Licence Fee to be paid for the use of the space, which can either be on a monthly basis or the whole amount in advance.

The remaining obligations inform the licensee that they must keep the space and the common parts of the premises clean and tidy, that they mustn't cause a nuisance to the Licensor or any other users of the premises or use the space for any other purpose other than what the licensor has agreed. The Licensee is prevented from making any alterations to the space they are occupying. They are also prevented from sharing or assigning their use of the premises. The Licensee will also need to comply with all statutes and regulations, as well as any rules that the Licensor has in place relating to the premises.

There is also a requirement that the Licensee indemnifies the Licensor against any claims or actions that may be taken against the Licensee in connection with their use of the space.

Upon the termination of the Licence in accordance with clause 5, the Licensee is required to leave the space in a clean and tidy condition, to make good any damage caused to the space as well as remove all their furniture, equipment and goods.

Clause 4 – Licensors obligations

The Licensor is expected to either insure the premises in its full reinstatement value or to self insure.

The Licensor may also provide a number of services for the Licensee, which the Licensee will pay for as part of the Licence Fee. Such services can include the maintenance, repair and cleaning of the premises and the common parts; providing lighting and heating, providing a receptionist and security for the premises, providing furnishings and equipment; and also fire prevention, detection and fighting machinery.

Clause 5 – Termination

This provides that the Licence will terminate on the set day as noted in clause 5.1.1.

The Licence can also be terminated immediately by the Licensor if the Licensee fails to comply with their obligations in clause 3 of the Licence.

Clause 5.1.3 also provides an option for the Licence to be terminated by either party giving to the other not less than 1 months notice.

Clause 6 – Agreements and Declarations

This provides confirmation of where any notice would need to be served and how the parties should deal with any disputes that may arise between them.

Heads of Terms for a Lease

1. Area to be occupied

The area will be demised.

2. Term

The term of occupation should be agreed between the parties.

Break clauses can be incorporated; they should be unconditional.

3. Costs

In accordance with Government Policy, the charge for occupation should be at full cost and include rent at the market value. Charges will therefore be made up as follows:

Rent

Market Value of the demised premises

Service Charge

The Owner will pass a proportion of all costs, fees and expenses incurred in connection with the building. The proportion will be based on the net internal area occupied as a proportion of the net internal area of the building.

4. Insurance

The Owner may pass on a fair proportion of the cost of insuring the premises. If the premises are damaged or destroyed by an insured risk, the Owner must rebuild, making good any shortfall.

There should be an option to self insure. A sum equivalent to the cost of insuring may be charged if appropriate. The Owner may wish to have the option to terminate the agreement on destruction or substantial damage by an insured risk.

5. Owner's obligations

The owner will be responsible for the following:

- a. Repair, maintenance, redecoration and cleaning the exterior of the premises and the structure;
- b. Common areas, car park and shared facilities;
- c. Lighting, and heating the common parts;
- d. Plant and Machinery; and
- e. Any other item which is used in common with other occupiers.

Where the occupier leases a whole building, the parties may wish to agree that the occupier assumes responsibility for all of the above.

6. Occupiers obligations:

- a. Repair, maintenance, decoration and cleaning the demise;
- b. Pay all costs, charges and taxes relating to the demise;
- c. Either
 - Pay the supplier for all costs and charges for utilities used, or
 - Pay the Owner a proportion of the cost of utilities;
- d. Comply with legislation;
- e. Comply with security requirements, health and safety etc;
- f. Comply with Owners regulations relating to the occupation and use of the building; and
- g. Indemnify the owner against loss, damage etc.

7. Services

The owner may provide a range of services in the building. This may include items such as reception, security, post room, restaurant etc. The range and extent of such services will obviously vary widely from one building to another. The cost of any services will be included in the service charge.

8. Alterations

Prohibited unless the owner provides prior consent, not to be unreasonably withheld or delayed. The owner may require that their own contractors carry out any works.

9. On Expiry of the Term

The occupier will remove all alterations, fixtures and fittings, making good any damage caused, and will leave the area in a clean and tidy condition.

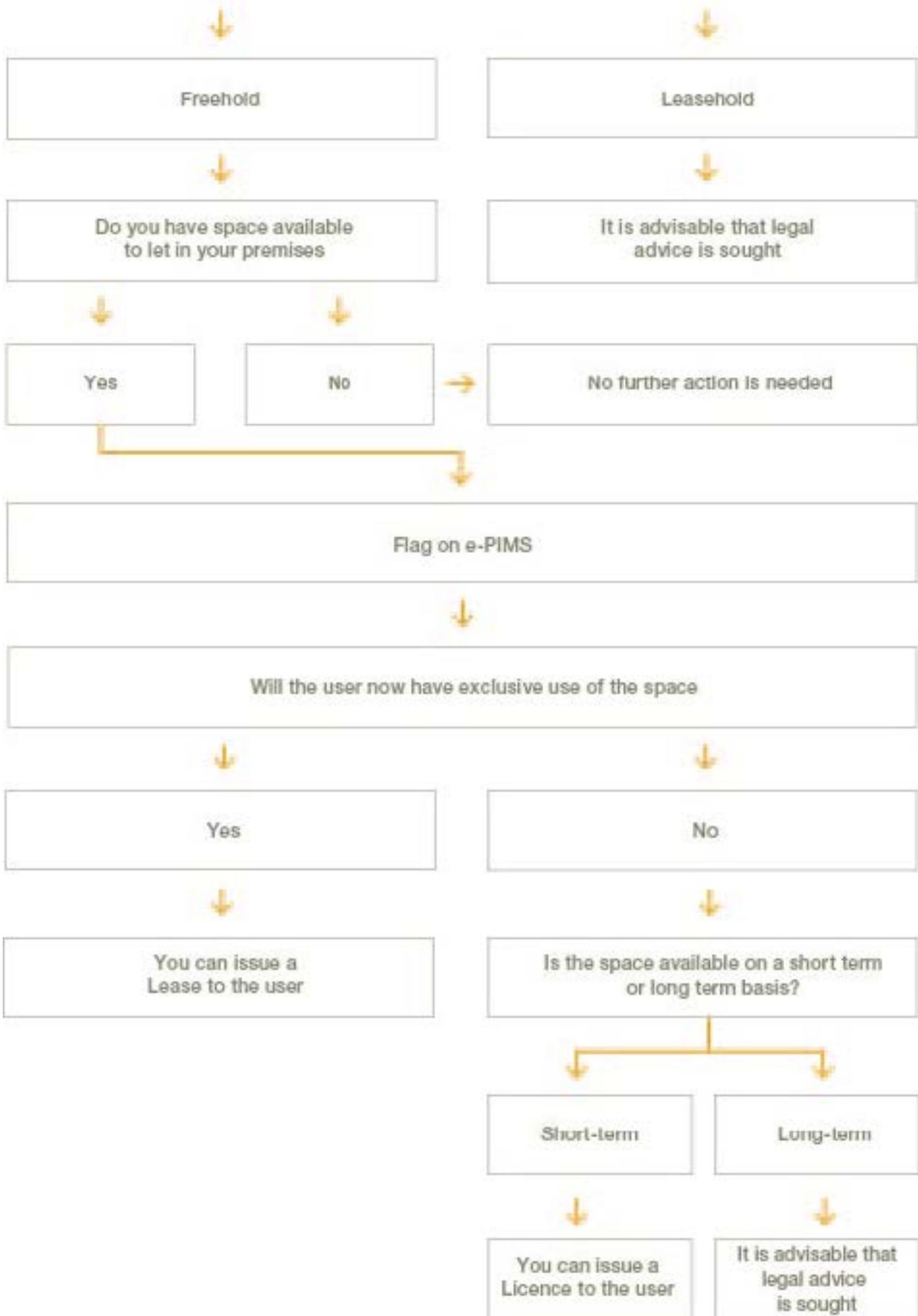
10. Dispute resolution

Senior representatives' from each of the organisations will be appointed to reach agreement. In the event that agreement cannot be reached an independent surveyor will be appointed to act as an expert.

11. Sustainability

It may be appropriate to incorporate terms to encourage occupiers to use the space in an energy efficient manner, and not to do anything which is likely to make the building less efficient.

Do you own a Freehold or Leasehold interest in your premises?



Annex 1

Definitions & Terminology

Best Value

Best Value was introduced in England and Wales within the 1999 Local Government Act by the UK Government, and its provisions came into force in April 2000. The Department for Communities and Local Government (DCLG) issued revised guidance on the statutory application in September 2011.

The duty of Best Value continues to be important because it makes clear that councils should consider overall value – including social value – when considering service provision. So it plays to the long-term strengths of voluntary and community groups and small businesses.

www.gov.uk/government/publications/revised-best-value-statutory-guidance

Consideration

This can be viewed as simply what is given in return for a transaction. It could be a price paid or rent. While it does have a technical meaning within the terms of Land Transaction Tax (LTT) legislation it is broadly the “quid pro quo”.

Best Consideration

This is unrestricted market value (see also below for definition of market value). It has particular meaning to local government bodies. Councils have a statutory obligation under section 123(2) of the Local Government Act 1972 to achieve the best consideration reasonably obtainable on a disposal of its property.

In R (Midlands Co-operative Society Ltd) v Birmingham CC [2012] EWHC 620 (Admin) (Hickinbottom J) [124]:-

In considering whether a particular price is the best price reasonably obtainable, the best price achievable in the open market is likely to be relevant. In many cases, they will be the same. It is intrinsic to the concept of open market value that it takes into account all potential bidders, including any special bidders, to avoid a speculator buying property and selling it on to someone with a special interest at a higher price (Commissioners of Inland Revenue v Clay [1914] 3 KB 466).

R (on the application of Faraday Development Ltd) v West Berkshire Council [2016] EWHC 2166 (Admin); [2016] PLSCS 240 may provide a useful analysis of how best consideration has been viewed by the courts.

Crichel Down Rules

The rules were prepared by the UK Government as a result of issues raised in a land holding at Crichel Down in Dorset in the 1950s.

The rules are non-statutory. However, all government departments and the former nationalised industries are expected to observe them. They apply to land that was acquired by **compulsory purchase** or where the use of such powers were, or could have been, contemplated, but which have since been declared surplus to requirements.

The general rule is that if such government land is surplus to requirements **and** is to be disposed of, it must first be offered to the former owners of the land at the current market value, provided that the land's character has not materially changed since acquisition. However, if the asset is to continue to provide public use it may not actually be surplus within the terms of the CD requirements.

The Rules only relate to government land acquired in either of the following ways:

- By, or under the threat of compulsory purchase (i.e. acquired by a body with CPO powers).
- Under the statutory blight provisions.

Although the rules are non-statutory and for guidance only, the courts have repeatedly held that the importance of the rules and the need to adhere to them “cannot be underestimated”, and that former owners have a legitimate expectation that the Rules will be applied.

Local authorities in Wales are also recommended to adopt the rules.

If the rules are breached, there is a risk that the disposal of land may be challenged by former owners on judicial review or human rights grounds, giving rise to delay and uncertainty to both the disposing department and the prospective buyer.

District Valuer Services (DVS)

District Valuer Services (DVS) is an arm of the Valuation Office Agency (VOA), providing professional property advice across the public sector, including private and third sector clients involved in delivering public services and functions of a public nature. It is a not-for-profit UK Government agency. The VOA is a Crown Body and may be recognised as such when considering issues over procurement of their services.

DVS Wales main offices are at Cardiff but have offices at, Swansea, Carmarthen, Wrexham and Bangor.
www.gov.uk/government/organisations/district-valuer-services-dvs/about

Fair Value

Fair Value is often referenced as Book Value as it represents the valuation for asset purposes.

Fair Value is a measurement basis required or permitted under International Financial Reporting Standards. Fair Value is a broader concept than Market Value. Although in many cases the price that is fair between two parties will equate to that obtainable in the general market. there will be cases where the assessment of Fair Value will involve taking into account matters that have to be disregarded in the assessment of Market Value.

The (RICS) Valuation Global Standards 2017: UK National Supplement.

www.rics.org/uk/upholding-professional-standards/sector-standards/valuation/red-book/red-book-uk/

“The amount for which an asset could be exchanged, between knowledgeable, willing parties, in an arm’s length transaction”

Find me some Government Space (FMSGS)

A website linked to e-PIMS that lets members of the public see what Government and public sector property is available to buy or rent. Launched by Cabinet Office it operates in a similarly way to commercial sites in that the public are able to find available property using either a postcode or area keyword. There is a Wales only version accessed from the Ystadau Cymru web section of the Welsh Government’s internet site.

Public sector property marked as available on e-PIMS will be automatically shown on the Space Cymru web page after 40 days. However, organisations can elect to mark a holding as exempt.
e-pims.cabinetoffice.gov.uk/SpaceCymru/SearchForSale.aspx

Managing Welsh Public Money

Managing Welsh Public Money is a guidance document that sets out the main principles for managing resources. It is primarily aimed at organisations within the boundary of the Welsh Government's consolidated accounts, but the principles should hold true across the whole of the Welsh public sector. This sets out to explain how to handle public funds with probity and in the public interest and should be read in conjunction with Managing Public Money (published by HM Treasury) to understand the wider picture of funding and financial control at a UK level.

This document has recently been updated and a web link is included below.
gov.wales/funding/managing-welsh-public-money/?lang=en
llyw.cymru/rheoli-arian-cyhoeddus-cymru?

Market Value

Market value is defined in International Valuation Standards and adopted by the RICS in the UK national supplement. At the time of writing it reads as follows:–

'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 and where the parties had each acted knowledgeably, prudently and without compulsion.'

Market Value is a basis of value that is internationally recognised and has a long-established history in use. It describes an exchange between parties that are unconnected and are operating freely in the marketplace and represents the figure that would appear in a hypothetical contract of sale, or equivalent legal document, at the *valuation date*, reflecting all those factors that would be taken into account in framing their bids by market participants at large and reflecting the highest and best use of the asset. The highest and best use of an asset is the use of an asset that maximises its productivity and that is possible, legally permissible and financially feasible.

It ignores any price distortions caused by *Special Value* (an amount that reflects particular attributes of an asset that are only of value to a *special purchaser*) or *Marriage Value*. It represents the price that would most likely be achievable for an asset across a wide range of circumstances. *Market Rent* (see below) applies similar criteria for estimating a recurring payment rather than a capital sum.

In applying *Market Value*, regard must also be had to the requirement that the valuation amount reflects the actual market state and circumstances as of the effective *valuation date*.

Notwithstanding the disregard of *Special Value*, where the price offered by prospective buyers generally in the market would reflect an expectation of a change in the circumstances of the asset in the future, the impact of that expectation is reflected in *Market Value*. Examples of where the expectation of additional value being created or obtained in the future may have an impact on the *Market Value* include:

- the prospect of development where there is no current permission for that development, and
- the prospect of *Marriage Value* arising from merger with another property or asset, or interests within the same property or asset, at a future date.

Market Rent

Market rent is defined in International Valuation Standards and adopted by the RICS within the UK national standards.

'the estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.'

Market Rent will vary significantly according to the terms of the assumed lease contract. The appropriate lease terms will normally reflect current practice in the market in which the property is situated, although for certain purposes unusual terms may need to be stipulated. Matters such as the duration of the lease, the frequency of rent reviews and the responsibilities of the parties for maintenance and outgoings will all affect the *Market Rent*. In certain countries or states, statutory factors may either restrict the terms that may be agreed, or influence the impact of terms in the contract. These need to be taken into account where appropriate.

Market Rent will normally be used to indicate the amount for which a vacant property may be let, or for which a let property may re-let when the existing lease terminates. *Market Rent* is not a suitable basis for settling the amount of rent payable under a rent review provision in a lease, where the definitions and *assumptions* specified in the lease have to be used.

Valuers must therefore take care to set out clearly the principal lease terms that are assumed when providing an opinion of *Market Rent*. If it is the market norm for lettings to include a payment or concession by one party to the other as an incentive to enter into a lease, and this is reflected in the general level of rents agreed, the *Market Rent* should also be expressed on this basis. The nature of the incentive assumed must be stated by the valuer, along with the assumed lease terms.

Public Procurement

So far as the law of Public Procurement presently applies, where a public body disposes of land without imposing any conditions as to how that land should be used, public procurement implications will not arise.

However, where the public body disposes of land with a requirement that it be used or developed for particular purposes or in a particular way, the Public Contracts Regulations 2006 (the “Regulations”) may apply. For instance, the Welsh Government may dispose of land to a local authority on the condition that it constructs a care home on the land. If the Regulations apply to the disposal, the public body must advertise the disposal of the land as a “public works contract” because the disposal involves imposing a requirement that the land be developed in a particular way, in other words, that works will take place on it.

If a public body fails to advertise (correctly or at all) a public works contract which is subject to the Regulations, and simply disposes of the land to another public body without following the correct procedure, an aggrieved third party, which could have submitted a tender to acquire and develop the land (had it been advertised), may issue legal proceedings.

The Regulations apply only where the value of the works exceeds a certain limit (£4,551,413 at 2018) but even when the value is below this level, regulations require some advertising of the land linked contract. The threshold is reviewed and available through the Cabinet Office – Efficiency and Reform Group web pages – see link.

www.gov.uk/government/collections/procurement-policy-notes

This explanation provides only a very brief overview of how public procurement may apply to disposals of land. This has been an evolving area of law and exiting the EU with the legislative changes associated carries some uncertainties. Early legal advice is recommended in individual cases.

Restricted Value

This is the market value of the property having regard to any proposed terms to the transaction. It is defined in the same way as unrestricted value, except that it should take into account the effect on value of any voluntary conditions.

The restricted value will often take into account claw back mechanisms which while specifying a restriction, enable the disposing organisation to reclaim value if the restriction is breached.

The resultant value may be described as “Market Value subject to restrictions”. The precise nature of the restrictions must be established in advance of obtaining a valuation report. The report must specify those restrictions as reflected in the Valuer’s opinion. By example WG usually requires an undertaking that buildings constructed on its (former) land will achieve a BREEAM excellent rating. See link below: www.breeam.com/discover/how-breeam-certification-works/

RICS

The Royal Institution of Chartered Surveyors is the recognised professional body for qualifications and standards in land property and construction.

RICS VPGA17 Disposal of Land at less than best consideration:

The RICS Valuation – Professional Standards (Red Book), Valuation Practice Guidance – Application 17 covers Local Authority Disposal of Land at less than best consideration. It highlights the wide powers, for disposal that are available to Local Authorities.

www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/valuation/red-book-uk-supplement-rics.pdf

Space Cymru

The Wales only version of the e-PIMS “Find Me Some Government Space (detailed above) is located on the Ystadau Cymru web page.

gov.wales/finding-public-sector-property-available-let-or-buy

llyw.cymru/dod-o-hyd-i-eiddo-sector-cyhoeddus-sydd-ar-gael-iw-osod-neu-ei-brynu

State aid

In general terms, there are no State aid implications for a disposal at unrestricted market value. Transfers between departments of the Welsh Government are not disposals for this purpose.

State aid law generally prohibits public bodies from providing funding to “undertakings” which are defined as bodies engaged in economic activity. Economic activity arises wherever there is a competitive market. As public bodies fund economic activity this could lead to unfair competition which may undermine the market principle, discourage undertakings from being competitive and would ultimately lead to higher prices for consumers. This prohibition on funding undertakings is generally described as the “State aid rules”.

Many individuals, charities, not-for-profit organisations and public bodies are involved in economic activity. For instance, a not-for-profit organisation may provide a nursing home, but simply because the organisation does not make a profit, it does not automatically follow that it is not engaged in economic activity. There will be other undertakings in the market providing the same service and so funding it would, on the face of it, engage the State aid rules.

Current (at date of writing) UK law includes the EU State aid tests set out here:

- Is the aid granted by the state or through state resources?
- Does it confer an advantage to an undertaking?
- Is it selective, favouring certain undertakings?
- Does the measure distort or have the potential to distort competition.
- Is the activity tradable between member states.

Please note that State aid does not have to be in the form of money, it can be in other forms such as land. It can also arise where a public body relaxes its usual requirements such as relieving a tax burden or disposing of land at an undervalue as discussed above.

If the 5 tests are satisfied, then it is necessary to consider whether the aid may be exempt or permitted in accordance with a notified scheme. It is outside the scope of this guide to provide details of individual schemes but advice should be sought on this issue. The Welsh Government's State Aid Unit advises Welsh Government officials as to State aid and other public bodies in Wales must seek their own State aid advice.

The sale of land by public bodies at less than market value may engage the State aid rules, with the aid element to the purchaser being the difference between the market value and the sale price.

The Market Value of land can be witnessed broadly, either through an open, unconditional bidding process accepting the highest bid or as assessed, in advance, by an independent Valuer. If the market value is determined in this way, then a sale at this value would not involve State aid. Special obligations or restrictions may be placed on the future use of the land in the public interest as part of the sale, provided that every potential buyer would have to, and be able to, meet those obligations or restrictions, irrespective of whether or not they run a business or of the nature of their business.

If a public authority wishes to justify the price at which public land is sold, it must be able to provide evidence showing that its decision to carry out the transaction was taken on the basis of an economic evaluation comparable to that which a rational market economy operator would have taken into account. This emphasises the importance of keeping good records showing the basis on which the market price was established.

The key message is – **seek advice early**. State aid rules are complex and getting it wrong can mean that the aid has to be repaid. Specific protocols must therefore address the issues pertinent to the proposed exchange. By example there is guidance on land released for affordable housing.

Surplus Asset

The Welsh Government, WGSBs, and the NHS in Wales have significant land holdings. Much of the land is required for ongoing services and operations. However, the Government Accounting advice is that land holdings should be kept under constant review and once surplus assets have been identified, they should be disposed of as quickly as possible, subject to value for money considerations.

Land and or buildings that cease, permanently, to be used for the needs of a public body are designated as non-operational assets awaiting disposal. These surplus property interests are then often re-valued (for capital accounting purposes) to Market Value.

Each body will have established guidance on when an asset formally becomes surplus. However, it can sometimes be prudent to examine the possibility of disposal prior to formal declaration.

Under Value

Can be defined as the amount by which an asset is disposed of below best consideration. By example this may be the difference between the unrestricted market value and the value subject to voluntary restrictions.

When disposing at an undervalue, authorities must remain aware of the need to fulfil their fiduciary duty in a way which is accountable to local people.

Unrestricted Value

The best price for which the disposal, if made on terms which are intended to maximise the consideration, might reasonably be expected to have been completed unconditionally for cash on the date of valuation by a willing seller.

It is the amount which would be received for a disposal of a property where the principal aim was to maximise the value of the receipt. This value will be determined subject to any external or statutory conditions (e.g. planning guidance) specific to the site/property.

Value for Money (VFM)

The Welsh Government's definition of Value for Money is contained within the publication 'Managing Welsh Public Money':-

“Value for money is defined as the optimum combination of whole-life costs and quality to meet the user's requirement – this definition allows relevant social and environmental issues to be taken into account...”

Voluntary Conditions

A voluntary condition is any term or condition of the proposed transaction which the body chooses to impose. It does not include any term or condition which the body is obliged to impose, (for example, as a matter of statute), or which runs with the land.

Wales Property database

The Welsh Government's Business Wales “Property Database” is a free service where it is possible to search for commercial land and property, available for sale and rent in Wales. (Not to be confused with the public sector only e-PIMS). Predominantly the content is of private property for sale or to let but can include public sector interests.

It is managed and updated by the market and policy team within Business Wales and relies on voluntary contributions from agents and landlords etc.

businesswales.gov.wales/property-database

Well-Being Powers

These are discretionary powers of the Welsh Ministers, to undertake any action to promote or improve the social, economic and environmental well-being of Wales or any part of Wales. The power is designed to, encourage innovative practice and provide opportunities for bodies, together with their partners, to help facilitate objectives that are likely to improve well-being.

The Welsh Government may potentially dispose of land or property at less than market value in accordance with its well-being powers, provided all other compliance checks have been undertaken (such as State aid and public procurement – see below).

The Government of Wales Act 2006 enables the Welsh Ministers to consider disposal at a below “market value” consideration to be appropriate, to achieve one or more of the promotion or improvement of the economic; social and environmental well-being in Wales.

Comparable well-being powers for Local Government are set out in Section 2 of the Local Government Act 2000 subject to certain caveats. The Local Government Act 1972 imposes a requirement on a local authority to seek the consent of the Welsh Ministers for the disposal of land at less than market value. The ‘Local Government Act 1972: General Disposal Consent (Wales) 2003’, issued under cover of circular letter NAFWC 41/2003 dated 16 December 2003, removed the need for further recourse to the Welsh Ministers where the disposal promotes or improves well-being and the undervalue does not exceed £2 million.

The Management Statement and Financial Memorandum of Welsh Government Sponsored Bodies also include provision for the disposal of assets at less than market value subject to the consent of the Welsh Government.

The NHS (Wales) Estate code allows for disposals at a price below market value in circumstances where it is relevant to consider issues of wider public benefit (“a concessionary sale”). The approval of the Minister for Health & Social Services for such a sale is required if the “concession” exceeds £100,000.

The Well-being of Future Generations (Wales) Act 2015

The Well-being of Future Generations (Wales) Act 2015 came into force in April 2016. The Act requires public bodies, including the Welsh Government, to think more about the long-term, to work better with people, communities and each other, look to prevent problems and take a more joined-up approach – helping us to create a Wales that we all want to live in, now and in the future.

The asset collaboration agenda enshrined within this guide dovetails well with the direction and intention of the Act.

Link:

www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=010103

WGSB's

Welsh Government Sponsored Bodies are non-departmental public bodies directly funded by the Welsh Government. Until the Government of Wales Act 2006, they were known as **Assembly Sponsored Public Bodies (ASPBs)**.

Ystadau Cymru – formally National Assets Working Group (NAWG)

Ystadau Cymru will operate across the public sector to improve services by identifying, facilitating and supporting the delivery of efficiencies and innovation in the operation of the public estate and its corresponding assets.

The aim of the group is to develop a structure to help ensure that the public estate, including land, is utilised to its maximum efficiency to support service delivery and value for money across a wide range of assets – heritage, roads, social care facilities, libraries and leisure centres.

The objective of Ystadau Cymru will be to work in collaboration with public sector bodies, to facilitate a change in the way in which public assets are procured, operated, shared and disposed.

Cymraeg

gweddill.gov.wales/topics/improvingservices/assets-cymru/?skip=1&lang=cy

English

gweddill.gov.wales/topics/improvingservices/assets-cymru/?lang=en

Annex 2

All Wales Public Sector Property Database (e-PIMS)

Working with representatives of departments within the Welsh Government, WGSBs, NHS Wales and public authorities across Wales, the Welsh Government's Land Division has developed a system to register land and building interests. The register will be used to inform future strategic estates policies and to ensure that resources are developed and utilised to their full potential across the public sector.

The host system is e-PIMS (electronic Property Information and Mapping Service) which is a central database of civil estate properties, holdings and occupations developed by the UK Government Cabinet Office and already used by all Central Government Departments and devolved nations.

Cabinet Office developed an entry level version of their database known as e-PIMS "lite". It provides a much more accessible route into e-PIMS (it requires fewer pages of detailed information) whilst still ensuring that key data – address, location and size of a holding is recorded. e-PIMS "lite" links to the mapping system, has ability to store electronic copies of leases, title documents, schedules of dilapidations, building audits, digital photos and other notes which will facilitate the storage of estates information for user bodies in Wales. The system will also access the vacant space register currently utilised by the central Government estate. This can alert other users (within the public sector) to the current (or planned) availability of accommodation.

Unlike other systems, e-PIMS provides all registered users with access to high level information across the database. This means that registered users can see, at a glance where other public sector property assets are located, their use and (in the full version) can be provided with a contact name to enable follow up enquiries to explore collaboration or development opportunities.

Property is displayed by map and behind the entry sits basic information about the holding such as size and tenure. The advantage of the system is that it is internet based, so (subject to password access) can be viewed by public organisations when planning schemes or collaborative property projects. Crucially it's free to use and Welsh Government Land Division (Estates) would supply advice and training to interested organisations.

Ystadau Cymru have recommended that it is best practice to flag available property on e-PIMS for 40 days prior to wider marketing.

The system includes a public facing portal "Find me some Government Space" which includes properties flagged as available on e-PIMS after the 40 day grace period has expired. However, organisations can specify that the entries do not go public. The usual requirements regarding EPCs on marketing literature will apply.

For more information contact:–
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Mae'r ddogfen yma hefyd ar gael yn Gymraeg. This document is also available in Welsh.

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